

ANTI-DISCRIMINATION (AMENDMENT) BILL, 1982

No. , 1982.

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 intellectual impairment or homosexuality; to transfer the functions of the Counsellor for Equal Opportunity under that Act to the President of the Anti-Discrimination Board; and for other purposes.

[MR WRAN—11 *November*, 1982.]

See also Miscellaneous Acts (Anti-Discrimination) Amendment Bill, 1982.

Anti-Discrimination (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 (Amendment) Act, 1982".

Commencement.

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

(2) Section 5, in its application to Schedule 3, section 6 and Schedules 3 and 5 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 (4), and Schedule 4 (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 INTELLECTUAL IMPAIRMENT.

SCHEDULE 2.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO DISCRIMINATION ON THE GROUND OF HOMOSEXUALITY.

Anti-Discrimination (Amendment).

SCHEDULE 3.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE TRANSFER OF THE FUNCTIONS OF THE COUNSELLOR FOR EQUAL OPPORTUNITY TO THE PRESIDENT OF THE ANTI-DISCRIMINATION BOARD.

5 SCHEDULE 4.—MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

SCHEDULE 5.—TRANSITIONAL AND OTHER PROVISIONS.

Amendment of Act No. 48, 1977.

5. The Principal Act is amended in the manner set forth in Schedules 10 1-4.

Transitional and other provisions.

6. Schedule 5 has effect.

SCHEDULE 1.

(Sec. 5.)

15 AMENDMENTS TO THE PRINCIPAL ACT RELATING TO DISCRIMINATION ON THE GROUND OF INTELLECTUAL IMPAIRMENT.

(1) Section 3—

After the matter relating to Part IVA, insert:—

20 PART IVB.—DISCRIMINATION ON THE GROUND OF INTELLECTUAL IMPAIRMENT—ss. 49P-49ZE.

DIVISION 1.—*General*—s. 49P.

DIVISION 2.—*Discrimination in Work*—ss. 49Q-49X.

DIVISION 3.—*Discrimination in Other Areas*—ss. 49Y-49ZB.

DIVISION 4.—*Exceptions to Part IVB*—ss. 49ZC-49ZE.

Anti-Discrimination (Amendment).

SCHEDULE 1—*continued.*

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

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

5 Omit the definitions.

(b) Section 4 (1), definitions of “intellectual impairment”, “intellectually handicapped person”—

After the definition of “inquiry”, insert:—

10 “intellectual impairment”, in relation to a person, means any defect or disturbance in the normal structure and functioning of the person’s brain, whether arising from a condition subsisting at birth or from illness or injury;

15 “intellectually handicapped person” means a person who, as a result of disabilities arising from intellectual impairment, is substantially limited in one or more major life activities;

(c) Section 4 (1), definitions of “physical impairment”, “physically handicapped person”—

After the definition of “near relative”, insert:—

20 “physical impairment”, in relation to a person, means any defect or disturbance in the normal structure and functioning of the person’s body, whether arising from a condition subsisting at birth or from illness or injury, but does not include intellectual impairment;

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

Anti-Discrimination (Amendment).

SCHEDULE 1—*continued.*

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

(d) Section 4 (5)—

5 Before “handicapped” wherever occurring, insert “physically”.

(e) Section 4 (6)—

After section 4 (5), insert:—

10 (6) A reference in this Act to a person having the same intellectual impairment as an intellectually handicapped person includes a reference to a person having an intellectual impairment which is substantially the same as the intellectual impairment of the intellectually handicapped person.

(3) Part IVA—

Before “handicapped” wherever occurring, insert “physically”.

15 (4) Part IVB—

After Part IVA, insert:—

PART IVB.

DISCRIMINATION ON THE GROUND OF INTELLECTUAL IMPAIRMENT.

DIVISION 1.—*General.*

20 **Discrimination on the ground of intellectual impairment.**

49P. (1) A person discriminates against an intellectually handicapped person on the ground of his intellectual impairment if, on the ground of—

- 25 (a) his intellectual impairment;
- (b) a characteristic that appertains generally to persons having the same intellectual impairment as the intellectually handicapped person; or

Anti-Discrimination (Amendment).

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

5 (c) a characteristic that is generally imputed to persons having
the same intellectual impairment as the intellectually
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 an intellectually handicapped person.

10 (2) A person discriminates against an intellectually handi-
capped person on the ground of his intellectual impairment if he
requires the intellectually handicapped person to comply with a
requirement or condition—

15 (a) with which a substantially higher proportion of persons who
are not intellectually handicapped persons comply or are
able to comply;

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

20 (c) with which the intellectually handicapped person does not
or is not able to comply.

DIVISION 2.—*Discrimination in Work.***Discrimination against applicants and employees.**

25 49Q. (1) It is unlawful for an employer to discriminate against
an intellectually handicapped person on the ground of his intellectual
impairment—

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

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

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

Anti-Discrimination (Amendment).

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

5 (2) It is unlawful for an employer to discriminate against an employee who is an intellectually handicapped person on the ground of his intellectual 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
- (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;
 - 15 (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.

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 (New South Wales) Code.

Discrimination against commission agents.

25 49R. (1) It is unlawful for a principal to discriminate against an intellectually handicapped person on the ground of his intellectual impairment—

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

Anti-Discrimination (Amendment).

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

5 (2) It is unlawful for a principal to discriminate against a
commission agent who is an intellectually handicapped person on the
ground of his intellectual impairment—

- 10 (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.

15 **Discrimination against contract workers.**

49s. It is unlawful for a principal to discriminate against a contract
worker who is an intellectually handicapped person on the ground
of his intellectual impairment—

- 20 (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.

25 **Partnerships.**

49t. (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 them-
selves into a partnership, to discriminate against an intellectually
handicapped person on the ground of his intellectual impairment—

- 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;

Anti-Discrimination (Amendment).

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

- 5 (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.

10 (2) It is unlawful for a firm consisting of 6 or more partners
to discriminate against a partner who is an intellectually handicapped
person on the ground of his intellectual 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
- (c) by subjecting him to any other detriment.

15 **Trade unions.**

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

- 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 trade union to discriminate against
an intellectually handicapped person who is a member of the trade
union on the ground of his intellectual 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
- 30 (c) by subjecting him to any other detriment.

Anti-Discrimination (Amendment).

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

- 5 49v. 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 an intellectually handicapped person on the ground of his intellectual impairment—
- 10 (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
- 15 authorisation or qualification; or
- (c) by withdrawing the authorisation or qualification or varying the terms or conditions upon which it is held.

Employment agencies.

- 20 49w. It is unlawful for an employment agency to discriminate against an intellectually handicapped person on the ground of his intellectual impairment—
- (a) by refusing to provide him with any of its services;
- (b) in the terms on which it offers to provide him with any of its services; or
- 25 (c) in the manner in which it provides him with any of its services.

Exceptions to certain provisions in this Division.

- 30 49x. (1) Nothing in section 49Q (1) (b), section 49R (1) (b) or section 49T (1) (b) renders unlawful discrimination by an employer, principal or person against an intellectually handicapped person on the ground of his intellectual impairment if, with respect to the work required to be performed in the course of the employment or engagement concerned, it appeared to the employer, principal

Anti-Discrimination (Amendment).

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

5 or person, on such grounds as, having regard to the circumstances
of the case, it was reasonable to rely, that the intellectually
handicapped person, because of his intellectual impairment—

(a) would be unable to carry out that work; or

10 (b) would, in order to carry out that work, require services or
facilities which are not required by persons who are not
intellectually handicapped persons and which, having regard
to the circumstances of the case, cannot reasonably be
provided or accommodated by the employer, principal or
person.

15 (2) Nothing in section 49Q (1) (c), (2) (a) or (b), section
49R (1) (c), (2) (a) or (b), section 49s (a) or (c) or section
49T (1) (c) or (2) (a) renders unlawful discrimination by an
employer, principal or person against an intellectually handicapped
20 person on the ground of his intellectual impairment in respect of any
determination by the employer, principal or person of any terms
or conditions relating to the intellectually handicapped person that are
reasonable, having regard to either or both of the following:—

25 (a) any limitation or restriction that the intellectually handi-
capped person's intellectual 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;

30 (b) any services or facilities which would be or are required by
the intellectually 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 are not intellectually
handicapped persons.

Anti-Discrimination (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO DISCRIMINATION
ON THE GROUND OF INTELLECTUAL IMPAIRMENT—*continued.*DIVISION 3.—*Discrimination in Other Areas.*5 **Education.**

49Y. (1) It is unlawful for an educational authority to discriminate against an intellectually handicapped person on the ground of his intellectual impairment—

- 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 who is an intellectually handicapped person on the ground of his intellectual impairment—

- (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.

20 (3) Nothing in this section applies to or in respect of—

- (a) a private educational authority;
- (b) a refusal or failure to accept an intellectually handicapped person's application for admission as a student by an educational authority where the educational authority administers a school, college, university or other institution which is conducted solely for students who have an intellectual impairment which is not the same as that of the applicant; or
- 25 (c) an educational authority where an intellectually handicapped person, if admitted as a student by the educational authority, would require services or facilities which are not required by students who are not intellectually handicapped persons and which, having regard to the circumstances of the case, cannot reasonably be provided or
- 30 accommodated by the educational authority.

Anti-Discrimination (Amendment)

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

5 49Z. (1) It is unlawful for a person who provides, for payment or not, goods or services to discriminate against an intellectually handicapped person on the ground of his intellectual 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.

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

- 15 (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 intellectually handicapped person would be unable, because of his intellectual impairment, to use the goods or services concerned; or
20 (b) in respect of the provision of services, the firstmentioned person did all such things as were reasonably practicable, having regard to the circumstances of the case, to assist the intellectually handicapped person to use those services but the intellectually handicapped person was unable, because of his intellectual impairment, to use those services.

