

FIRST PRINT

## ANTI-DISCRIMINATION (AMENDMENT) BILL 1994

NEW SOUTH WALES



### EXPLANATORY NOTE

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

The object of this Bill is to amend the Anti-Discrimination Act 1977 so as:

- (a) to include the concepts of descent and ethno-religion as aspects of race for racial discrimination and vilification purposes and to increase the maximum penalty which may be imposed on an individual for the offence of serious racial vilification (further details below); and
- (b) to make it unlawful to vilify another person or persons on the ground of HIV/AIDS infection and to create a criminal offence of serious vilification on that ground (further details below); and
- (c) to replace the existing provisions dealing with discrimination on the ground of physical or intellectual impairment with provisions dealing with discrimination on the ground of a broader concept of disability and to change the defences available in such cases (further details below); and
- (d) to make miscellaneous amendments (further details below).

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#### **Definition of "race" and penalties for serious racial vilification (See Schedule 1)**

The Bill will expand the definition of "race" in the Act to include descent and ethno-religion as aspects of race for the purposes of the racial discrimination and racial vilification provisions of the Act. The Bill will also increase the maximum penalty that may be imposed on an individual for the offence of serious racial vilification. The current maximum penalty is 10 penalty units or 6 months imprisonment, or both. The new maximum penalty will be 50 penalty units or 6 months imprisonment, or both. The maximum penalty for corporations remains unchanged at 100 penalty units. One penalty unit currently equates to \$100 (see section 56 of the Interpretation Act 1987).

Certain other amendments made by Schedule 4 to the Bill also affect the racial discrimination and vilification provisions of the Act, in particular the amendments made by Schedule 4 (26) enable a complaint of racial vilification or discrimination to be made on behalf of a person by a representative body that has a genuine concern about the conduct complained of.

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### **HIV/AIDS vilification (See Schedule 2)**

The Bill will insert provisions that make it unlawful for a person to publicly incite hatred towards or serious contempt for a person or group of persons on the ground of HIV/AIDS infection (or presumed HIV/AIDS infection).

Vilification of this kind (unless it is serious as explained below) will not be a criminal offence but can be the subject of a complaint to the Equal Opportunity Tribunal under the Act. The Tribunal can make orders for compensation of up to \$40,000 and orders for preventing future breaches and redressing past breaches.

Serious vilification (vilification that involves the threat of or the incitement of a threat of physical harm towards persons or their property) is made a criminal offence punishable by a penalty of up to 50 penalty units or imprisonment for 6 months (or both) in the case of an individual and 100 penalty units in the case of a corporation. The consent of the Attorney General is required before a prosecution can be taken for serious vilification.

The new provisions parallel the existing provisions of the Act dealing with racial vilification except that public incitement to severe ridicule will not constitute vilification under the new provisions and religious discussion and instruction will be added to the list of conduct that does not constitute unlawful conduct under the new provisions.

### **Discrimination on the ground of disability (See Schedule 3)**

The Bill replaces the existing separate Parts of the Act dealing with discrimination on the ground of physical or intellectual impairment with a new Part dealing with discrimination on the ground of disability and containing a broad definition of disability.

The new Part includes all that is currently covered by the existing Parts, with the following variations:

- the new definition of disability will cover all forms of disability and make it unnecessary to categorise a disability as either physical or intellectual;
- the presence of an organism (such as HIV) causing or capable of causing illness is specifically included as a form of disability;
- it will be unlawful to discriminate on the ground of past, future or presumed disability (in addition to actual existing disability as at present);
- existing defences (which permit discrimination in situations where for example the disabled person would require additional services or facilities that could not reasonably be expected to be provided) are replaced with defences based on the concept of the unjustifiable hardship that would be caused by having to accommodate a person's disability (to bring the defences into line with the defences provided for by the Disability Discrimination Act 1992 of the Commonwealth);
- existing defences which permit discrimination in sport are brought into line with the defences provided for by the Disability Discrimination Act 1992 of the Commonwealth so that there will be a defence generally where a person's disability would prevent the person taking part in a sporting activity and so as not to prevent sporting events for the disabled;
- an existing defence which permits discrimination by a registered club in the services it provides to members on the basis of unjustifiable hardship in accommodating a person's disability is extended to the services provided by industrial organisations and educational authorities;



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- an existing defence that applies to provisions in superannuation schemes is limited so that it will only apply when the discrimination is reasonable based on statistical or actuarial data or is reasonable having regard to other relevant factors when no such data is available;
- a new defence is added for discrimination in cases of infectious disease where the discrimination is reasonably necessary to protect public health.

**Miscellaneous amendments (See Schedules 4 and 5)**

The Act will be amended as follows:

- (a) to update the definition of "trade union" in the Act (See Schedule 4 (1) and (2) (c));
- (b) to update the definition of "registered club" in the Act (See Schedule 4 (2) (b));
- (c) to make it clear that references in the Act to homosexuality include references to female (as well as male) homosexuality (See Schedule 4 (2) (a));
- (d) to provide that when discrimination occurs on more than one ground, the relevant ground of discrimination for the purposes of the Act is whichever is the dominant ground of discrimination (See Schedule 4 (3));
- (e) to extend the definitions in the Act of discriminatory conduct so that it will be unlawful to discriminate against a person on the basis of a characteristic of a relative or associate of the person (See Schedule 4 (2) (a), (4), (5), (8), (9), (10), (13), (14), (17), (18));
- (f) to make it unlawful for members of local councils to discriminate against fellow councillors on any of the grounds of discrimination to which the Act applies (See Schedule 4 (6), (11), (15), (19));
- (g) to change the existing race discrimination exemption for special needs facilities and services so that it will accord with the principles applicable to the proposed provisions for exempting special needs programs in other areas of discrimination referred to in (s) below (See Schedule 4 (7));
- (h) to limit the existing defences that apply for sex and marital status discrimination provisions in superannuation schemes so that they will only apply when the discrimination is reasonable based on statistical or actuarial data or is reasonable having regard to other relevant factors when no such data is available (See Schedule 4 (12));
- (i) to expand an existing provision of the Act concerning discrimination on the ground of marital status in respect of the provision of services to include discrimination in the provision of goods, for consistency with other grounds of discrimination under the Act (See Schedule 4 (16));
- (j) to amend various sections of the Act which create offences so as to provide a separate and higher maximum penalty (\$5,000) for corporations and to increase (from \$500 to \$1,000) the maximum penalty for the offence of failing to attend conciliation proceedings when committed by an individual (See Schedule 4 (20), (29), (31), (32), (35), (36));
- (k) to clarify the operation of provisions dealing with the liability of persons who cause, induce or permit a contravention of the Act and the liability of employers and principals for the actions of their employees and agents (See Schedule 4 (21));

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- (l) to remove the current exemption in the Act for things done in compliance with industrial orders, awards and agreements but with the amendments not applying to current orders, awards and agreements until 12 months after the commencement of the amendments (See Schedule 4 (22) and proposed clause 7 of the provisions to be inserted by Schedule 4 (39));
- (m) to extend the general exemption in the Act that applies to practices of a religious nature to include acts of a religious nature (See Schedule 4 (23));
- (n) to re-write the current exemption in the Act for institutions providing housing accommodation and ancillary services for aged persons which restrict admission on the basis of class, type, sex, race or age so as to provide an exemption for restrictions on the basis of race, sex and marital status, and to remove the requirement that those institutions must also provide ancillary services to qualify for the exemption (See Schedule 4 (24));
- (o) to enable a complaint of discrimination to be made on behalf of a person by a representative body that has a genuine concern about the conduct complained of, but only if the aggrieved person consents to the complaint being made on his or her behalf (See Schedule 4 (26) (a)—proposed section 88 (1A)–(1C));
- (p) to enable a complaint of discrimination to be made on behalf of a person under 18 years of age, or who has a disability of any kind, by another person with the aggrieved person's consent (not just on behalf of an intellectually handicapped person as at present) (See Schedule 4 (26) (a)—proposed section 88 (2) and (2A) and Schedule 4 (26) (c)—proposed section 88 (2C));
- (q) to make it clear that a complaint under the Act can be formally dismissed or the complainant removed from the complaint if the complainant does not wish to proceed with the complaint (See Schedule 4 (28), (33));
- (r) to provide that a person who is joined as a complainant or respondent to a complaint is considered to be a complainant or respondent to remove any doubt that such a person can be the subject of an order of the Equal Opportunity Tribunal (See Schedule 4 (30));
- (s) to provide for the exemption of "special needs" programs and activities that promote equality of opportunity for groups protected by the Act (except in relation to racial discrimination, for which exemption is already available under section 21) (See Schedule 4 (37));
- (t) to enact consequential savings and transitional provisions (See Schedule 4 (38), (39));
- (u) to make consequential amendments (See Schedule 4 (25), (26) (b), (27), (34));
- (v) to make the language of the Act gender neutral (See Schedule 5).

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**Clause 1** specifies the short title of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** gives effect to the Schedules of amendments to the Anti-Discrimination Act 1977.