25 **Accommodation.**

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

- 30 (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.

Anti-Discrimination (Amendment).

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

5 (2) It is unlawful for a person, whether as principal or agent, to discriminate against an intellectually handicapped person on the ground of his intellectual impairment—

(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.

10 (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

15 (b) the accommodation provided in those premises is for no more than 6 persons.

(4) Nothing in subsection (1) (a) or (b) or (2) (a) renders unlawful discrimination by a person against an intellectually handicapped person on the ground of his intellectual impairment if 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 intellectually handicapped person, because of his intellectual impairment, would be able to use the accommodation or benefit associated with the accommodation, as the case may be, only with
20
25 substantial risk of injury to himself.

Registered clubs.

49ZB. (1) It is unlawful for a registered club to discriminate against an intellectually handicapped person who is not a member of the registered club on the ground of his intellectual impairment—

30 (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.

Anti-Discrimination (Amendment).

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

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

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

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

(c) by subjecting him to any other detriment.

15 (3) Nothing in subsection (1) or (2) applies to or in respect of a registered club where an intellectually 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 facilities which are not required by members of the registered club who are not intellectually handicapped persons and which, having regard to the circumstances of the case, cannot reasonably be provided or accommodated by the registered club.

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DIVISION 4.—*Exceptions to Part IVB.***Superannuation, etc.**

25 49zc. Nothing in this Part renders unlawful discrimination against an intellectually handicapped person on the ground of his intellectual impairment in the terms or conditions appertaining to a superannuation or provident fund or scheme.

Anti-Discrimination (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO DISCRIMINATION
ON THE GROUND OF INTELLECTUAL IMPAIRMENT—*continued.***Insurance, etc.**

5 49ZD. Nothing in this Part renders unlawful discrimination against an intellectually handicapped person on the ground of his intellectual impairment 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—

10 (a) the discrimination is—

(i) based upon actuarial or statistical data 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

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

20 (b) the source on which the data referred to in paragraph (a) (i) is based is disclosed to the Tribunal, where the Tribunal so requires, and any other relevant factors to which regard has been had as referred to in paragraph (a) (ii) are disclosed to the Tribunal, where the Tribunal so requires.

Sport.

25 49ZE. Nothing in this Part renders unlawful discrimination by a person against an intellectually handicapped person on the ground of his intellectual impairment so as to exclude the intellectually 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 or any prescribed sporting activity.

Anti-Discrimination (Amendment).

SCHEDULE 2.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO DISCRIMINATION ON THE GROUND OF HOMOSEXUALITY.

5 (1) Section 3—

Before the matter relating to Part V, insert:—

PART IVc.—DISCRIMINATION ON THE GROUND OF HOMOSEXUALITY—ss. 49ZF–49ZR.

DIVISION 1.—*General*—ss. 49ZF, 49ZG.

10 DIVISION 2.—*Discrimination in Work*—ss. 49ZH–49ZN.

DIVISION 3.—*Discrimination in Other Areas*—ss. 49ZO–49ZR.

(2) Part IVc—

Before Part V, insert:—

PART IVc.

15 DISCRIMINATION ON THE GROUND OF HOMOSEXUALITY.

DIVISION 1.—*General*.

Interpretation: Pt. IVc.

20 49ZF. A reference in this Part to a person's homosexuality includes a reference to the person's being thought to be a homosexual person, whether he is in fact a homosexual person or not.

Discrimination on the ground of homosexuality.

49ZG. (1) A person discriminates against another person on the ground of his homosexuality if, on the ground of—

- (a) his homosexuality;
- (b) a characteristic that appertains generally to homosexual persons; or

Anti-Discrimination (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO DISCRIMINATION ON
THE GROUND OF HOMOSEXUALITY—*continued.*

5 (c) a characteristic that is generally imputed to homosexual persons,

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 he did not think was a homosexual person.

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

(a) with which a substantially higher proportion of persons who are not homosexual persons comply or are able to comply;

15 (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.

DIVISION 2.—*Discrimination in Work.*20 **Discrimination against applicants and employees.**

49ZH. (1) It is unlawful for an employer to discriminate against a person on the ground of his homosexuality—

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

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

Anti-Discrimination (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO DISCRIMINATION ON
THE GROUND OF HOMOSEXUALITY—*continued.*

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

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

- 10 (a) for the purposes of a private household;
- (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.

- 15 (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 (New South Wales) Code.

20 **Discrimination against commission agents.**

49ZI. (1) It is unlawful for a principal to discriminate against a person on the ground of his homosexuality—

- (a) in the arrangements he makes for the purpose of determining who should be engaged as a commission agent;
- 25 (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
30 a commission agent on the ground of his homosexuality—

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

Anti-Discrimination (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO DISCRIMINATION ON
THE GROUND OF HOMOSEXUALITY—*continued.*

- 5 (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 **Discrimination against contract workers.**

49zJ. It is unlawful for a principal to discriminate against a contract worker on the ground of his homosexuality—

- (a) in the terms on which he allows him to work;
- (b) by not allowing him to work or continue to work;
- 15 (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.

Partnerships.

20 49zK. (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 homosexuality—

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

Anti-Discrimination (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO DISCRIMINATION ON
THE GROUND OF HOMOSEXUALITY—*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 homosexuality—
- (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.

10 **Trade unions.**

- 49ZL. (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 homosexuality—
- 15 (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 homosexuality—
- (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
 - 25 (c) by subjecting him to any other detriment.

Qualifying bodies.

- 49ZM. 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, the carrying on of a trade or the engaging in of an occupation to discriminate against a person on the ground of his homosexuality—
- 30 (a) by refusing or failing to confer, renew or extend the authorisation or qualification;

Anti-Discrimination (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO DISCRIMINATION ON
THE GROUND OF HOMOSEXUALITY—*continued.*

- 5 (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.

- 10 49ZN. It is unlawful for an employment agency to discriminate against a person on the ground of his homosexuality—
- (a) by refusing to provide him with any of its services;
- (b) in the terms on which it offers to provide him with any of its services; or
- 15 (c) in the manner in which it provides him with any of its services.

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

- 20 49ZO. (1) It is unlawful for an educational authority to discriminate against a person on the ground of his homosexuality—
- (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.
- 25 (2) It is unlawful for an educational authority to discriminate against a student on the ground of his homosexuality—
- (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.
- 30 (3) Nothing in this section applies to or in respect of a private educational authority.

*Anti-Discrimination (Amendment).*SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO DISCRIMINATION ON
THE GROUND OF HOMOSEXUALITY—*continued.***Provision of goods and services.**

- 5 49ZP. 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 homosexuality—
- (a) by refusing to provide him with those goods or services; or
- 10 (b) in the terms on which he provides him with those goods or services.

Accommodation.

- 49ZQ. (1) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of his homosexuality—
- 15 (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.
- 20 (2) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of his homosexuality—
- (a) by denying him access, or limiting his access, to any benefit associated with accommodation occupied by him; or
- 25 (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
- 30 (b) the accommodation provided in those premises is for no more than 6 persons.

*Anti-Discrimination (Amendment).*SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO DISCRIMINATION ON
THE GROUND OF HOMOSEXUALITY—*continued.***Registered clubs.**

- 5 49ZR. (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 homosexuality—
- (a) by refusing or failing to accept his application for member-
 ship; or
- 10 (b) in the terms on which it is prepared to admit him to
 membership.
- (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 homosexuality—
- 15 (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.

20

SCHEDULE 3.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE TRANSFER OF THE
FUNCTIONS OF THE COUNSELLOR FOR EQUAL OPPORTUNITY TO THE
PRESIDENT OF THE ANTI-DISCRIMINATION BOARD.

- 25 (1) (a) Section 3—
 Omit the matter relating to Part VII.
- (b) Section 3, matter relating to Part IX—
 Omit "COUNSELLOR", insert instead "PRESIDENT".

*Anti-Discrimination (Amendment).*SCHEDULE 3—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE TRANSFER OF THE FUNCTIONS OF THE COUNSELLOR FOR EQUAL OPPORTUNITY TO THE PRESIDENT OF THE ANTI-DISCRIMINATION BOARD—*continued.*

5 (c) Section 3—

Omit the matter relating to Division 2 of Part IX, insert instead:—

DIVISION 2.—*The Functions of the President*—ss. 88–94A.

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

10 Omit the definition.

(b) Section 4 (1), definition of “President”—

Before the definition of “principal”, insert:—

“President” means the President of the Board;

(3) Part VII—

15 Omit the Part.

(4) Section 70, definition of “President”—

Omit the definition.

(5) Section 73—

Omit the section, insert instead:—

20 **Term of office.**

73. Subject to this Part, a member shall hold office for such period, not exceeding—

(a) in the case of the full-time member—7 years; and

Anti-Discrimination (Amendment).

SCHEDULE 3—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE TRANSFER OF THE
FUNCTIONS OF THE COUNSELLOR FOR EQUAL OPPORTUNITY TO THE
PRESIDENT OF THE ANTI-DISCRIMINATION BOARD—*continued.*

- 5 (b) in the case of a part-time member—3 years,
as is specified in the instrument of his appointment and is eligible for
re-appointment as a member.
- (6) (a) Section 86—
10 Omit “Board to exercise its functions may be appointed”, insert
instead “President and the Board to exercise their functions may
be appointed and employed”.
- (b) Section 86 (2)—
At the end of section 86, insert:—
15 (2) A person who is employed for the purposes of subsection
(1) is, while he is so employed, an officer of the Board.
- (7) Part IX, heading—
Omit “COUNSELLOR”, insert instead “PRESIDENT”.
- (8) Part IX, Division 2, heading—
Omit “*Counsellor*”, insert instead “*President*”.
- 20 (9) Sections 88, 89, 89A, 90, 91, 92, 93, 94, 107, 112—
Omit “Counsellor” wherever occurring, insert instead “President”.
- (10) Section 94A—
After section 94, insert:—
Officers of the President.
25 94A. (1) The President may, with the concurrence of the
Minister, designate an officer of the Board for the purposes of this
section.

Anti-Discrimination (Amendment).

SCHEDULE 3—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE TRANSFER OF THE
FUNCTIONS OF THE COUNSELLOR FOR EQUAL OPPORTUNITY TO THE
PRESIDENT OF THE ANTI-DISCRIMINATION BOARD—*continued.*

5 (2) The President may, by instrument in writing, delegate
to an officer designated for the purposes of this section the exercise
of such one or more of his functions under sections 88 (4), 89, 92
and 93 as may be specified in the instrument.

10 (3) An officer who is a delegate of the President under this
section is, while the delegation remains unrevoked, an officer of the
President.

15 (4) A delegation under this section may be made subject to
such conditions or limitations as to the exercise of any of the functions
delegated, or as to time or circumstances, as may be specified in the
instrument of delegation.

(5) The President may, by instrument in writing, revoke
wholly or in part a delegation under this section at any time, whether
made by him or not.

20 (6) During a vacancy in the office of President, the Minister
may, in like manner, revoke wholly or in part a delegation under this
section.

(7) A delegation under this section is not revoked by the
occurrence of a vacancy in the office of President, except to the extent
that the instrument of delegation so provides.

25 (8) Notwithstanding any delegation under this section, the
President may continue to exercise any or all of the functions
delegated.

30 (9) Any act or thing done or suffered by an officer of the
President pursuant to a delegation under this section has the same
force and effect as if done or suffered by the President.

(11) Section 119—

After “may”, insert “, by resolution, determine to”.

Anti-Discrimination (Amendment).

SCHEDULE 3—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE TRANSFER OF THE
FUNCTIONS OF THE COUNSELLOR FOR EQUAL OPPORTUNITY TO THE
PRESIDENT OF THE ANTI-DISCRIMINATION BOARD—*continued.*

5 (12) Section 121A—

After section 121, insert:—

Execution of functions of the Board.

121A. Resolutions of the Board relating to—

- 10 (a) matters referred to in section 119; and
(b) the conduct of an examination under section 120 (2),
shall be implemented by the President.

(13) Section 122 (1A)—

After section 122 (1), insert:—

- 15 (1A) The report shall include an account by the President of the
administration of Division 2 during that period of 12 months.

(14) Sections 122H–122HG—

Omit section 122H, insert instead:—

Persons ineligible for appointment as Director.

20 122H. A person is not eligible for appointment as the Director 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.

Anti-Discrimination (Amendment).

SCHEDULE 3—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE TRANSFER OF THE
FUNCTIONS OF THE COUNSELLOR FOR EQUAL OPPORTUNITY TO THE
PRESIDENT OF THE ANTI-DISCRIMINATION BOARD—*continued.*5 **Vacation of office.**

122HA. The Director vacates his 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;
- 10 (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;
- 15 (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 retired from office or removed from office by the Governor pursuant to section 122HB.

Retirement or removal from office.

20 122HB. (1) The Director 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 Remuneration Tribunal determines.

25 (2) The Director may, at any time, be removed from office by the Governor upon the address of both Houses of Parliament.

Director not subject to Public Service Act, 1979.

30 122HC. The provisions of the Public Service Act, 1979, do not apply to or in respect of the appointment of the Director and the Director is not subject to those provisions.

Anti-Discrimination (Amendment).

SCHEDULE 3—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE TRANSFER OF THE
FUNCTIONS OF THE COUNSELLOR FOR EQUAL OPPORTUNITY TO THE
PRESIDENT OF THE ANTI-DISCRIMINATION BOARD—*continued.*5 **Remuneration and allowances.**

122HD. The Director is entitled to be paid—

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

Acting Director.

122HE. (1) The Minister may appoint an acting Director during
the absence of the Director or during a vacancy in his office.

- 15 (2) An acting Director 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 Director
to act as Director.

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

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

25 **Preservation of rights of Director previously public servant, etc.**

122HF. (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.

Anti-Discrimination (Amendment).

SCHEDULE 3—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE TRANSFER OF THE
FUNCTIONS OF THE COUNSELLOR FOR EQUAL OPPORTUNITY TO THE
PRESIDENT OF THE ANTI-DISCRIMINATION BOARD—*continued.*

- 5 (2) Subject to subsection (3) and to the terms of his
appointment, where the Director was, immediately before his
appointment as the Director—
- (a) an officer of the Public Service; or
- (b) a contributor to a superannuation scheme,
- 10 he—
- (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
- 15 appointment as the Director; 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 the Director, and—
- 20 (f) his service as the Director 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
- 25 (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.
- 30 (3) A person appointed as the Director 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 Director or at any later time
while he holds office as the Director) a contributor to any other

*Anti-Discrimination (Amendment).*SCHEDULE 3—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE TRANSFER OF THE
FUNCTIONS OF THE COUNSELLOR FOR EQUAL OPPORTUNITY TO THE
PRESIDENT OF THE ANTI-DISCRIMINATION BOARD—*continued.*

5 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.

10 (4) Subsection (3) does not prevent the payment to the Director 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.

15 (5) A person appointed as the Director shall not, in respect of the same period of service, be entitled to claim a benefit under this Act and another Act.

Staff.

20 122HG. (1) Such officers and employees as may be necessary to enable the Director to exercise his functions may be appointed and employed under and subject to the Public Service Act, 1979.

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

(15) Section 124—

Omit the section, insert instead:—

25 **Obstruction.**

124. A person shall not, without lawful excuse, wilfully obstruct, hinder or resist—

(a) the President, or an officer of the President, in the exercise of his functions under Division 2 of Part IX; or

Anti-Discrimination (Amendment).

SCHEDULE 3—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE TRANSFER OF THE FUNCTIONS OF THE COUNSELLOR FOR EQUAL OPPORTUNITY TO THE PRESIDENT OF THE ANTI-DISCRIMINATION BOARD—*continued.*

5 (b) a member of the Tribunal, the Registrar, a member of the Board, or the Director or an officer of the Director, in the exercise of his functions under this Act or the regulations.

Penalty: \$1,000.

10

SCHEDULE 4.

(Sec. 5.)

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

(1) (a) Section 4 (2)—

After “duty,” insert “a reference to”.

15 (b) Section 4 (7)—

At the end of section 4, insert:—

20

(7) A reference in this Act to an employer shall be read and construed, in relation to employment in a Department, or Administrative Office, within the meaning of the Public Service Act, 1979, as a reference to the Department Head, within the meaning of that Act, of that Department or in relation to that Administrative Office, as the case may require, and any thing determined or done with respect to—

25

(a) the offer of any such employment;

(b) the terms and conditions on which any such employment is afforded;

Anti-Discrimination (Amendment).

SCHEDULE 4—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

5 (c) the opportunities afforded for promotion, transfer, training or other benefits associated with any such employment; or

(d) dismissal from any such employment,

10 or with respect to any other matter concerning employment, by an officer or employee in any such Department or Administrative Office who is authorised to determine and do things in that respect shall be deemed to have been determined or done by the Department Head.

(2) Section 32 (2)—

Omit the subsection.

(3) Section 49i (1) (b)—

15 Omit “person who”, insert instead “persons who”.

(4) Section 51—

Omit the section, insert instead:—

Advertisements.

51. (1) In this section—

20 (a) “advertisement”, without affecting the generality of the expression, includes any notice, sign, label, circular and any similar thing, and includes any matter that is not writing but which, by reason of the form or context in which it appears, conveys a message; and

25 (b) a reference to the publishing of an advertisement is a reference to the publishing of the advertisement by any means, including the publishing thereof in a newspaper or periodical, by radio or television broadcast or in a film.

30

Anti-Discrimination (Amendment).

SCHEDULE 4—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

5 (2) A person shall not publish or cause to be published an advertisement that indicates an intention to do an act that is unlawful under this Act.

Penalty: \$1,000.

10 (3) For the purposes of subsection (2), but without limiting the generality of that subsection, the use of a word which, by reason of its gender, denotes a person or persons of a particular sex—

(a) as or as part of—

(i) the description of a job offered; or

(ii) the description of a class of persons to whom any offer or invitation is made,

15 by an advertisement; or

(b) as or as part of a classification or heading under which an advertisement which makes any offer or invitation is published,

20 shall be taken to indicate the intention that the offer of the job or other offer or invitation made by the advertisement is made only to persons of that sex, unless the contrary intention appears in the advertisement or in the classification or heading.

25 (4) In proceedings for an offence under subsection (2), it is a defence for the defendant to prove that he believed on reasonable grounds that the publication of the advertisement was not an offence under that subsection.

*Anti-Discrimination (Amendment).*A SCHEDULE 4—*continued.*A MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(5) Section 54—

Omit the section, insert instead:—

5 **Acts done under statutory authority, etc.**

54. (1) Nothing in this Act renders unlawful anything done by a person if it was necessary for him to do it in order to comply with a requirement of—

- 10 (a) any other Act, whether passed before or after this Act;
 10 (b) any regulation, ordinance, by-law, rule or other instrument made under any such other Act;
 (c) an order of the Tribunal;
 (d) an order of any court, including an order or award of a court or tribunal having power to fix minimum wages and other terms and conditions of employment; or
 15 (e) an industrial agreement in force under the Industrial Arbitration Act, 1940, or under the Conciliation and Arbitration Act 1904 of the Parliament of the Commonwealth, as amended from time to time, or any like agreement in force under any other Act or law.

20 (2) Nothing in this Act renders unlawful any discrimination by an employer in the payment of a salary, wage or other remuneration in excess of the amount fixed by or under any Act or law.