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**Schedule 1** makes the amendments explained above concerning the definition of "race" and the penalty for the offence of serious racial vilification.

**Schedule 2** makes the amendments explained above concerning HIV/AIDS vilification.

**Schedule 3** makes the amendments explained above concerning discrimination on the ground of disability.

**Schedule 4** makes the miscellaneous amendments explained above.

**Schedule 5** amends the Act to make its language gender neutral.

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## ANTI-DISCRIMINATION (AMENDMENT) BILL 1994

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### TABLE OF PROVISIONS

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SCHEDULE 2—AMENDMENTS RELATING TO HIV/AIDS VILIFICATION

SCHEDULE 3—AMENDMENTS RELATING TO DISABILITY

SCHEDULE 4—MISCELLANEOUS AMENDMENTS

SCHEDULE 5—AMENDMENTS FOR GENDER NEUTRAL LANGUAGE

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# **ANTI-DISCRIMINATION (AMENDMENT) BILL 1994**

NEW SOUTH WALES



No. , 1994

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## **A BILL FOR**

An Act to amend the Anti-Discrimination Act 1977 to make provision with respect to HIV/AIDS vilification and to make further provision with respect to racial vilification, racial discrimination and discrimination on the ground of disability, and to make miscellaneous amendments with respect to the grounds of discrimination, complaints procedure, the liability of principals and employers, penalties, exemptions and other matters; and for other purposes.

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Anti-Discrimination (Amendment) Act 1994.

**5 Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Amendment of Anti-Discrimination Act 1977 No. 48**

3. The Anti-Discrimination Act 1977 is amended as set out in Schedules 1–5.

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**SCHEDULE 1—AMENDMENTS RELATING TO THE  
DEFINITION OF “RACE” AND PENALTIES  
FOR RACIAL VILIFICATION**

(Sec. 3)

15 (1) Section 4 (**Definitions**):

Omit the definition of “race” in section 4 (1), insert instead:  
“**race**” includes colour, nationality, descent and ethnic,  
ethno-religious or national origin;

20 (2) Section 20D (**Offence of serious racial vilification**):

From section 20D (1), omit “10 penalty units”, insert instead  
“50 penalty units”.

**SCHEDULE 2—AMENDMENTS RELATING TO HIV/AIDS  
VILIFICATION**

(Sec. 3)

25 Part 4F:

After Part 4E, insert:

**PART 4F—HIV/AIDS VILIFICATION**

**Definitions**

49ZXA. In this Part:



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**SCHEDULE 2—AMENDMENTS RELATING TO HIV/AIDS  
VILIFICATION—*continued***

**“HIV/AIDS infected”** means infected by the Human Immunodeficiency Virus or having the medical condition known as Acquired Immunodeficiency Syndrome; 5

**“public act”** includes:

(a) any form of communication to the public, including speaking, writing, printing, displaying notices, broadcasting, telecasting, screening and playing of tapes or other recorded material; and 10

(b) any conduct (not being a form of communication referred to in paragraph (a)) observable by the public, including actions and gestures and the wearing or display of clothing, signs, flags, emblems and insignia; and 15

(c) the distribution or dissemination of any matter to the public with knowledge that the matter promotes or expresses hatred towards, or serious contempt for, a person or group of persons on the ground that the person is or members of the group are HIV/AIDS infected or thought to be HIV/AIDS infected (whether or not actually HIV/AIDS infected). 20

**HIV/AIDS vilification unlawful** 25

49ZXB. (1) It is unlawful for a person, by a public act, to incite hatred towards or serious contempt for a person or group of persons on the ground that the person is or members of the group are HIV/AIDS infected or thought to be HIV/AIDS infected (whether or not actually HIV/AIDS infected). 30

(2) Nothing in this section renders unlawful:

(a) a fair report of a public act referred to in subsection (1); or

(b) a communication or the distribution or dissemination of any matter comprising a publication referred to in Division 3 of Part 3 of the Defamation Act 1974 or which is otherwise subject to a defence of absolute privilege in proceedings for defamation; or 35

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**SCHEDULE 2—AMENDMENTS RELATING TO HIV/AIDS  
VILIFICATION—*continued***

- 5 (c) a public act, done reasonably and in good faith, for academic, artistic, scientific, research or religious discussion or instruction purposes or for other purposes in the public interest, including discussion or debate about and expositions of any act or matter.

**Offence of serious HIV/AIDS vilification**

10 49ZXC. (1) A person must not, by a public act, incite hatred towards or serious contempt for a person or group of persons on the ground that the person is or members of the group are HIV/AIDS infected or thought to be HIV/AIDS infected (whether or not actually HIV/AIDS infected) by means which include:

- 15 (a) threatening physical harm towards, or towards any property of, the person or group of persons; or  
(b) inciting others to threaten physical harm towards, or towards any property of, the person or group of persons.

20 Maximum penalty: In the case of an individual—50 penalty units or imprisonment for 6 months, or both. In the case of a corporation—100 penalty units.

25 (2) A person is not to be prosecuted for an offence under this section unless the Attorney General has consented to the prosecution.

**SCHEDULE 3—AMENDMENTS RELATING TO DISABILITY**

(Sec. 3)

(1) Section 4 (**Definitions**):

- 30 (a) Omit the definitions of “intellectual impairment”, “intellectually handicapped person”, “physical impairment” and “physically handicapped person” in section 4 (1).

(b) Insert in section 4 (1) in alphabetical order:

“disability” means:

- 35 (a) total or partial loss of a person’s bodily or mental functions or of a part of a person’s body; or  
(b) the presence in a person’s body of organisms causing or capable of causing disease or illness; or

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*continued***

- (c) the malfunction, malformation or disfigurement of a part of a person's body; or
- (d) a disorder or malfunction that results in a person learning differently from a person without the disorder or malfunction; or 5
- (e) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour; 10
- (c) Omit section 4 (5) and (6).
- (2) Part 4A:  
Omit Parts 4A and 4B, insert instead:
- PART 4A—DISCRIMINATION ON THE GROUND OF DISABILITY** 15
- Division 1—General**
- Disability includes past, future and presumed disability**
- 49A. A reference in this Part to a person's disability is a reference to a disability:
- (a) that a person has; or 20
- (b) that a person is thought to have (whether or not the person in fact has the disability); or
- (c) that a person had in the past, or is thought to have had in the past (whether or not the person in fact had the disability); or 25
- (d) that a person will have in the future, or that it is thought a person will have in the future (whether or not the person in fact will have the disability).
- What constitutes discrimination on the ground of disability** 30
- 49B. (1) A person ("the perpetrator") discriminates against another person ("the aggrieved person") on the ground of disability if, on the ground of the aggrieved person's disability or the disability of a relative or associate of the aggrieved person, the perpetrator: 35



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SCHEDULE 3—AMENDMENTS RELATING TO DISABILITY—  
*continued*

5 (a) treats the aggrieved person less favourably than in the same circumstances, or in circumstances which are not materially different, the perpetrator treats or would treat a person who does not have that disability or who does not have such a relative or associate who has that disability; or

10 (b) requires the aggrieved person to comply with a requirement or condition with which a substantially higher proportion of persons who do not have that disability, or who do not have such a relative or associate who has that disability, comply or are able to comply, being a requirement which is not reasonable  
 15 having regard to the circumstances of the case and with which the aggrieved person does not or is not able to comply.

20 (2) For the purposes of subsection (1) (a), something is done on the ground of a person's disability if it is done on the ground of the person's disability, a characteristic that appertains generally to persons who have that disability or a characteristic that is generally imputed to persons who have that disability.

25 (3) For the purposes of, but without limiting, this section, the fact that a person who has a disability of or relating to vision, hearing or mobility has, or may be accompanied by, a dog which assists the person in respect of that disability, is taken to be a characteristic that appertains generally to persons who have that disability, but nothing in this Act  
 30 affects the liability of any such person for any injury, loss or damage caused by the dog.

35 (4) A reference in this section to persons who have a disability ("the particular disability") is a reference to persons who have the particular disability or who have a disability that is substantially the same as the particular disability.