25 (3) Except as provided in this section, this Act has effect notwithstanding anything contained in—

- (a) the Co-operation Act, 1923;
 (b) the Credit Union Act, 1969;
 (c) the Friendly Societies Act, 1912;
 (d) the Gaming and Betting Act, 1912;
 30 (e) the Permanent Building Societies Act, 1967; or
 (f) the Registered Clubs Act, 1976,

or any instrument of whatever nature made or approved thereunder.

Anti-Discrimination (Amendment).

SCHEDULE 4—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (6) (a) Section 57 (1) (c)—
Omit “1912; or”, insert instead “1912;”.
- 5 (b) Section 57 (1) (d)—
Omit “1967.”, insert instead “1967; or”.
- (c) Section 57 (1) (e)—
After section 57 (1) (d), insert:—
(e) a registered club.
- 10 (7) (a) Section 69A, definition of “judicial member”—
Omit “the” where firstly occurring, insert instead “a”.
- (b) Section 69A, definition of “judicial member”—
After “Tribunal”, insert “and includes the senior judicial member”.
- 15 (c) Section 69A, definition of “member”—
Omit “the judicial member.”, insert instead “a judicial member;”.
- (d) Section 69A, definition of “senior judicial member”—
After the definition of “member”, insert:—
20 “senior judicial member” means the senior judicial member of the Tribunal.
- (e) Section 69A (2)—
At the end of section 69A, insert:—
25 (2) Where, for the time being, only one judicial member holds office, he shall be deemed, for the purposes of this Part, to be the senior judicial member, and may do and constitute

Anti-Discrimination (Amendment).

SCHEDULE 4—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

all such matters and things as are required or permitted under this Part to be done or constituted by the senior judicial member or by a judicial member selected by the senior judicial member.

(8) Section 69C—

Omit the section, insert instead:—

Appointment of members.

69C. (1) The Tribunal shall consist of not fewer than 5 part-time members and not more than 10 part-time members appointed by the Governor, of whom—

(a) at least 4 members; and

(b) at most 6 members,

shall not be judicial members.

(2) Where 2 or more judicial members hold office, one of the judicial members shall be designated by the Governor, in and by the instrument of the member's appointment or by another instrument, as the senior judicial member.

(9) (a) Section 69E (1)—

Omit "The judicial", insert instead "A judicial".

(b) Section 69E (2)—

Omit "the judicial" wherever occurring, insert instead "a judicial".

(10) (a) Section 69G (1)—

Omit "The judicial", insert instead "A judicial".

(b) Section 69G (2)—

Omit "the judicial", insert instead "a judicial".

Anti-Discrimination (Amendment).

SCHEDULE 4—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(11) Section 69H—

Omit “the judicial”, insert instead “a judicial”.

5 (12) Section 69J—

Omit “the judicial member where the judicial member has”, insert instead “a judicial member having”.

(13) Section 69K—

Omit the section, insert instead:—

10 **Acting judicial members.**

69k. (1) The Minister may at any time appoint a person qualified for appointment as a judicial member—

(a) to act as the senior judicial member; or

15 (b) to act as a judicial member other than the senior judicial member,

during the absence or illness of the senior judicial member or another judicial member, as the case may be.

20 (2) Where a judicial member is appointed, under subsection (1), to act as the senior judicial member, he shall be deemed, for the purposes only of that subsection, to be absent while so acting.

(3) A person appointed under this section shall have and may exercise, while acting under the appointment, the functions of the member for whom he is acting.

(14) Section 69L (1)—

25 Omit “the judicial”, insert instead “a judicial”.

Anti-Discrimination (Amendment).

SCHEDULE 4—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(15) Section 69M (1)—

Omit section 69M (1) (a) and (b), insert instead:—

5

(a) a judicial member; and

(b) 2 members, not being judicial members,

selected by the senior judicial member.

(16) (a) Section 69N (1)—

Omit the subsection, insert instead:—

10

(1) Subject to this Act and the regulations—

(a) the procedure for constituting a sitting of the Tribunal shall be determined by the senior judicial member; and

(b) the procedure for the conduct of business at a sitting of the Tribunal shall be determined by the judicial member selected for the sitting (in this section referred to as “the sitting judicial member”).

15

(b) Section 69N (2), (3)—

Before “judicial” wherever occurring, insert “sitting”.

(c) Section 69N (2)—

20

Omit “all sittings”, insert instead “a sitting”.

(17) Section 84 (2) (b)—

Omit “contributor”, insert instead “a contributor”.

(18) (a) Section 87, definition of “complaint”—

From paragraph (a), omit “(1) or (2)”.

Anti-Discrimination (Amendment).

SCHEDULE 4—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) Section 87, definition of “representative complaint”—
Omit “(1)”.

5 (19) (a) Section 88 (1), (4)—

Omit “or the Registrar” wherever occurring.

(b) Section 88 (2)—(2B)—

Omit section 88 (2), insert instead: —

10 (2) Where an intended complainant, being an intellectually
handicapped person, so desires, his complaint may be lodged
on his behalf by another person, who shall thereupon be deemed,
for the purposes of this Division, to have the same rights,
obligations and interests with respect to the investigation or
15 referral of the complaint as the intellectually handicapped
person.

(2A) For the purposes of this Part, a complaint lodged in
accordance with subsection (2) shall be deemed, except to the
extent necessary to give effect to that subsection, to have been
20 lodged by the intellectually handicapped person on his own
behalf.

(2B) Nothing in subsection (2) limits or restricts the
discretion of the Counsellor under section 90 (1) to decline to
entertain a complaint lodged in accordance with subsection
(2)—

25 (a) where it appears to him that the person who lodged
the complaint has subsequently lost the confidence or
authority of the intellectually handicapped complain-
ant; or

30 (b) for any other reason that, in the circumstances of the
case, appears to him sufficient.

Anti-Discrimination (Amendment).

SCHEDULE 4—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(c) Section 88 (5)—

Omit the subsection.

5 (20) Sections 89, 89A—

Omit “(1) or (2) or referred to him by the Registrar under section 88 (5)” wherever occurring.

(21) (a) Section 90 (2) (b)—

10 Before “the” where firstly occurring, insert “where section 91 (1) applies to the notification—”.

(b) Section 90 (2) (b)—

Omit “under section 91 (1)”, insert instead “under that subsection”.

(22) Section 91 (1A)—

15 After section 91 (1), insert:—

(1A) Subsection (1) does not apply to a notification in which the Counsellor has given, as a reason for declining to entertain a complaint, that what has been alleged in the complaint does not disclose any contravention of this Act.

20 (23) Section 108 (2)—

Omit “the judicial member”, insert instead “judicial member presiding at a sitting”.

(24) (a) Section 112—

25 Omit “the judicial” where firstly occurring, insert instead “the senior judicial”.

Anti-Discrimination (Amendment).

SCHEDULE 4—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (b) Section 112—
5 Omit “he”, insert instead “a judicial member of the Tribunal sitting”.
- (c) Section 112—
Omit “the judicial member,”, insert instead “the senior judicial member or a judicial member selected by him”.
- (d) Section 112 (2)—
10 At the end of section 112, insert:—
(2) Section 69A (2) applies in respect of this section in the same way as it applies in respect of Part VIIA.
- (25) Section 113 (b) (i)—
Omit “\$20,000”, insert instead “\$40,000”.
- 15 (26) Section 119 (a) (x)–(xii)—
Omit the subparagraphs.
- (27) (a) Section 122L (1)—
Omit “the date on”, insert instead “the year in”.
- (b) Section 122L (3)—
20 After section 122L (2), insert: —
(3) A report under subsection (1) shall be made to the Director—
(a) in the case of an authority referred to in section 122B (1) (a)—on or before 1st October in each year;

Anti-Discrimination (Amendment).

SCHEDULE 4—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) in the case of an authority referred to in section 122B
5 (1) (b) or (c)—on or before 1st July in each year;
and

(c) in the case of an authority referred to in section 122B
(1) (d)—on or before each anniversary of the date
specified by proclamation in relation to that authority
in accordance with section 122J (4) (c).

10 (28) (a) Section 127 (4) (d)—

After “at”, insert “or in connection with”.

(b) Section 127 (4)—

Omit:—

(e) exempting—

15 (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.

20 Insert instead:—

(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.

Anti-Discrimination (Amendment).

SCHEDULE 5.

(Sec. 6.)

TRANSITIONAL AND OTHER PROVISIONS.

Interpretation.

- 5 1. In this Schedule, "appointed day" means the day appointed and notified under section 2 (2).

Completion of dealings with complaints under Pt. IX of the Principal Act.

- 10 2. (1) A complaint lodged under section 88 of the Principal Act before the appointed day with the Counsellor for Equal Opportunity and not conclusively dealt with under Part IX of that Act before that day shall be deemed to be a complaint lodged under that section, as amended by this Act, with the President of the Anti-Discrimination Board and shall be dealt with accordingly.

- 15 (2) Any decision made or action taken before the appointed day by the Counsellor for Equal Opportunity in dealing with a complaint referred to in subclause (1) shall be deemed to be the decision or action of the President of the Anti-Discrimination Board.

Entitlement of the last acting Counsellor.

- 20 3. The person who, immediately before the appointed day, held office as acting Counsellor under section 68 of the Principal Act, as in force immediately before that day, is entitled to be appointed to a position in the Public Service not lower in classification and salary than the office held by him immediately before he was appointed as acting Counsellor.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1982

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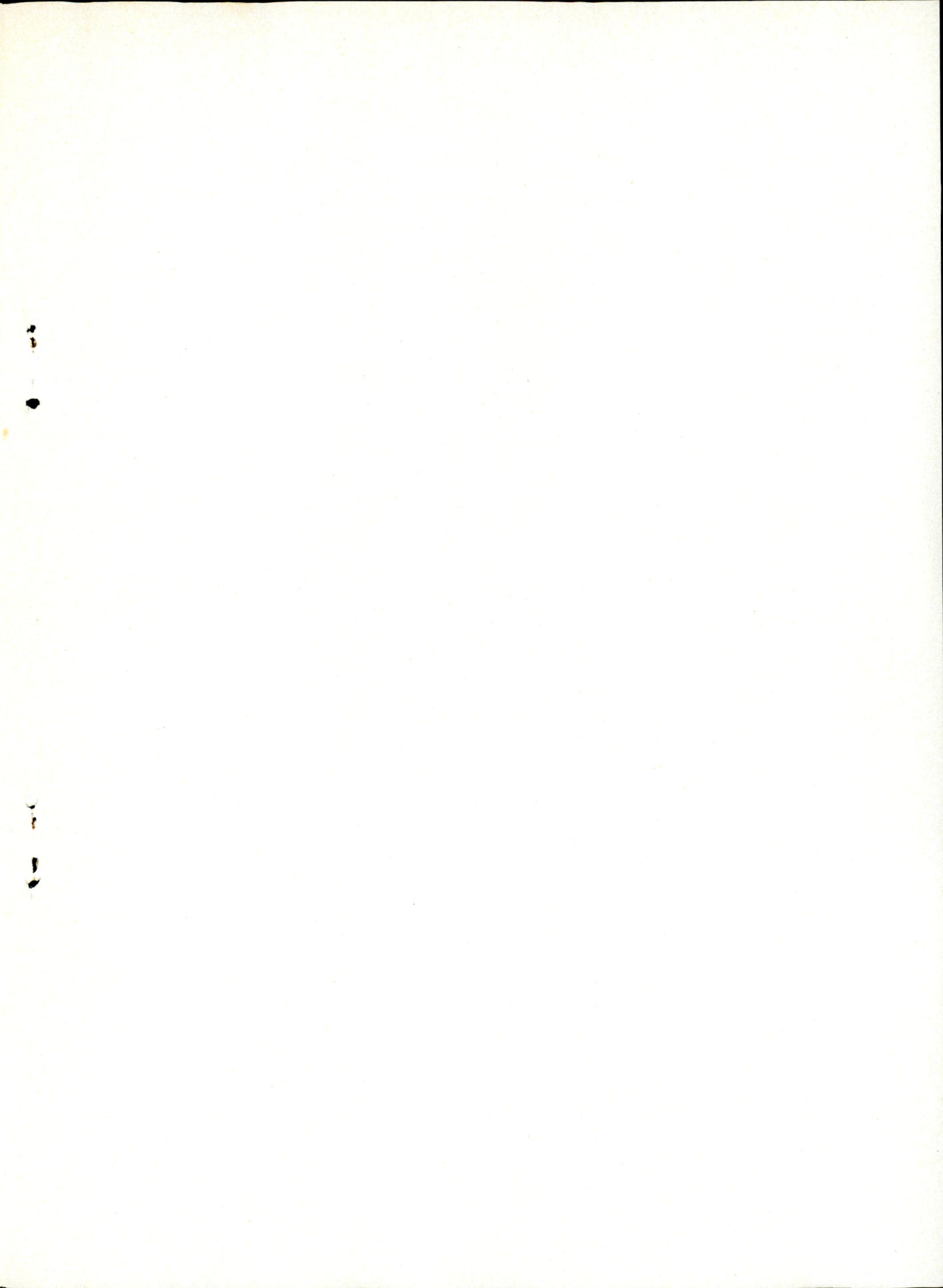
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**ANTI-DISCRIMINATION (AMENDMENT) ACT, 1982,
No. 142**

New South Wales



ANNO TRICESIMO PRIMO

ELIZABETHÆ II REGINÆ

Act No. 142, 1982.

An Act to amend the Anti-Discrimination Act, 1977, to render unlawful, in certain circumstances, discrimination on the ground of a person's intellectual impairment or homosexuality; to transfer the functions of the Counsellor for Equal Opportunity under that Act to the President of the Anti-Discrimination Board; and for other purposes. [Assented to, 20th December, 1982.]

See also Miscellaneous Acts (Anti-Discrimination) Amendment Act, 1982.

Anti-Discrimination (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:—

Short title.

1. This Act may be cited as the "Anti-Discrimination (Amendment) Act, 1982".

Commencement.

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

(2) Section 5, in its application to Schedule 3, section 6 and Schedules 3 and 5 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) Section 5, in its application to Schedule 4 (4), and Schedule 4 (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.

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

Schedules.

4. This Act contains the following Schedules:—

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

SCHEDULE 2.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO DISCRIMINATION ON THE GROUND OF HOMOSEXUALITY.

Anti-Discrimination (Amendment).

SCHEDULE 3.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE TRANSFER OF THE FUNCTIONS OF THE COUNSELLOR FOR EQUAL OPPORTUNITY TO THE PRESIDENT OF THE ANTI-DISCRIMINATION BOARD.

SCHEDULE 4.—MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

SCHEDULE 5.—TRANSITIONAL AND OTHER PROVISIONS.

Amendment of Act No. 48, 1977.

5. The Principal Act is amended in the manner set forth in Schedules 1-4.

Transitional and other provisions.

6. Schedule 5 has effect.

SCHEDULE 1.

(Sec. 5.)

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

(1) Section 3—

After the matter relating to Part IVA, insert:—

PART IVB.—DISCRIMINATION ON THE GROUND OF INTELLECTUAL IMPAIRMENT—*ss.* 49P-49ZE.

DIVISION 1.—*General*—*s.* 49P.

DIVISION 2.—*Discrimination in Work*—*ss.* 49Q-49X.

DIVISION 3.—*Discrimination in Other Areas*—*ss.* 49Y-49ZB.

DIVISION 4.—*Exceptions to Part IVB*—*ss.* 49ZC-49ZE.

Anti-Discrimination (Amendment).

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

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

Omit the definitions.

- (b) Section 4 (1), definitions of “intellectual impairment”, “intellectually handicapped person”—

After the definition of “inquiry”, insert:—

“intellectual impairment”, in relation to a person, means any defect or disturbance in the normal structure and functioning of the person’s brain, whether arising from a condition subsisting at birth or from illness or injury;

“intellectually handicapped person” means a person who, as a result of disabilities arising from intellectual impairment, is substantially limited in one or more major life activities;

- (c) Section 4 (1), definitions of “physical impairment”, “physically handicapped person”—

After the definition of “near relative”, insert:—

“physical impairment”, in relation to a person, means any defect or disturbance in the normal structure and functioning of the person’s body, whether arising from a condition subsisting at birth or from illness or injury, but does not include intellectual impairment;

“physically handicapped person” means a person who, as a result of having a physical impairment to his body, and having regard to any community 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;

Anti-Discrimination (Amendment).

SCHEDULE 1—*continued.*

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

(d) Section 4 (5)—

Before “handicapped” wherever occurring, insert “physically”.

(e) Section 4 (6)—

After section 4 (5), insert:—

(6) A reference in this Act to a person having the same intellectual impairment as an intellectually handicapped person includes a reference to a person having an intellectual impairment which is substantially the same as the intellectual impairment of the intellectually handicapped person.

(3) Part IVA—

Before “handicapped” wherever occurring, insert “physically”.

(4) Part IVB—

After Part IVA, insert:—

PART IVB.

DISCRIMINATION ON THE GROUND OF INTELLECTUAL IMPAIRMENT.

DIVISION 1.—*General.*

Discrimination on the ground of intellectual impairment.

49P. (1) A person discriminates against an intellectually handicapped person on the ground of his intellectual impairment if, on the ground of—

- (a) his intellectual impairment;
- (b) a characteristic that appertains generally to persons having the same intellectual impairment as the intellectually handicapped person; or

Anti-Discrimination (Amendment).

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

- (c) a characteristic that is generally imputed to persons having the same intellectual impairment as the intellectually 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 an intellectually handicapped person.

(2) A person discriminates against an intellectually handicapped person on the ground of his intellectual impairment if he requires the intellectually handicapped person to comply with a requirement or condition—

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

DIVISION 2.—*Discrimination in Work.***Discrimination against applicants and employees.**

49Q. (1) It is unlawful for an employer to discriminate against an intellectually handicapped person on the ground of his intellectual impairment—

- (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.

Anti-Discrimination (Amendment).

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

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

- (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—

- (a) for the purposes of a private household;
- (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.

(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 (New South Wales) Code.

Discrimination against commission agents.

49R. (1) It is unlawful for a principal to discriminate against an intellectually handicapped person on the ground of his intellectual impairment—

- (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.

Anti-Discrimination (Amendment).

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

(2) It is unlawful for a principal to discriminate against a commission agent who is an intellectually handicapped person on the ground of his intellectual impairment—

- (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.

Discrimination against contract workers.

49s. It is unlawful for a principal to discriminate against a contract worker who is an intellectually handicapped person on the ground of his intellectual impairment—

- (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.

Partnerships.

49t. (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 an intellectually handicapped person on the ground of his intellectual 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;

Anti-Discrimination (Amendment).

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

- (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 an intellectually handicapped person on the ground of his intellectual 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
- (c) by subjecting him to any other detriment.

Trade unions.

49U. (1) It is unlawful for a trade union to discriminate against an intellectually handicapped person who is not a member of the trade union on the ground of his intellectual 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.

(2) It is unlawful for a trade union to discriminate against an intellectually handicapped person who is a member of the trade union on the ground of his intellectual 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
- (c) by subjecting him to any other detriment.

Anti-Discrimination (Amendment).

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

49v. 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 an intellectually handicapped person on the ground of his intellectual impairment—

- (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.

Employment agencies.