**What constitutes unjustifiable hardship**

40 49C. In determining what constitutes unjustifiable hardship for the purposes of this Part, all relevant circumstances of the particular case are to be taken into account including:



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SCHEDULE 3—AMENDMENTS RELATING TO DISABILITY—  
*continued*

- (a) the nature of the benefit or detriment likely to accrue or be suffered by any persons concerned; and
  - (b) the effect of the disability of a person concerned; and 5
  - (c) the financial circumstances and the estimated amount of expenditure required to be made by the person claiming unjustifiable hardship.
- Division 2—Discrimination in work**
- Discrimination against applicants and employees** 10
- 49D. (1) It is unlawful for an employer to discriminate against a person on the ground of disability:
- (a) in the arrangements the employer makes for the purpose of determining who should be offered employment; or 15
  - (b) in determining who should be offered employment; or
  - (c) in the terms on which the employer offers employment.
- (2) It is unlawful for an employer to discriminate against an employee on the ground of disability:
- (a) in the terms or conditions of employment which the employer affords the employee; or 20
  - (b) by denying the employee access, or limiting the employee's access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment; or 25
  - (c) by dismissing the employee; or
  - (d) by subjecting the employee to any other detriment.
- (3) Subsections (1) and (2) do not apply to employment:
- (a) for the purposes of a private household; or
  - (b) where the number of persons employed by the employer, disregarding any persons employed within the employer's private household, does not exceed 5; or 30
  - (c) by a private educational authority.
- (4) Nothing in subsection (1) (b) or (2) (c) renders unlawful discrimination by an employer against a person on the ground of the person's disability if taking into account the 35

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SCHEDULE 3—AMENDMENTS RELATING TO DISABILITY—  
*continued*

5 person's past training, qualifications and experience relevant to the particular employment and, if the person is already employed by the employer, the person's performance as an employee, and all other relevant factors that it is reasonable to take into account, the person because of his or her disability:

- 10 (a) would be unable to carry out the inherent requirements of the particular employment; or
- (b) would, in order to carry out those requirements, require services or facilities that are not required by persons without that disability and the provision of which would impose an unjustifiable hardship on the employer.
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(5) For the purposes of subsection (3) (b), a corporation is taken to be the employer of the employees of any other corporation which, with respect to the firstmentioned corporation, is taken to be a related corporation within the meaning of the Corporations Law.

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**Discrimination against commission agents**

49E. (1) It is unlawful for a principal to discriminate against a person on the ground of disability:

- 25 (a) in the arrangements the principal makes for the purpose of determining who should be engaged as a commission agent; or
- (b) in determining who should be engaged as a commission agent; or
- (c) in the terms on which the principal engages the person as a commission agent.
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(2) It is unlawful for a principal to discriminate against a commission agent on the ground of disability:

- (a) in the terms or conditions which the principal affords him or her as a commission agent; or
- 35 (b) by denying him or her access, or limiting his or her access, to opportunities for promotion, transfer or training, or to any other benefits associated with his or her position as a commission agent; or

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**SCHEDULE 3—AMENDMENTS RELATING TO DISABILITY—**  
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- (c) by terminating his or her engagement; or
- (d) by subjecting him or her to any other detriment.

(3) Nothing in subsection (1) (b) or (2) (c) renders unlawful discrimination by a principal against a person on the ground of the person's disability if taking into account the person's past training, qualifications and experience relevant to engagement as a commission agent and, if the person is already engaged by the principal as a commission agent, the person's performance as a commission agent, and all other relevant factors that it is reasonable to take into account, the person because of his or her disability: 5

- (a) would be unable to carry out the inherent requirements of a commission agent; or 15
- (b) would, in order to carry out those requirements, require services or facilities that are not required by persons without that disability and the provision of which would impose an unjustifiable hardship on the principal. 20

**Discrimination against contract workers**

49F. (1) It is unlawful for a principal to discriminate against a contract worker on the ground of disability:

- (a) in the terms on which the principal allows him or her to work; or 25
- (b) by not allowing him or her to work or continue to work; or
- (c) by denying him or her access, or limiting his or her access, to any benefit associated with the work in respect of which the contract with his or her employer is made; or 30
- (d) by subjecting him or her to any other detriment.

(2) Nothing in subsection (1) (b) renders unlawful discrimination by a principal against a contract worker on the ground of the contract worker's disability if taking into account the contract worker's past training, qualifications and experience relevant to working as a contract worker and, if the person is already working for the principal as a contract worker, the contract worker's performance as a contract worker, and all other relevant factors that it is reasonable to 35 40



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SCHEDULE 3—AMENDMENTS RELATING TO DISABILITY—  
*continued*

take into account, the contract worker because of his or her disability:

- 5           (a) would be unable to carry out the inherent requirements of a contract worker; or
- (b) would, in order to carry out those requirements, require services or facilities that are not required by persons without that disability and the provision of which
- 10           would impose an unjustifiable hardship on the principal.

**Partnerships**

49G. (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 disability:

- 15           (a) in the arrangements made for the purpose of determining who should be offered a position as partner in the firm; or
- 20           (b) in determining who should be offered a position as partner in the firm; or
- (c) in the terms on which the person is offered a position as partner in the firm.

25           (2) It is unlawful for a firm consisting of 6 or more partners to discriminate against a partner on the ground of disability:

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

35           (3) Nothing in subsection (1) (b) or (2) (b) renders unlawful discrimination by a person against another person on the ground of the other person's disability if taking into account the other person's past training, qualifications and experience relevant to the proposed partnership or the partnership and, if the other person is already a partner, the other person's performance as a partner, and all other relevant factors that it is reasonable to take into account, the other

40           person because of his or her disability:



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SCHEDULE 3—AMENDMENTS RELATING TO DISABILITY—  
*continued*

- (a) would be unable to carry out the inherent requirements of a partner in the proposed partnership or the partnership; or 5
- (b) would, in order to carry out those requirements, require services or facilities that are not required by persons without that disability and the provision of which would impose an unjustifiable hardship on the partnership. 10

**Discrimination by local government councillors**

49H. It is unlawful for any member or members of a council of a local government area when acting (whether alone or together) in the course of his, her or their official functions to discriminate against another member of the council on the ground of disability. 15

**Industrial organisations**

49I. (1) It is unlawful for an industrial organisation to discriminate against a person who is not a member of the industrial organisation on the ground of disability: 20

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

(2) It is unlawful for an industrial organisation to discriminate against a person who is a member of the industrial organisation on the ground of disability: 25

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

(3) Nothing in subsection (2) (a) renders it unlawful to discriminate against a person on the ground of disability where, because of the person's disability, the person requires the benefit to be provided in a special manner and the benefit cannot be provided in that manner by the industrial organisation without unjustifiable hardship to it. 35

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**SCHEDULE 3—AMENDMENTS RELATING TO DISABILITY—**  
*continued*

**Qualifying bodies**

5           49J. (1) It is unlawful for an authority or body which is empowered to confer, renew or extend an authorisation or a qualification that is needed for or facilitates the practice of a profession, the carrying on of a trade or the engaging in of an occupation to discriminate against a person on the ground of disability:

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

              (2) Nothing in subsection (1) (a) or (c) renders unlawful discrimination by an authority or body against a person on the ground of the person's disability if taking into account the person's past training, qualifications and experience relevant to the particular profession, trade or occupation and, if the person is already a member of the profession, carrying on the trade or engaged in the occupation, the person's performance in the profession trade or occupation, and all other relevant factors that it is reasonable to take into account, the person because of his or her disability would be unable to carry out the inherent requirements of the profession, trade or occupation.

**Employment agencies**

30           49K. (1) It is unlawful for an employment agency to discriminate against a person on the ground of disability:

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

              (2) Nothing in this section renders unlawful discrimination by an employment agency against a person on the ground of the person's disability if taking into account the person's past

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*continued***

training, qualifications and experience relevant to the work sought, and all other relevant factors that it is reasonable to take into account, the person because of his or her disability would be unable to carry out the inherent requirements of the work sought. 5

**Division 3—Discrimination in other areas****Education**

49L. (1) It is unlawful for an educational authority to discriminate against a person on the ground of disability: 10

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

(b) in the terms on which it is prepared to admit him or her as a student. 15

(2) It is unlawful for an educational authority to discriminate against a student on the ground of disability:

(a) by denying him or her access, or limiting his or her access, to any benefit provided by the educational authority; or 20

(b) by expelling him or her; or

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

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

(a) a private educational authority; or

(b) a refusal or failure to accept a 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 a disability which is not the same as that of the applicant. 25 30

(4) Nothing in subsection (1) (a) or (2) (b) renders it unlawful to discriminate against a person on the ground of disability where, because of the person's disability, the person requires services or facilities that are not required by students who do not have a disability and the provision of which would impose unjustifiable hardship on the educational authority. 35

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SCHEDULE 3—AMENDMENTS RELATING TO DISABILITY—  
*continued*

5 (5) Nothing in subsection (2) (a) renders it unlawful to discriminate against a person on the ground of disability where, because of the person's disability, the person requires the benefit to be provided in a special manner and the benefit cannot without unjustifiable hardship be so provided by the educational authority.

**Provision of goods and services**

10 49M. (1) It is unlawful for a person who provides, for payment or not, goods or services to discriminate against a person on the ground of disability:

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

20 (2) Nothing in this section renders it unlawful to discriminate against a person on the ground of the person's disability if the provision of the goods or services would impose unjustifiable hardship on the person who provides the goods or services.

**Accommodation**

25 49N. (1) It is unlawful for a person, whether as principal or agent, to discriminate against a person on the ground of disability:

- 30 (a) by refusing the person's application for accommodation; or  
 (b) in the terms on which the person is offered accommodation; or  
 (c) by deferring the person's application for accommodation or according the person a lower order of precedence in any list of applicants for that accommodation.