49w. It is unlawful for an employment agency to discriminate against an intellectually handicapped person on the ground of his intellectual impairment—

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

49x. (1) Nothing in section 49Q (1) (b), section 49R (1) (b) or section 49T (1) (b) renders unlawful discrimination by an employer, principal or person against an intellectually handicapped person on the ground of his intellectual impairment if, with respect to the work required to be performed in the course of the employment or engagement concerned, it appeared to the employer, principal

Anti-Discrimination (Amendment).

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

or person, on such grounds as, having regard to the circumstances of the case, it was reasonable to rely, that the intellectually handicapped person, because of his intellectual impairment—

- (a) would be unable to carry out that work; or
- (b) would, in order to carry out that work, require services or facilities which are not required by persons who are not intellectually handicapped persons and which, having regard to the circumstances of the case, cannot reasonably be provided or accommodated by the employer, principal or person.

(2) Nothing in section 49Q (1) (c), (2) (a) or (b), section 49R (1) (c), (2) (a) or (b), section 49s (a) or (c) or section 49T (1) (c) or (2) (a) renders unlawful discrimination by an employer, principal or person against an intellectually handicapped person on the ground of his intellectual impairment in respect of any determination by the employer, principal or person of any terms or conditions relating to the intellectually handicapped person that are reasonable, having regard to either or both of the following:—

- (a) any limitation or restriction that the intellectually handicapped person's intellectual impairment would or does impose on his ability to carry out the work required to be performed in the course of the employment or engagement concerned;
- (b) any services or facilities which would be or are required by the intellectually 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 are not intellectually handicapped persons.

Anti-Discrimination (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO DISCRIMINATION
ON THE GROUND OF INTELLECTUAL IMPAIRMENT—*continued.*DIVISION 3.—*Discrimination in Other Areas.***Education.**

49Y. (1) It is unlawful for an educational authority to discriminate against an intellectually handicapped person on the ground of his intellectual impairment—

- (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) It is unlawful for an educational authority to discriminate against a student who is an intellectually handicapped person on the ground of his intellectual impairment—

- (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) a private educational authority;
- (b) a refusal or failure to accept an intellectually handicapped person's application for admission as a student by an educational authority where the educational authority administers a school, college, university or other institution which is conducted solely for students who have an intellectual impairment which is not the same as that of the applicant; or
- (c) an educational authority where an intellectually handicapped person, if admitted as a student by the educational authority, would require services or facilities which are not required by students who are not intellectually handicapped persons and which, having regard to the circumstances of the case, cannot reasonably be provided or accommodated by the educational authority.

Anti-Discrimination (Amendment).

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

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

- (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.

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

- (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 intellectually handicapped person would be unable, because of his intellectual impairment, to use the goods or services concerned; or
- (b) in respect of the provision of services, the firstmentioned person did all such things as were reasonably practicable, having regard to the circumstances of the case, to assist the intellectually handicapped person to use those services but the intellectually handicapped person was unable, because of his intellectual impairment, to use those services.

Accommodation.

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

- (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.

Anti-Discrimination (Amendment).

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

(2) It is unlawful for a person, whether as principal or agent, to discriminate against an intellectually handicapped person on the ground of his intellectual impairment—

- (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.

(4) Nothing in subsection (1) (a) or (b) or (2) (a) renders unlawful discrimination by a person against an intellectually handicapped person on the ground of his intellectual impairment if 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 intellectually handicapped person, because of his intellectual impairment, 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.

Registered clubs.

49ZB. (1) It is unlawful for a registered club to discriminate against an intellectually handicapped person who is not a member of the registered club on the ground of his intellectual 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.

Anti-Discrimination (Amendment).

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

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

- (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.

(3) Nothing in subsection (1) or (2) applies to or in respect of a registered club where an intellectually 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 facilities which are not required by members of the registered club who are not intellectually handicapped persons and which, having regard to the circumstances of the case, cannot reasonably be provided or accommodated by the registered club.

DIVISION 4.—*Exceptions to Part IVB.***Superannuation, etc.**

49zc. Nothing in this Part renders unlawful discrimination against an intellectually handicapped person on the ground of his intellectual impairment in the terms or conditions appertaining to a superannuation or provident fund or scheme.

Anti-Discrimination (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO DISCRIMINATION
ON THE GROUND OF INTELLECTUAL IMPAIRMENT—*continued.***Insurance, etc.**

49ZD. Nothing in this Part renders unlawful discrimination against an intellectually handicapped person on the ground of his intellectual impairment 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 or, where there is no such data, on such other data as may be available; and

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

(b) the source on which the data referred to in paragraph (a) (i) is based is disclosed to the Tribunal, where the Tribunal so requires, and any other relevant factors to which regard has been had as referred to in paragraph (a) (ii) are disclosed to the Tribunal, where the Tribunal so requires.

Sport.

49ZE. Nothing in this Part renders unlawful discrimination by a person against an intellectually handicapped person on the ground of his intellectual impairment so as to exclude the intellectually 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 or any prescribed sporting activity.

Anti-Discrimination (Amendment).

SCHEDULE 2.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO DISCRIMINATION ON
THE GROUND OF HOMOSEXUALITY.

(1) Section 3—

Before the matter relating to Part V, insert:—

PART IVc.—DISCRIMINATION ON THE GROUND OF HOMOSEXUALITY—ss. 49ZF–49ZR.

DIVISION 1.—*General*—ss. 49ZF, 49ZG.

DIVISION 2.—*Discrimination in Work*—ss. 49ZH–49ZN.

DIVISION 3.—*Discrimination in Other Areas*—ss. 49ZO–49ZR.

(2) Part IVc—

Before Part V, insert:—

PART IVc.

DISCRIMINATION ON THE GROUND OF HOMOSEXUALITY.

DIVISION 1.—*General*.

Interpretation: Pt. IVc.

49ZF. A reference in this Part to a person's homosexuality includes a reference to the person's being thought to be a homosexual person, whether he is in fact a homosexual person or not.

Discrimination on the ground of homosexuality.

49ZG. (1) A person discriminates against another person on the ground of his homosexuality if, on the ground of—

- (a) his homosexuality;
- (b) a characteristic that appertains generally to homosexual persons; or

Anti-Discrimination (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO DISCRIMINATION ON
THE GROUND OF HOMOSEXUALITY—*continued.*

- (c) a characteristic that is generally imputed to homosexual persons,

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 he did not think was a homosexual person.

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

- (a) with which a substantially higher proportion of persons who are not homosexual persons 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.

DIVISION 2.—*Discrimination in Work.***Discrimination against applicants and employees.**

49ZH. (1) It is unlawful for an employer to discriminate against a person on the ground of his homosexuality—

- (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 homosexuality—

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

Anti-Discrimination (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO DISCRIMINATION ON
THE GROUND OF HOMOSEXUALITY—*continued.*

- (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—

- (a) for the purposes of a private household;
- (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.

(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 (**New South Wales**) Code.

Discrimination against commission agents.

49ZI. (1) It is unlawful for a principal to discriminate **against** a person on the ground of his homosexuality—

- (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 homosexuality—

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

Anti-Discrimination (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO DISCRIMINATION ON
THE GROUND OF HOMOSEXUALITY—*continued.*

- (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.

Discrimination against contract workers.

49ZJ. It is unlawful for a principal to discriminate against a contract worker on the ground of his homosexuality—

- (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.

Partnerships.

49ZK. (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 homosexuality—

- (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 (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO DISCRIMINATION ON
THE GROUND OF HOMOSEXUALITY—*continued.*

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

- (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.

Trade unions.

49ZL. (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 homosexuality—

- (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 homosexuality—

- (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.

49ZM. 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, the carrying on of a trade or the engaging in of an occupation to discriminate against a person on the ground of his homosexuality—

- (a) by refusing or failing to confer, renew or extend the authorisation or qualification;

Anti-Discrimination (Amendment).

SCHEDULE 2—*continued.***AMENDMENTS TO THE PRINCIPAL ACT RELATING TO DISCRIMINATION ON THE GROUND OF HOMOSEXUALITY—*continued.***

- (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.

49ZN. It is unlawful for an employment agency to discriminate against a person on the ground of his homosexuality—

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

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

49ZO. (1) It is unlawful for an educational authority to discriminate against a person on the ground of his homosexuality—

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

- (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 private educational authority.

Anti-Discrimination (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO DISCRIMINATION ON
THE GROUND OF HOMOSEXUALITY—*continued.***Provision of goods and services.**

49ZP. 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 homosexuality—

- (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.

Accommodation.

49ZQ. (1) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of his homosexuality—

- (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 homosexuality—

- (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.

Anti-Discrimination (Amendment).

 SCHEDULE 2—*continued.*

 AMENDMENTS TO THE PRINCIPAL ACT RELATING TO DISCRIMINATION ON
 THE GROUND OF HOMOSEXUALITY—*continued.*
Registered clubs.

49ZR. (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 homosexuality—

- (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 registered club to discriminate against a person who is a member of the registered club on the ground of his homosexuality—

- (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.

 SCHEDULE 3.

(Sec. 5.)

 AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE TRANSFER OF THE
 FUNCTIONS OF THE COUNSELLOR FOR EQUAL OPPORTUNITY TO THE
 PRESIDENT OF THE ANTI-DISCRIMINATION BOARD.

(1) (a) Section 3—

Omit the matter relating to Part VII.

(b) Section 3, matter relating to Part IX—

Omit "COUNSELLOR", insert instead "PRESIDENT".

Anti-Discrimination (Amendment).

SCHEDULE 3—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE TRANSFER OF THE FUNCTIONS OF THE COUNSELLOR FOR EQUAL OPPORTUNITY TO THE PRESIDENT OF THE ANTI-DISCRIMINATION BOARD—*continued.*

(c) Section 3—

Omit the matter relating to Division 2 of Part IX, insert instead:—

DIVISION 2.—*The Functions of the President—ss. 88–94A.*

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

Omit the definition.