35 (2) It is unlawful for a person, whether as principal or agent, to discriminate against a person on the ground of disability:

- (a) by denying the person access, or limiting the person's access, to any benefit associated with accommodation occupied by the person; or



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SCHEDULE 3—AMENDMENTS RELATING TO DISABILITY—  
*continued*

- (b) by evicting the person; or
- (c) by subjecting the person to any other detriment.
- (3) Nothing in this section applies to or in respect of the provision of accommodation in premises if: 5
  - (a) the person who provides or proposes to provide the accommodation or a near relative of that person resides, and intends to continue to reside, on those premises; and 10
  - (b) the accommodation provided in those premises is for no more than 6 persons.
- (4) Nothing in this section applies to the provision of accommodation in premises where special services or facilities would be required by the person with a disability and the provision of such special services or facilities would impose unjustifiable hardship on the person providing or proposing to provide the accommodation whether as principal or agent. 15
- (5) Nothing in this section applies to the provision of accommodation to persons who have a particular disability by a charitable body or other body that does not distribute its profits to members. 20
- (6) Nothing in subsection (2) (a) renders it unlawful to discriminate against a person on the ground of disability where, because of the person's disability, the person requires the benefit to be provided in a special manner and the benefit cannot without unjustifiable hardship be so provided by the person who provides the accommodation. 25
- Registered clubs** 30
  - 49O. (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 disability:
    - (a) by refusing or failing to accept the person's application for membership; or 35
    - (b) in the terms on which it is prepared to admit the person 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 disability: 40

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*continued***

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

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

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

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

25 (5) Nothing in subsection (2) (a) renders it unlawful to discriminate against a person on the ground of disability where, because of the person's disability, the person requires the benefit to be provided in a special manner and the benefit cannot without unjustifiable hardship be so provided by the registered club.

**Division 4—Exceptions to Part 4A**

30 **Public health**

49P. Nothing in this Part renders unlawful discrimination against a person on the ground of disability if the disability concerned is an infectious disease and the discrimination is reasonably necessary to protect public health.

35 **Superannuation, insurance**

49Q. Nothing in this Part renders unlawful discrimination against a person on the ground of disability in the terms or

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SCHEDULE 3—AMENDMENTS RELATING TO DISABILITY—  
*continued*

conditions appertaining to a superannuation or provident fund or scheme or 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: 5

(a) the terms or conditions:

(i) are based upon actuarial or statistical data on which it is reasonable to rely; and

(ii) are reasonable having regard to the data and any other relevant factors; or 10

(b) in a case where no such actuarial or statistical data is available and cannot reasonably be obtained—the terms or conditions are reasonable having regard to any other relevant factors, 15

and the source on which any data referred to in paragraph (a) 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) or (b) are disclosed to the Tribunal, where the Tribunal so requires. 20

**Sport**

49R. Nothing in this Part renders unlawful discrimination against a person on the ground of disability, being discrimination consisting of the exclusion of the person from a sporting activity: 25

(a) if the person is not reasonably capable of performing the actions reasonably required in relation to the sporting activity; or

(b) if the persons who participate or are to participate in the sporting activity are selected by a method which is reasonable on the basis of their skills and abilities relevant to the sporting activity and relative to each other; or 30

(c) if the sporting activity is conducted only for persons who have a particular disability and the person does not have that disability. 35



**SCHEDULE 4—MISCELLANEOUS AMENDMENTS**

(Sec. 3)

(1) The whole Act (except section 4):

- 5 (a) Omit “a trade union” wherever occurring, insert instead “an industrial organisation”.
- (b) Omit “the trade union” wherever occurring, insert instead “the industrial organisation”.

(2) Section 4 (**Definitions**):

- 10 (a) Insert in section 4 (1) in alphabetical order:
- “**associate**” of a person means any person with whom he or she associates, whether socially or in business or commerce, or otherwise;
- “**homosexual**” means male or female homosexual;
- “**relative**” of a person means:
- 15 (a) any person to whom the person is related by blood, marriage, affinity or adoption; and
- (b) any person who is wholly or mainly dependent on, or a member of the household of, the person;
- 20 (b) Omit the definition of “registered club” in section 4 (1), insert instead:
- “**registered club**” has the same meaning as in the Registered Clubs Act 1976;
- (c) Omit the definition of “trade union” in section 4 (1) and insert in alphabetical order:
- 25 “**industrial organisation**” means an industrial organisation or non-industrial organisation within the meaning of the Industrial Relations Act 1991 or an organisation registered under the Industrial Relations Act 1988 of the Commonwealth;

(3) Section 4A:

After section 4, insert:

**More than one ground for discrimination**

4A. If something is done on more than one ground, it is for the purposes of this Act taken to have been done on



*Anti-Discrimination (Amendment) 1994*SCHEDULE 4—MISCELLANEOUS AMENDMENTS—*continued*

whichever of those grounds is the dominant ground (with the result that this Act will apply only if that dominant ground is a ground of unlawful discrimination under this Act).

## (4) Section 7:

5

Omit the section, insert instead:

**What constitutes discrimination on the ground of race**

7. (1) A person (“**the perpetrator**”) discriminates against another person (“**the aggrieved person**”) on the ground of race if, on the ground of the aggrieved person’s race or the race of a relative or associate of the aggrieved person, the perpetrator:

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(a) treats the aggrieved person less favourably than in the same circumstances, or in circumstances which are not materially different, the perpetrator treats or would treat a person of a different race or who has such a relative or associate of a different race; or

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(b) segregates the aggrieved person from persons of a different race or from persons who have such a relative or associate of a different race; or

20

(c) requires the aggrieved person to comply with a requirement or condition with which a substantially higher proportion of persons not of that race, or who have such a relative or associate not of that race, comply or are able to comply, being a requirement which is not reasonable having regard to the circumstances of the case and with which the aggrieved person does not or is not able to comply.

25

(2) For the purposes of subsection (1) (a) and (b), something is done on the ground of a person’s race if it is done on the ground of the person’s race, a characteristic that appertains generally to persons of that race or a characteristic that is generally imputed to persons of that race.

30

## (5) Sections 8–13, 17–20A:

Omit “on the ground of his race” wherever occurring, insert instead “on the ground of race”.

35

*Anti-Discrimination (Amendment) 1994***SCHEDULE 4—MISCELLANEOUS AMENDMENTS—*continued*****(6) Section 10B:**

After section 10A, insert:

**Discrimination by local government councillors**

- 5        10B. It is unlawful for any member or members of a council of a local government area when acting (whether alone or together) in the course of his, her or their official functions to discriminate against another member of the council on the ground of race.

**10        (7) Section 21:**

Omit the section, insert instead:

**Special needs programs and activities**

- 15        21. Nothing in this Part applies to or in respect of anything done in affording persons of a particular race access to facilities, services or opportunities to meet their special needs or to promote equal or improved access for them to facilities, services and opportunities.

**(8) Section 24 (*What constitutes discrimination on the ground of sex*):**

- 20        (a) Omit section 24 (1), insert instead:

- 25        (1) A person ("**the perpetrator**") discriminates against another person ("**the aggrieved person**") on the ground of sex if, on the ground of the aggrieved person's sex or the sex of a relative or associate of the aggrieved person, the perpetrator:

- 30        (a) treats the aggrieved person less favourably than in the same circumstances, or in circumstances which are not materially different, the perpetrator treats or would treat a person of the opposite sex or who does not have such a relative or associate of that sex; or
- 35        (b) requires the aggrieved person to comply with a requirement or condition with which a substantially higher proportion of persons of the opposite sex, or who do not have such a relative or associate of that sex, comply or are able to comply, being a requirement which is not reasonable having regard to the circumstances of the case and with which the aggrieved person does not or is not able to comply.

*Anti-Discrimination (Amendment) 1994***SCHEDULE 4—MISCELLANEOUS AMENDMENTS—*continued***

- (1A) For the purposes of subsection (1) (a), something is done on the ground of a person's sex if it is done on the ground of the person's sex, a characteristic that appertains generally to persons of that sex or a characteristic that is generally imputed to persons of that sex. 5
- (b) From section 24 (1A), omit "(1A) For the purposes of subsection (1), but without limiting the generality of that subsection", insert instead "(1B) For the purposes of this section, but without limiting the generality of this section". 10
- (c) Omit section 24 (3).
- (9) Sections 25–35:  
Omit "on the ground of his sex" wherever occurring, insert instead "on the ground of sex".
- (10) Section 25: 15  
Omit "her sex" wherever occurring, insert instead "sex".
- (11) Section 27B:  
After section 27A, insert:  
**Discrimination by local government councillors**  
27B. It is unlawful for any member or members of a council of a local government area when acting (whether alone or together) in the course of his, her or their official functions to discriminate against another member of the council on the ground of sex. 20
- (12) Sections 36, 49 (**Superannuation**): 25  
Omit "scheme.", insert instead:  
scheme, where:  
(a) the terms or conditions:  
(i) are based upon actuarial or statistical data on which it is reasonable to rely; and 30  
(ii) are reasonable having regard to the data and any other relevant factors; or  
(b) in a case where no such actuarial or statistical data is available and cannot reasonably be obtained—the terms or conditions are reasonable having regard to any other relevant factors, 35



*Anti-Discrimination (Amendment) 1994*SCHEDULE 4—MISCELLANEOUS AMENDMENTS—*continued*

5 and the source on which any data referred to in paragraph (a) 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) or (b) are disclosed to the Tribunal, where the Tribunal so requires.

(13) Section 39 (**What constitutes discrimination on the ground of marital status**):

(a) Omit section 39 (1), insert instead:

10 (1) A person ("**the perpetrator**") discriminates against another person ("**the aggrieved person**") on the ground of marital status if, on the ground of the aggrieved person's marital status or the marital status of a relative or associate of the aggrieved person, the perpetrator:

15 (a) treats the aggrieved person less favourably than in the same circumstances, or in circumstances which are not materially different, the perpetrator treats or would treat a person of a different marital status or who does not have such a relative or associate of that marital status; or

20 (b) requires the aggrieved person to comply with a requirement or condition with which a substantially higher proportion of persons of a different marital status, or who do not have such a relative or associate of that marital status, comply or are able to comply, being a requirement which is not reasonable having regard to the circumstances of the case and with which the aggrieved person does not or is not able to comply.

25 (1A) For the purposes of subsection (1) (a), something is done on the ground of a person's marital status if it is done on the ground of the person's marital status, a characteristic that appertains generally to persons of that marital status or a characteristic that is generally imputed to persons of that marital status.

30 (b) Omit section 39 (3).

(14) Sections 40–48A:

Omit "on the ground of his marital status" wherever occurring, insert instead "on the ground of marital status".

*Anti-Discrimination (Amendment) 1994***SCHEDULE 4—MISCELLANEOUS AMENDMENTS—*continued*****(15) Section 42B:**

After section 42A, insert:

**Discrimination by local government councillors**

42B. It is unlawful for any member or members of a council of a local government area when acting (whether alone or together) in the course of his, her or their official functions to discriminate against another member of the council on the ground of marital status.

5

**(16) Section 47:**

10

Omit the section, insert instead:

**Provision of goods and services**

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

15

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

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

**(17) Section 49ZG:**

20

Omit the section, insert instead:

**What constitutes discrimination on the ground of homosexuality**

49ZG. (1) A person ("**the perpetrator**") discriminates against another person ("**the aggrieved person**") on the ground of homosexuality if, on the ground of the aggrieved person's homosexuality or the homosexuality of a relative or associate of the aggrieved person, the perpetrator:

25

(a) treats the aggrieved person less favourably than in the same circumstances, or in circumstances which are not materially different, the perpetrator treats or would treat a person who he or she did not think was a homosexual person or who does not have such a relative or associate who he or she thinks was a homosexual person; or

30

35

*Anti-Discrimination (Amendment) 1994***SCHEDULE 4—MISCELLANEOUS AMENDMENTS—*continued***

5 (b) requires the aggrieved person to comply with a requirement or condition with which a substantially higher proportion of persons who are not homosexual persons, or who do not have such a relative or associate who is a homosexual person, comply or are able to comply, being a requirement which is not reasonable having regard to the circumstances of the case and with which the aggrieved person does not or is not able to comply.

10 (2) For the purposes of subsection (1) (a), something is done on the ground of a person's homosexuality if it is done on the ground of the person's homosexuality, a characteristic that appertains generally to homosexual persons or a characteristic that is generally imputed to homosexual persons.

(18) Sections 49ZH–49ZR:

Omit “on the ground of his homosexuality” wherever occurring, insert instead “on the ground of homosexuality”.

20 (19) Section 49ZKA:

After section 49ZK, insert:

**Discrimination by local government councillors**

25 49ZKA. It is unlawful for any member or members of a council of a local government area when acting (whether alone or together) in the course of his, her or their official functions to discriminate against another member of the council on the ground of homosexuality.

(20) Section 51 (**Advertisements**):

Omit the penalty at the end of section 51 (2), insert instead:

30 Maximum penalty: 50 penalty units in the case of a body corporate or 10 penalty units in any other case.

(21) Sections 52, 53:

Omit the sections, insert instead:

**Aiding and abetting etc.**

35 52. It is unlawful for a person to cause, instruct, induce, aid or permit another person to do an act that is unlawful by reason of a provision of this Act.



SCHEDULE 4—MISCELLANEOUS AMENDMENTS—*continued***Liability of principals and employers**

53. (1) An act done by a person as the agent or employee of the person's principal or employer which if done by the principal or employer would be a contravention of this Act is taken to have been done by the principal or employer also unless the principal or employer did not, either before or after the doing of the act, authorise the agent or employee, either expressly or by implication, to do the act.

5

(2) If both the principal or employer and the agent or employee who did the act are subject to any liability arising under this Act in respect of the doing of the act, they are jointly and severally subject to that liability.

10

(22) Section 54 (**Acts done under statutory authority etc.**):

- (a) From section 54 (1) (d), omit "including an order or award", insert instead "not including an order or award".
- (b) Omit section 54 (1) (e).
- (c) Omit section 54 (2).

15

(23) Section 56 (**Religious bodies**):

In section 56 (d), before "practice", insert "act or".

20

## (24) Section 59:

Omit the section, insert instead:

**Establishments providing housing accommodation for aged persons**

59. Nothing in this Act affects any rule or practice of an establishment which provides housing accommodation for aged persons, whether by statute or otherwise, whereby admission to the establishment is restricted to persons of a particular sex, marital status or race.

25

(25) Section 87 (**Definitions**):

30

- (a) Omit the definition of "racial vilification complaint".
- (b) In the definition of "representative body", omit "a racial group", insert instead "a group".
- (c) Insert in alphabetical order:

"**vilification complaint**" means a complaint in respect of a contravention of section 20C or 49ZXB.

35

*Anti-Discrimination (Amendment) 1994***SCHEDULE 4—MISCELLANEOUS AMENDMENTS—*continued*****(26) Section 88 (Making of complaints):**

(a) Omit section 88 (1A)–(2A), insert instead:

5 (1A) A complaint may be lodged under subsection (1) by a representative body on behalf of a named person or named persons, but only if the representative body has satisfied the President that:

10 (a) each person on whose behalf the complaint is lodged consents to the complaint being lodged by the body on his or her behalf; and

(b) the body has a sufficient interest in the complaint.

15 (1B) A representative body has a sufficient interest in a complaint only if the conduct that constitutes the alleged contravention concerned is a matter of genuine concern to the body because of the way conduct of that nature adversely affects or has the potential to adversely affect the interests of the body or the interests or welfare of the group of people it represents.

20 (1C) The President may require a representative body which has lodged a complaint to nominate a person to appear for the representative body in conciliation proceedings concerning the complaint before the President.

25 (1D) A vilification complaint cannot be lodged under this section unless each person on whose behalf the complaint is lodged:

(a) has the characteristic that was the ground for the conduct that constitutes the alleged contravention concerned; or

30 (b) claims to have that characteristic and there is no sufficient reason to doubt that claim.

(2) If a person is under the age of 18 years or has a disability, his or her complaint may be lodged on his or her behalf by another person, but only if:

35 (a) the President is satisfied that the person on whose behalf the complaint is to be lodged consents to the complaint being lodged on his or her behalf by the other person; and

*Anti-Discrimination (Amendment) 1994*SCHEDULE 4—MISCELLANEOUS AMENDMENTS—*continued*

- (b) in the case of a complaint to be lodged on behalf of a person (whether or not a person who has a disability) who is under the age of 18 years, the other person who is to lodge the complaint is, or does so with the consent of, the person's parent or guardian. 5
- (2A) When a complaint is lodged on behalf of another person ("**the complainant**") pursuant to subsection (2):
- (a) the person who lodges the complaint is, for the purposes of this Division, taken to have the same rights, obligations and interests with respect to the investigation or referral of the complaint as the complainant; and 10
- (b) the complaint is, for the purposes of this Part, taken to have been lodged by the complainant on his or her own behalf (except to the extent necessary to give effect to subsection (2)). 15
- (b) From section 88 (2B), omit "intellectually handicapped".
- (c) After section 88 (2B), insert:
- (2C) A person who because of any disability is incapable of consenting to the making of a complaint on his or her behalf is taken to have consented to the making of the complaint on his or her behalf if that consent is given by the person's parent or guardian or by anyone else who the President is satisfied has a genuine concern for the person's welfare. 20 25
- (27) Section 89B (**Prosecution for serious vilification**):
- (a) From section 89B (1) (a), omit "racial".
- (b) After "20D" wherever occurring, insert "or 49ZXC".
- (28) Section 90A: 30
- After section 90, insert:
- Withdrawal of complaint**
- 90A. (1) The President may decide not to proceed with a complaint if satisfied that the person or (in the case of a complaint made on behalf of more than one person) each person on whose behalf the complaint was made does not 35



*Anti-Discrimination (Amendment) 1994***SCHEDULE 4—MISCELLANEOUS AMENDMENTS—*continued***

wish to proceed with the complaint, in which case no further action is required to be taken on the complaint.

5 (2) The President may amend a complaint made on behalf of more than one person to remove a person as a person on whose behalf the complaint was made if the President is satisfied that the person does not wish to proceed with the complaint.