(b) Section 4 (1), definition of “President”—

Before the definition of “principal”, insert:—

“President” means the President of the Board;

(3) Part VII—

Omit the Part.

(4) Section 70, definition of “President”—

Omit the definition.

(5) Section 73—

Omit the section, insert instead:—

Term of office.

73. Subject to this Part, a member shall hold office for such period, not exceeding—

(a) in the case of the full-time member—7 years; and

Anti-Discrimination (Amendment).

SCHEDULE 3—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE TRANSFER OF THE FUNCTIONS OF THE COUNSELLOR FOR EQUAL OPPORTUNITY TO THE PRESIDENT OF THE ANTI-DISCRIMINATION BOARD—*continued.*

(b) in the case of a part-time member—3 years,
as is specified in the instrument of his appointment and is eligible for re-appointment as a member.

(6) (a) Section 86—

Omit “Board to exercise its functions may be appointed”, insert instead “President and the Board to exercise their functions may be appointed and employed”.

(b) Section 86 (2)—

At the end of section 86, insert:—

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

(7) Part IX, heading—

Omit “COUNSELLOR”, insert instead “PRESIDENT”.

(8) Part IX, Division 2, heading—

Omit “*Counsellor*”, insert instead “*President*”.

(9) Sections 88, 89, 89A, 90, 91, 92, 93, 94, 107, 112—

Omit “Counsellor” wherever occurring, insert instead “President”.

(10) Section 94A—

After section 94, insert:—

Officers of the President.

94A. (1) The President may, with the concurrence of the Minister, designate an officer of the Board for the purposes of this section.

Anti-Discrimination (Amendment).

SCHEDULE 3—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE TRANSFER OF THE FUNCTIONS OF THE COUNSELLOR FOR EQUAL OPPORTUNITY TO THE PRESIDENT OF THE ANTI-DISCRIMINATION BOARD—*continued.*

(2) The President may, by instrument in writing, delegate to an officer designated for the purposes of this section the exercise of such one or more of his functions under sections 88 (4), 89, 92 and 93 as may be specified in the instrument.

(3) An officer who is a delegate of the President under this section is, while the delegation remains unrevoked, an officer of the President.

(4) A delegation under this section may be made subject to such conditions or limitations as to the exercise of any of the functions delegated, or as to time or circumstances, as may be specified in the instrument of delegation.

(5) The President may, by instrument in writing, revoke wholly or in part a delegation under this section at any time, whether made by him or not.

(6) During a vacancy in the office of President, the Minister may, in like manner, revoke wholly or in part a delegation under this section.

(7) A delegation under this section is not revoked by the occurrence of a vacancy in the office of President, except to the extent that the instrument of delegation so provides.

(8) Notwithstanding any delegation under this section, the President may continue to exercise any or all of the functions delegated.

(9) Any act or thing done or suffered by an officer of the President pursuant to a delegation under this section has the same force and effect as if done or suffered by the President.

(11) Section 119—

After “may”, insert “, by resolution, determine to”.

Anti-Discrimination (Amendment).

SCHEDULE 3—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE TRANSFER OF THE
FUNCTIONS OF THE COUNSELLOR FOR EQUAL OPPORTUNITY TO THE
PRESIDENT OF THE ANTI-DISCRIMINATION BOARD—*continued.*

(12) Section 121A—

After section 121, insert:—

Execution of functions of the Board.

121A. Resolutions of the Board relating to—

- (a) matters referred to in section 119; and
- (b) the conduct of an examination under section 120 (2),

shall be implemented by the President.

(13) Section 122 (1A)—

After section 122 (1), insert:—

(1A) The report shall include an account by the President of the administration of Division 2 during that period of 12 months.

(14) Sections 122H–122HG—

Omit section 122H, insert instead:—

Persons ineligible for appointment as Director.

122H. A person is not eligible for appointment as the Director 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.

Anti-Discrimination (Amendment).

SCHEDULE 3—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE TRANSFER OF THE FUNCTIONS OF THE COUNSELLOR FOR EQUAL OPPORTUNITY TO THE PRESIDENT OF THE ANTI-DISCRIMINATION BOARD—*continued.***Vacation of office.**

122HA. The Director vacates his 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) 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 retired from office or removed from office by the Governor pursuant to section 122HB.

Retirement or removal from office.

122HB. (1) The Director 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 Remuneration Tribunal determines.

(2) The Director may, at any time, be removed from office by the Governor upon the address of both Houses of Parliament.

Director not subject to Public Service Act, 1979.

122HC. The provisions of the Public Service Act, 1979, do not apply to or in respect of the appointment of the Director and the Director is not subject to those provisions.

Anti-Discrimination (Amendment).

SCHEDULE 3—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE TRANSFER OF THE FUNCTIONS OF THE COUNSELLOR FOR EQUAL OPPORTUNITY TO THE PRESIDENT OF THE ANTI-DISCRIMINATION BOARD—*continued.***Remuneration and allowances.**

122HD. The Director 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 Director.

122HE. (1) The Minister may appoint an acting Director during the absence of the Director or during a vacancy in his office.

(2) An acting Director 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 Director to act as Director.

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

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

Preservation of rights of Director previously public servant, etc.

122HF. (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.

Anti-Discrimination (Amendment).

SCHEDULE 3—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE TRANSFER OF THE FUNCTIONS OF THE COUNSELLOR FOR EQUAL OPPORTUNITY TO THE PRESIDENT OF THE ANTI-DISCRIMINATION BOARD—*continued.*

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

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

he—

- (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 Director; 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 the Director, and—

- (f) his service as the Director 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 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 Director 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 Director or at any later time while he holds office as the Director) a contributor to any other

Anti-Discrimination (Amendment).

SCHEDULE 3—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE TRANSFER OF THE FUNCTIONS OF THE COUNSELLOR FOR EQUAL OPPORTUNITY TO THE PRESIDENT OF THE ANTI-DISCRIMINATION BOARD—*continued.*

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 Director 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 Director shall not, in respect of the same period of service, be entitled to claim a benefit under this Act and another Act.

Staff.

122HG. (1) Such officers and employees as may be necessary to enable the Director to exercise his functions may be appointed and employed under and subject to the Public Service Act, 1979.

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

(15) Section 124—

Omit the section, insert instead:—

Obstruction.

124. A person shall not, without lawful excuse, wilfully obstruct, hinder or resist—

- (a) the President, or an officer of the President, in the exercise of his functions under Division 2 of Part IX; or

Anti-Discrimination (Amendment).

SCHEDULE 3—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE TRANSFER OF THE
FUNCTIONS OF THE COUNSELLOR FOR EQUAL OPPORTUNITY OF THE
PRESIDENT OF THE ANTI-DISCRIMINATION BOARD—*continued.*

- (b) a member of the Tribunal, the Registrar, a member of the Board, or the Director or an officer of the Director, in the exercise of his functions under this Act or the regulations.

Penalty: \$1,000.

SCHEDULE 4.

(Sec. 5.)

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

- (1) (a) Section 4 (2)—

After "duty," insert "a reference to".

- (b) Section 4 (7)—

At the end of section 4, insert:—

(7) A reference in this Act to an employer shall be read and construed, in relation to employment in a Department, or Administrative Office, within the meaning of the Public Service Act, 1979, as a reference to the Department Head, within the meaning of that Act, of that Department or in relation to that Administrative Office, as the case may require, and any thing determined or done with respect to—

- (a) the offer of any such employment;
- (b) the terms and conditions on which any such employment is afforded;

Anti-Discrimination (Amendment).

SCHEDULE 4—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(c) the opportunities afforded for promotion, transfer, training or other benefits associated with any such employment; or

(d) dismissal from any such employment,

or with respect to any other matter concerning employment, by an officer or employee in any such Department or Administrative Office who is authorised to determine and do things in that respect shall be deemed to have been determined or done by the Department Head.

(2) Section 32 (2)—

Omit the subsection.

(3) Section 49I (1) (b)—

Omit “person who”, insert instead “persons who”.

(4) Section 51—

Omit the section, insert instead:—

Advertisements.

51. (1) In this section—

(a) “advertisement”, without affecting the generality of the expression, includes any notice, sign, label, circular and any similar thing, and includes any matter that is not writing but which, by reason of the form or context in which it appears, conveys a message; and

(b) a reference to the publishing of an advertisement is a reference to the publishing of the advertisement by any means, including the publishing thereof in a newspaper or periodical, by radio or television broadcast or in a film.

Anti-Discrimination (Amendment).

SCHEDULE 4—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(2) A person shall not publish or cause to be published an advertisement that indicates an intention to do an act that is unlawful under this Act.

Penalty: \$1,000.

(3) For the purposes of subsection (2), but without limiting the generality of that subsection, the use of a word which, by reason of its gender, denotes a person or persons of a particular sex—

(a) as or as part of—

(i) the description of a job offered; or

(ii) the description of a class of persons to whom any offer or invitation is made,

by an advertisement; or

(b) as or as part of a classification or heading under which an advertisement which makes any offer or invitation is published,

shall be taken to indicate the intention that the offer of the job or other offer or invitation made by the advertisement is made only to persons of that sex, unless the contrary intention appears in the advertisement or in the classification or heading.

(4) In proceedings for an offence under subsection (2), it is a defence for the defendant to prove that he believed on reasonable grounds that the publication of the advertisement was not an offence under that subsection.

Anti-Discrimination (Amendment).

SCHEDULE 4—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(5) Section 54—

Omit the section, insert instead:—

Acts done under statutory authority, etc.

54. (1) Nothing in this Act renders unlawful anything done by a person if it was necessary for him to do it in order to comply with a requirement of—

- (a) any other Act, whether passed before or after this Act;
- (b) any regulation, ordinance, by-law, rule or other instrument made under any such other Act;
- (c) an order of the Tribunal;
- (d) an order of any court, including an order or award of a court or tribunal having power to fix minimum wages and other terms and conditions of employment; or
- (e) an industrial agreement in force under the Industrial Arbitration Act, 1940, or under the Conciliation and Arbitration Act 1904 of the Parliament of the Commonwealth, as amended from time to time, or any like agreement in force under any other Act or law.