10 (3) The President is to give notice in writing of any decision by the President under this section to the complainant and respondent under the complaint concerned and to each person on whose behalf the complaint was made.

(29) Section 92 (**Resolution of complaint by conciliation**):

15 Omit the penalty at the end of section 92 (3), insert instead:  
Maximum penalty: 50 penalty units in the case of a body corporate or 10 penalty units in any other case.

(30) Section 98 (**Joinder of parties by the Tribunal**):

20 At the end of the section, insert:  
(2) If a person is joined as a party to the inquiry as a complainant or respondent, the person is for the purposes of this Part taken to be a complainant or respondent (as appropriate) in relation to the complaint concerned.

(31) Section 101B (**Holding of inquiry**):

25 Omit the penalty at the end of section 101B (5), insert instead:  
Maximum penalty (subsection (5)): 50 penalty units in the case of a body corporate or 10 penalty units in any other case.

(32) Section 110A (**Publication of proceedings etc.**):

30 Omit the penalty at the end of section 110A (3), insert instead:  
Maximum penalty (subsection (3)): 50 penalty units in the case of a body corporate or 10 penalty units in any other case.

*Anti-Discrimination (Amendment) 1994***SCHEDULE 4—MISCELLANEOUS AMENDMENTS—*continued*****(33) Section 111 (Tribunal may dismiss frivolous etc. complaints):****(a) After section 111 (1), insert:**

(1A) The Tribunal may dismiss a complaint if satisfied that the person or (in the case of a complaint made on behalf of more than one person) each person on whose behalf the complaint was made does not wish to proceed with the complaint.

5

(1B) The Tribunal may amend a complaint made on behalf of more than one person to remove a person as a person on whose behalf the complaint was made if the Tribunal is satisfied that the person does not wish to proceed with the complaint.

10

**(b) In section 111 (2), omit “under subsection (1)”, insert instead “under this section”.**

15

**(34) Section 113 (Order or other decision of the Tribunal):****(a) From section 113 (1) (b) (iiia) and (iiib), omit “racial” wherever occurring.****(b) From section 113 (2), omit “racial vilification”.****(c) Omit section 113 (3), insert instead:**

20

(3) In making an order for damages under this section concerning a complaint lodged on behalf of a person or persons, the Tribunal may make such order as it thinks fit as to the application of those damages for the benefit of the person or persons.

25

(4) If 2 or more vilification complaints are made in respect of the same public act of the respondent and those complaints are found to be substantiated, the Tribunal must not make an order or orders for damages under this section that would cause the respondent to pay more than \$40,000 in the aggregate in respect of that public act.

30

**(35) Section 116 (Compliance with order of the Tribunal):**

Omit the penalty at the end of the section, insert instead:

Maximum penalty: 50 penalty units in the case of a body corporate or 10 penalty units in any other case.

35

*Anti-Discrimination (Amendment) 1994***SCHEDULE 4—MISCELLANEOUS AMENDMENTS—*continued*****(36) Section 124 (Obstruction):**

Omit the penalty at the end of the section, insert instead:

5           Maximum penalty: 50 penalty units in the case of a body  
corporate or 10 penalty units in any other case.

**(37) Section 126A:**

After section 126, insert:

**Exemption for special needs programs and activities**

10           126A. (1) Nothing in Parts 3–4C renders unlawful  
anything done by a person in good faith for the purposes of  
or in the course of any program or activity for which  
certification is in force under this section as a special needs  
program or activity.

15           (2) The appropriate authority may certify a program or  
activity to be a special needs program or activity if satisfied  
that its purpose or primary purpose is the promotion of  
access, for members of a group of persons affected by any  
form of unlawful discrimination to which this Act applies in  
20           an area of discrimination to which this Act applies, to  
facilities, services or opportunities to meet their special needs  
or the promotion of equal or improved access for them to  
facilities, services and opportunities.

25           (3) The “appropriate authority” for the purposes of this  
section is:

(a) in the case of a program or activity for which a  
Government Department or a public or local authority  
is responsible—the Minister responsible for the  
Department or authority; or

30           (b) in any other case—the Minister administering this  
section.

(4) Certification for a program or activity remains in force  
for the period specified in the certification or (if no period is  
specified) until the certification is withdrawn.

35           (5) Certification may be withdrawn by the appropriate  
authority at any time by giving notice in writing to the person  
who appears to the appropriate authority to be the person  
who is in charge of the program or who has responsibility for  
the activity concerned.



*Anti-Discrimination (Amendment) 1994***SCHEDULE 4—MISCELLANEOUS AMENDMENTS—*continued*****(38) Section 128:**

Omit the section, insert instead:

**Savings and transitional provisions**

128. Schedule 1 has effect.

5

**(39) Schedule 1:**

At the end of the Act, insert:

**SCHEDULE 1—SAVINGS AND TRANSITIONAL PROVISIONS****Part 1—Preliminary**

10

**Regulations**

1. (1) The regulations may include provisions of a savings or transitional nature consequent on the enactment of the Anti-Discrimination (Amendment) Act 1994.

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to that Act or from a later date.

15

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

20

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of the person existing before the date of publication; or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of publication.

25

**Part 2—Anti-Discrimination (Amendment) Act 1994****Definition**

2. In this Part:

“the amending Act” means the Anti-Discrimination (Amendment) Act 1994.

30

**Operation of amendments**

3. Except as otherwise provided by this Part:

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**SCHEDULE 4—MISCELLANEOUS AMENDMENTS—*continued***

- (a) an amendment made by the amending Act does not apply to or in respect of anything done or omitted to be done before the commencement of the amendment; and
- 5 (b) this Act continues to apply to anything done or omitted before the commencement of such an amendment as if the amendment had not been made.

**Complaints by representative bodies**

- 10 4. The amendments made by the amending Act to sections 87 and 88 extend to apply in respect of an act done before the commencement of the amendments.

**Complaints not pursued**

- 15 5. Section 90A (as inserted by the amending Act) and the amendments made by the amending Act to section 111 extend to complaints lodged before the commencement of that section and those amendments.

**Joinder of parties**

- 20 6. The amendments made by the amending Act to section 98 extend to notice of joinder given by the Tribunal before the commencement of the amendments.

**Industrial awards and agreements**

- 25 7. The amendments made by the amending Act to section 54 do not apply in respect of any order, award or agreement in force immediately before the commencement of those amendments until the first anniversary of the commencement of those amendments.

**Superannuation**

- 30 8. The amendments made by the amending Act to sections 36 and 49 (Superannuation), and section 49Q (Superannuation) as inserted by the amending Act, are not limited in their operation to superannuation or provident funds or schemes begun after the commencement of those amendments or that section and extend to apply in respect of such a fund or scheme begun before that commencement.

## SCHEDULE 5—AMENDMENTS FOR GENDER NEUTRAL LANGUAGE

(Sec. 3)

- (1) Section 4 (**Definitions**):  
 From the definition of “near relative” in section 4 (1), omit  
 “his spouse, parent, child, grandparent, grandchild, brother or  
 sister”, insert instead “the spouse, parent, child, grandparent,  
 grandchild, brother or sister of the person”. 5
- (2) From sections 8, 25, 40 and 49ZH, omit “he” wherever  
 occurring, insert instead “the employer”. 10
- (3) From sections 8 (2), 25 (2), 40 (2) and 49ZH, omit “him”  
 wherever occurring, insert instead “the employee”.
- (4) From sections 8 (1), 9 (1), 10A (1), 11, 17 (1), 20, 20A, 28, 31A  
 (1), 33 (2), 34, 34A, 43, 46A (1), 48, 48A, 49ZG (1), 49ZL, 49ZO  
 (1), 49ZQ and 49ZR, omit “his” wherever occurring (except 15  
 where otherwise amended by this Act), insert instead “the  
 person’s”.
- (5) From sections 8 (2), 25 (2), 40 (2) and 49ZH (2), omit “his”  
 wherever occurring (except where otherwise amended by this 20  
 Act), insert instead “the employee’s”.
- (6) From sections 9, 10, 26, 27, 41, 42, 49ZI and 49ZJ, omit “he”  
 wherever occurring, insert instead “the principal”.
- (7) From sections 9 (1), 11, 13, 15, 17 (1), 18, 19, 20, 20A, 26 (1),  
 28, 30, 31A (1) (b), 32, 33 (1), 34, 34A, 41, 43, 45, 46A (1), 48,  
 48A, 49ZG (1), 49ZI (1) (c), 49ZL, 49ZN, 49ZO (1), 49ZP, 25  
 49ZQ, 49ZR, 50 and 54, omit “him” wherever occurring, insert  
 instead “the person”.
- (8) From sections 9 (2), 10, 26 (2), 41 (2), 49ZI (2), 79, 80 (2) (b), 81  
 (2), 84 and 112 (1), omit “him” wherever occurring, insert instead 30  
 “him or her”.
- (9) From sections 9 (2), 10, 26 (2), 27, 41 (2), 42, 49ZI (2), 49ZJ,  
 69E (2), 80 (2), 84, 94 (1), 114 (1) and 124, omit “his” wherever  
 occurring (except where otherwise amended by this Act), insert  
 instead “his or her”.
- (10) From sections 10A (1) (a), 27A (1) (a), 42A (1) (a) and 49ZK (1) 35  
 (a), omit “they make or he makes” wherever occurring, insert  
 instead “made”.



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**SCHEDULE 5—AMENDMENTS FOR GENDER  
NEUTRAL LANGUAGE—*continued***

- (11) Omit sections 10A (1) (c), 27A (1) (c), 42A (1) (c) and 49ZK (1) (c), insert instead:
- 5           (c) in the terms on which the person is offered a position as partner in the firm.
- (12) From sections 10A (2), 27A (2), 42A (2) and 49ZK (2), omit "his" wherever occurring, insert instead "the partner's".
- 10       (13) From sections 10A (2), 27A (2), 42A (2) and 49ZK (2), omit "him" wherever occurring, insert instead "the partner".
- (14) From sections 17 (2), 31A (2), 46A (2) and 49ZO (2), omit "his" wherever occurring, insert instead "the student's".
- (15) From sections 17 (2), 31A (2), 46A (2) and 49ZO (2), omit "him" wherever occurring, insert instead "the student".
- 15       (16) From sections 18, 33 (1) (b), 34 (1) (b), 48, 49ZF, 49ZG, 49ZP (b), 49ZQ (1) (b), 69L (2), 82 (2), 84 (3) and (4), 85 and 86, omit "he" wherever occurring, insert instead "he or she".
- (17) From section 20 (1) (b), 22, 69E (3), 69K (3), 74 and 122HG (2), omit "he" wherever occurring, insert instead "the person".
- 20       (18) From sections 25 (3), 40 (3) and 49ZH (3) (b), omit "his" wherever occurring, insert instead "the employer's".
- (19) From sections 27, 42 and 49ZJ, omit "him" wherever occurring, insert instead "the contract worker".
- (20) Section 31:
- 25           Omit the section, insert instead:
- Exception—genuine occupational qualification**
- 30           31. (1) Nothing in this Division renders unlawful discrimination against a person on the ground of the person's sex where being a person of a particular sex is a genuine occupational qualification for the job.
- (2) Being a person of a particular sex is a genuine occupational qualification for a job where any one or more of the following requirements is satisfied:

**SCHEDULE 5—AMENDMENTS FOR GENDER  
NEUTRAL LANGUAGE—*continued***

- |   |    |
|---|----|
| (a) the essential nature of the job calls for a person of that sex for reasons of physiognomy or physique, excluding physical strength or stamina, or, in dramatic performances or other entertainment, for reasons of authenticity, so that the essential nature of the job would be materially different if carried out by a person of the opposite sex; or | 5  |
| (b) the job needs to be held by a person of that sex to preserve decency or privacy because it involves the fitting of a person's clothing; or  | 10 |
| (c) the job requires the holder of the job to enter a lavatory ordinarily used by persons of that sex while it is used by persons of that sex; or   | 15 |
| (d) the job requires the holder of the job to search persons of that sex; or  |    |
| (e) the job requires the holder of the job to enter areas ordinarily used by persons of that sex while in a state of undress or while bathing or showering; or  | 20 |
| (f) the job requires the holder of the job to live in premises provided by the employer and:  |    |
| (i) those premises are not equipped with separate sleeping accommodation for persons of the opposite sex and sanitary facilities which could be used by persons of the opposite sex in privacy from persons of that sex; and  | 25 |
| (ii) it is not reasonable to expect the employer either to equip those premises with accommodation and facilities of that kind or to provide other premises for persons of the opposite sex; or   | 30 |
| (g) the job requires the holder of the job to keep persons of that sex in custody in a prison or other institution or in part of a prison or other institution; or  |    |
| (h) the holder of the job provides persons of that sex with personal services relating to their welfare or education, or similar personal services, and they or a substantial number of them might reasonably object to its being carried out by a person of the opposite sex; or   | 35 |
| (i) the job is one of two to be held by a married couple.   | 40 |



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SCHEDULE 5—AMENDMENTS FOR GENDER  
NEUTRAL LANGUAGE—*continued*

- 5           (3) Being a person of a particular sex is a genuine occupational qualification for a prescribed job or a job of a prescribed class or description.
- (4) Nothing in subsection (2) limits the Governor's power to make a regulation for the purposes of subsection (3).
- (21) From section 32 (1) (b), omit "he", insert instead "the holder".
- (22) From section 51 (4), omit "he", insert instead "he or she".
- 10   (23) From sections 69A (2), 69E (2) and 69K (2), omit "he" wherever occurring, insert instead "the judicial member".
- (24) From sections 69F, 69H, 75 and 77, omit "he" wherever occurring, insert instead "the member".
- 15   (25) From sections 69F, 69I, 73, 75 and 78, omit "his" wherever occurring, insert instead "the member's".
- (26) From sections 69G (2) and 76, omit "him" wherever occurring, insert instead "the Governor".
- (27) From section 69J, omit "him", insert instead "the member".
- 20   (28) In sections 75 (c) and 87, after "himself" wherever occurring, insert "or herself".
- (29) From sections 81 (1), 90 (1) and 94A (2), omit "his" wherever occurring, insert instead "the President's".
- (30) From sections 81 (5), 122 (2) and 122HE (5), omit "him" wherever occurring, insert instead "the Minister".
- 25   (31) From section 84 (2), omit "he" wherever occurring, insert instead "the full-time member".
- (32) From sections 88 (2B), 89, 89A, 91 (2), 92 (2), 94 (1) and 94A (5), omit "him" wherever occurring, insert instead "the President".
- 30   (33) From sections 89A, 90 (1), 92 (1) and 94 (1), omit "he" wherever occurring, insert instead "the President".
- (34) From section 101 (1) (b), omit "his or its solicitor or counsel or an agent", insert instead "a solicitor, by counsel or by an agent".



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SCHEDULE 5—AMENDMENTS FOR GENDER  
NEUTRAL LANGUAGE—*continued*

(35) Section 122HE:

- (a) From section 122HE (1), omit “his”, insert instead “the Director’s”. 5
- (b) From section 122HE (2), omit “him”, insert instead “the acting Director”.

(36) From sections 122HG (1) and 122I (3) and (4), omit “his” wherever occurring, insert instead “the Director’s”.

(37) Section 122I: 10

- (a) From section 122I (2), omit “him”, insert instead “the Director”.
  - (b) From section 122I (3), omit “he”, insert instead “the Director”.
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SECOND PRINT

**ANTI-DISCRIMINATION (AMENDMENT) BILL 1994**

NEW SOUTH WALES



**TABLE OF PROVISIONS**

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2. Commencement
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SCHEDULE 3—AMENDMENTS RELATING TO DISABILITY

SCHEDULE 4—MISCELLANEOUS AMENDMENTS

SCHEDULE 5—AMENDMENTS FOR GENDER NEUTRAL LANGUAGE

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

*Legislative Council*

*Clerk of the Parliaments*

NEW SOUTH WALES



Act No.           , 1994

An Act to amend the Anti-Discrimination Act 1977 to make provision with respect to HIV/AIDS vilification and to make further provision with respect to racial vilification, racial discrimination and discrimination on the ground of disability, and to make miscellaneous amendments with respect to the grounds of discrimination, complaints procedure, the liability of principals and employers, penalties, exemptions and other matters; and for other purposes.

*Anti-Discrimination (Amendment) 1994*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Anti-Discrimination (Amendment) Act 1994.

**5 Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Amendment of Anti-Discrimination Act 1977 No. 48**

3. The Anti-Discrimination Act 1977 is amended as set out in  
10 Schedules 1–5.

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**SCHEDULE 1—AMENDMENTS RELATING TO THE  
DEFINITION OF “RACE” AND PENALTIES  
FOR RACIAL VILIFICATION**

(Sec. 3)

15 (1) Section 4 (**Definitions**):

Omit the definition of “race” in section 4 (1), insert instead:  
“race” includes colour, nationality, descent and ethnic,  
ethno-religious or national origin;

20 (2) Section 20D (**Offence of serious racial vilification**):

From section 20D (1), omit “10 penalty units”, insert instead  
“50 penalty units”.

**SCHEDULE 2—AMENDMENTS RELATING TO HIV/AIDS  
VILIFICATION**

(Sec. 3)

25 Part 4F:

After Part 4E, insert:

**PART 4F—HIV/AIDS VILIFICATION**

**Definitions**

49ZXA. In this Part:



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SCHEDULE 2—AMENDMENTS RELATING TO HIV/AIDS  
VILIFICATION—*continued*

**“HIV/AIDS infected”** means infected by the Human Immunodeficiency Virus or having the medical condition known as Acquired Immunodeficiency Syndrome;

5

**“public act”** includes:

- (a) any form of communication to the public, including speaking, writing, printing, displaying notices, broadcasting, telecasting, screening and playing of tapes or other recorded material; and 10
- (b) any conduct (not being a form of communication referred to in paragraph (a)) observable by the public, including actions and gestures and the wearing or display of clothing, signs, flags, emblems and insignia; and 15
- (c) the distribution or dissemination of any matter to the public with knowledge that the matter promotes or expresses hatred towards, or serious contempt for, a person or group of persons on the ground that the person is or members of the group are HIV/AIDS infected or thought to be HIV/AIDS infected (whether or not actually HIV/AIDS infected). 20

**HIV/AIDS vilification unlawful**

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49ZXB. (1) It is unlawful for a person, by a public act, to incite hatred towards or serious contempt for a person or group of persons on the ground that the person is or members of the group are HIV/AIDS infected or thought to be HIV/AIDS infected (whether or not actually HIV/AIDS infected).