(2) Nothing in this Act renders unlawful any discrimination by an employer in the payment of a salary, wage or other remuneration in excess of the amount fixed by any order, award or agreement referred to in subsection (1) (d) or (e).

(3) Except as provided in this section, this Act has effect notwithstanding anything contained in—

- (a) the Co-operation Act, 1923;
- (b) the Credit Union Act, 1969;
- (c) the Friendly Societies Act, 1912;
- (d) the Gaming and Betting Act, 1912;
- (e) the Permanent Building Societies Act, 1967; or
- (f) the Registered Clubs Act, 1976,

or any instrument of whatever nature made or approved thereunder.

Anti-Discrimination (Amendment).

SCHEDULE 4—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (6) (a) Section 57 (1) (c)—
Omit “1912; or”, insert instead “1912;”.
- (b) Section 57 (1) (d)—
Omit “1967.”, insert instead “1967; or”.
- (c) Section 57 (1) (e)—
After section 57 (1) (d), insert:—
(e) a registered club.
- (7) (a) Section 69A, definition of “judicial member”—
Omit “the” where firstly occurring, insert instead “a”.
- (b) Section 69A, definition of “judicial member”—
After “Tribunal”, insert “and includes the senior judicial member”.
- (c) Section 69A, definition of “member”—
Omit “the judicial member.”, insert instead “a judicial member;”.
- (d) Section 69A, definition of “senior judicial member”—
After the definition of “member”, insert:—
“senior judicial member” means the senior judicial member of the Tribunal.
- (e) Section 69A (2)—
At the end of section 69A, insert:—
(2) Where, for the time being, only one judicial member holds office, he shall be deemed, for the purposes of this Part, to be the senior judicial member, and may do and constitute

Anti-Discrimination (Amendment).

SCHEDULE 4—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

all such matters and things as are required or permitted under this Part to be done or constituted by the senior judicial member or by a judicial member selected by the senior judicial member.

(8) Section 69C—

Omit the section, insert instead:—

Appointment of members.

69C. (1) The Tribunal shall consist of not fewer than 5 part-time members and not more than 10 part-time members appointed by the Governor, of whom—

(a) at least 4 members; and

(b) at most 6 members,

shall not be judicial members.

(2) Where 2 or more judicial members hold office, one of the judicial members shall be designated by the Governor, in and by the instrument of the member's appointment or by another instrument, as the senior judicial member.

(9) (a) Section 69E (1)—

Omit "The judicial", insert instead "A judicial".

(b) Section 69E (2)—

Omit "the judicial" wherever occurring, insert instead "a judicial".

(10) (a) Section 69G (1)—

Omit "The judicial", insert instead "A judicial".

(b) Section 69G (2)—

Omit "the judicial", insert instead "a judicial".

Anti-Discrimination (Amendment).

SCHEDULE 4—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(11) Section 69H—

Omit “the judicial”, insert instead “a judicial”.

(12) Section 69J—

Omit “the judicial member where the judicial member has”, insert instead “a judicial member having”.

(13) Section 69K—

Omit the section, insert instead:—

Acting judicial members.

69K. (1) The Minister may at any time appoint a person qualified for appointment as a judicial member—

(a) to act as the senior judicial member; or

(b) to act as a judicial member other than the senior judicial member,

during the absence or illness of the senior judicial member or another judicial member, as the case may be.

(2) Where a judicial member is appointed, under subsection (1), to act as the senior judicial member, he shall be deemed, for the purposes only of that subsection, to be absent while so acting.

(3) A person appointed under this section shall have and may exercise, while acting under the appointment, the functions of the member for whom he is acting.

(14) Section 69L (1)—

Omit “the judicial”, insert instead “a judicial”.

Anti-Discrimination (Amendment).

SCHEDULE 4—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(15) Section 69M (1)—

Omit section 69M (1) (a) and (b), insert instead:—

(a) a judicial member; and

(b) 2 members, not being judicial members,

selected by the senior judicial member.

(16) (a) Section 69N (1)—

Omit the subsection, insert instead:—

(1) Subject to this Act and the regulations—

(a) the procedure for constituting a sitting of the Tribunal shall be determined by the senior judicial member; and

(b) the procedure for the conduct of business at a sitting of the Tribunal shall be determined by the judicial member selected for the sitting (in this section referred to as “the sitting judicial member”).

(b) Section 69N (2), (3)—

Before “judicial” wherever occurring, insert “sitting”.

(c) Section 69N (2)—

Omit “all sittings”, insert instead “a sitting”.

(17) Section 84 (2) (b)—

Omit “contributor”, insert instead “a contributor”.

(18) (a) Section 87, definition of “complaint”—

From paragraph (a), omit “(1) or (2)”.

Anti-Discrimination (Amendment).

SCHEDULE 4—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (b) Section 87, definition of “representative complaint”—
Omit “(1)”.

- (19) (a) Section 88 (1), (4)—

Omit “or the Registrar” wherever occurring.

- (b) Section 88 (2)—(2B)—

Omit section 88 (2), insert instead: —

(2) Where an intended complainant, being an intellectually handicapped person, so desires, his complaint may be lodged on his behalf by another person, who shall thereupon be deemed, for the purposes of this Division, to have the same rights, obligations and interests with respect to the investigation or referral of the complaint as the intellectually handicapped person.

(2A) For the purposes of this Part, a complaint lodged in accordance with subsection (2) shall be deemed, except to the extent necessary to give effect to that subsection, to have been lodged by the intellectually handicapped person on his own behalf.

(2B) Nothing in subsection (2) limits or restricts the discretion of the Counsellor under section 90 (1) to decline to entertain a complaint lodged in accordance with subsection (2)—

- (a) where it appears to him that the person who lodged the complaint has subsequently lost the confidence or authority of the intellectually handicapped complainant; or

- (b) for any other reason that, in the circumstances of the case, appears to him sufficient.

Anti-Discrimination (Amendment).

SCHEDULE 4—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(c) Section 88 (5)—

Omit the subsection.

(20) Sections 89, 89A—

Omit “(1) or (2) or referred to him by the Registrar under section 88 (5)” wherever occurring.

(21) (a) Section 90 (2) (b)—

Before “the” where firstly occurring, insert “where section 91 (1) applies to the notification—”.

(b) Section 90 (2) (b)—

Omit “under section 91 (1)”, insert instead “under that subsection”.

(22) Section 91 (1A)—

After section 91 (1), insert:—

(1A) Subsection (1) does not apply to a notification in which the Counsellor has given, as a reason for declining to entertain a complaint, that what has been alleged in the complaint does not disclose any contravention of this Act.

(23) Section 108 (2)—

Omit “the judicial member”, insert instead “judicial member presiding at a sitting”.

(24) (a) Section 112—

Omit “the judicial” where firstly occurring, insert instead “the senior judicial”.

Anti-Discrimination (Amendment).

SCHEDULE 4—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) Section 112—

Omit “he”, insert instead “a judicial member of the Tribunal sitting”.

(c) Section 112—

Omit “the judicial member,”, insert instead “the senior judicial member or a judicial member selected by him”.

(d) Section 112 (2)—

At the end of section 112, insert:—

(2) Section 69A (2) applies in respect of this section in the same way as it applies in respect of Part VIIA.

(25) Section 113 (b) (i)—

Omit “\$20,000”, insert instead “\$40,000”.

(26) Section 119 (a) (x)–(xii)—

Omit the subparagraphs.

(27) (a) Section 122L (1)—

Omit “the date on”, insert instead “the year in”.

(b) Section 122L (3)—

After section 122L (2), insert: —

(3) A report under subsection (1) shall be made to the Director—

(a) in the case of an authority referred to in section 122B (1) (a)—on or before 1st October in each year;

Anti-Discrimination (Amendment).

SCHEDULE 4—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (b) in the case of an authority referred to in section 122B (1) (b) or (c)—on or before 1st July in each year; and
- (c) in the case of an authority referred to in section 122B (1) (d)—on or before each anniversary of the date specified by proclamation in relation to that authority in accordance with section 122J (4) (c).

(28) (a) Section 127 (4) (d)—

After “at”, insert “or in connection with”.

(b) Section 127 (4)—

Omit:—

(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.

Insert instead:—

(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.
-

Anti-Discrimination (Amendment).

SCHEDULE 5.

(Sec. 6.)

TRANSITIONAL AND OTHER PROVISIONS.

Interpretation.

1. In this Schedule, "appointed day" means the day appointed and notified under section 2 (2).

Completion of dealings with complaints under Pt. IX of the Principal Act.

2. (1) A complaint lodged under section 88 of the Principal Act before the appointed day with the Counsellor for Equal Opportunity and not conclusively dealt with under Part IX of that Act before that day shall be deemed to be a complaint lodged under that section, as amended by this Act, with the President of the Anti-Discrimination Board and shall be dealt with accordingly.

(2) Any decision made or action taken before the appointed day by the Counsellor for Equal Opportunity in dealing with a complaint referred to in subclause (1) shall be deemed to be the decision or action of the President of the Anti-Discrimination Board.

Entitlement of the last acting Counsellor.

3. The person who, immediately before the appointed day, held office as acting Counsellor under section 68 of the Principal Act, as in force immediately before that day, is entitled to be appointed to a position in the Public Service not lower in classification and salary than the office held by him immediately before he was appointed as acting Counsellor.

In the name and on behalf of Her Majesty I assent to this Act.

L. W. STREET,
*By Deputation from
His Excellency the Governor.*

*Government House,
Sydney, 20th December, 1982.*