30

(2) Nothing in this section renders unlawful:

- (a) a fair report of a public act referred to in subsection (1); or
- (b) a communication or the distribution or dissemination of any matter comprising a publication referred to in Division 3 of Part 3 of the Defamation Act 1974 or which is otherwise subject to a defence of absolute privilege in proceedings for defamation; or

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*Anti-Discrimination (Amendment) 1994*

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**SCHEDULE 2—AMENDMENTS RELATING TO HIV/AIDS  
VILIFICATION—*continued***

- 5 (c) a public act, done reasonably and in good faith, for academic, artistic, scientific, research or religious discussion or instruction purposes or for other purposes in the public interest, including discussion or debate about and expositions of any act or matter.

**Offence of serious HIV/AIDS vilification**

10 49ZXC. (1) A person must not, by a public act, incite hatred towards or serious contempt for a person or group of persons on the ground that the person is or members of the group are HIV/AIDS infected or thought to be HIV/AIDS infected (whether or not actually HIV/AIDS infected) by means which include:

- 15 (a) threatening physical harm towards, or towards any property of, the person or group of persons; or  
(b) inciting others to threaten physical harm towards, or towards any property of, the person or group of persons.

20 Maximum penalty: In the case of an individual—50 penalty units or imprisonment for 6 months, or both. In the case of a corporation—100 penalty units.

25 (2) A person is not to be prosecuted for an offence under this section unless the Attorney General has consented to the prosecution.

**SCHEDULE 3—AMENDMENTS RELATING TO DISABILITY**

(Sec. 3)

(1) Section 4 (**Definitions**):

30 (a) Omit the definitions of “intellectual impairment”, “intellectually handicapped person”, “physical impairment” and “physically handicapped person” in section 4 (1).

(b) Insert in section 4 (1) in alphabetical order:

“**disability**” means:

- 35 (a) total or partial loss of a person’s bodily or mental functions or of a part of a person’s body; or  
(b) the presence in a person’s body of organisms causing or capable of causing disease or illness; or

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SCHEDULE 3—AMENDMENTS RELATING TO DISABILITY—  
*continued*

- (c) the malfunction, malformation or disfigurement of a part of a person's body; or
- (d) a disorder or malfunction that results in a person learning differently from a person without the disorder or malfunction; or
- (e) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour;

(c) Omit section 4 (5) and (6).

(2) Part 4A:

Omit Parts 4A and 4B, insert instead:

**PART 4A—DISCRIMINATION ON THE GROUND OF DISABILITY**

**Division 1—General**

**Disability includes past, future and presumed disability**

49A. A reference in this Part to a person's disability is a reference to a disability:

- (a) that a person has; or
- (b) that a person is thought to have (whether or not the person in fact has the disability); or
- (c) that a person had in the past, or is thought to have had in the past (whether or not the person in fact had the disability); or
- (d) that a person will have in the future, or that it is thought a person will have in the future (whether or not the person in fact will have the disability).

**What constitutes discrimination on the ground of disability**

49B. (1) A person ("the perpetrator") discriminates against another person ("the aggrieved person") on the ground of disability if, on the ground of the aggrieved person's disability or the disability of a relative or associate of the aggrieved person, the perpetrator:



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SCHEDULE 3—AMENDMENTS RELATING TO DISABILITY—  
*continued*

5 (a) treats the aggrieved person less favourably than in the same circumstances, or in circumstances which are not materially different, the perpetrator treats or would treat a person who does not have that disability or who does not have such a relative or associate who has that disability; or

10 (b) requires the aggrieved person to comply with a requirement or condition with which a substantially higher proportion of persons who do not have that disability, or who do not have such a relative or associate who has that disability, comply or are able to comply, being a requirement which is not reasonable  
 15 having regard to the circumstances of the case and with which the aggrieved person does not or is not able to comply.

20 (2) For the purposes of subsection (1) (a), something is done on the ground of a person's disability if it is done on the ground of the person's disability, a characteristic that appertains generally to persons who have that disability or a characteristic that is generally imputed to persons who have that disability.

25 (3) For the purposes of, but without limiting, this section, the fact that a person who has a disability of or relating to vision, hearing or mobility has, or may be accompanied by, a dog which assists the person in respect of that disability, is taken to be a characteristic that appertains generally to persons who have that disability, but nothing in this Act  
 30 affects the liability of any such person for any injury, loss or damage caused by the dog.

35 (4) A reference in this section to persons who have a disability ("the particular disability") is a reference to persons who have the particular disability or who have a disability that is substantially the same as the particular disability.

**What constitutes unjustifiable hardship**

40 49C. In determining what constitutes unjustifiable hardship for the purposes of this Part, all relevant circumstances of the particular case are to be taken into account including:

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**SCHEDULE 3—AMENDMENTS RELATING TO DISABILITY—**  
*continued*

- (a) the nature of the benefit or detriment likely to accrue or be suffered by any persons concerned; and
- (b) the effect of the disability of a person concerned; and 5
- (c) the financial circumstances and the estimated amount of expenditure required to be made by the person claiming unjustifiable hardship.

**Division 2—Discrimination in work**

**Discrimination against applicants and employees 10**

49D. (1) It is unlawful for an employer to discriminate against a person on the ground of disability:

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

(2) It is unlawful for an employer to discriminate against an employee on the ground of disability:

- (a) in the terms or conditions of employment which the employer affords the employee; or 20
- (b) by denying the employee access, or limiting the employee's access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment; or 25
- (c) by dismissing the employee; or
- (d) by subjecting the employee to any other detriment.

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

- (a) for the purposes of a private household; or
- (b) where the number of persons employed by the employer, disregarding any persons employed within the employer's private household, does not exceed 5; or 30
- (c) by a private educational authority.

(4) Nothing in subsection (1) (b) or (2) (c) renders unlawful discrimination by an employer against a person on the ground of the person's disability if taking into account the 35



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SCHEDULE 3—AMENDMENTS RELATING TO DISABILITY—  
*continued*

- 5 person's past training, qualifications and experience relevant to the particular employment and, if the person is already employed by the employer, the person's performance as an employee, and all other relevant factors that it is reasonable to take into account, the person because of his or her disability:
- 10 (a) would be unable to carry out the inherent requirements of the particular employment; or
- 15 (b) would, in order to carry out those requirements, require services or facilities that are not required by persons without that disability and the provision of which would impose an unjustifiable hardship on the employer.
- 20 (5) For the purposes of subsection (3) (b), a corporation is taken to be the employer of the employees of any other corporation which, with respect to the firstmentioned corporation, is taken to be a related corporation within the meaning of the Corporations Law.
- Discrimination against commission agents**
- 25 49E. (1) It is unlawful for a principal to discriminate against a person on the ground of disability:
- (a) in the arrangements the principal makes for the purpose of determining who should be engaged as a commission agent; or
- (b) in determining who should be engaged as a commission agent; or
- 30 (c) in the terms on which the principal engages the person as a commission agent.
- (2) It is unlawful for a principal to discriminate against a commission agent on the ground of disability:
- (a) in the terms or conditions which the principal affords him or her as a commission agent; or
- 35 (b) by denying him or her access, or limiting his or her access, to opportunities for promotion, transfer or training, or to any other benefits associated with his or her position as a commission agent; or



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SCHEDULE 3—AMENDMENTS RELATING TO DISABILITY—  
*continued*

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

(3) Nothing in subsection (1) (b) or (2) (c) renders unlawful discrimination by a principal against a person on the ground of the person's disability if taking into account the person's past training, qualifications and experience relevant to engagement as a commission agent and, if the person is already engaged by the principal as a commission agent, the person's performance as a commission agent, and all other relevant factors that it is reasonable to take into account, the person because of his or her disability: 5

- (a) would be unable to carry out the inherent requirements of a commission agent; or 15
- (b) would, in order to carry out those requirements, require services or facilities that are not required by persons without that disability and the provision of which would impose an unjustifiable hardship on the principal. 20

**Discrimination against contract workers**

49F. (1) It is unlawful for a principal to discriminate against a contract worker on the ground of disability:

- (a) in the terms on which the principal allows him or her to work; or 25
- (b) by not allowing him or her to work or continue to work; or
- (c) by denying him or her access, or limiting his or her access, to any benefit associated with the work in respect of which the contract with his or her employer is made; or 30
- (d) by subjecting him or her to any other detriment.

(2) Nothing in subsection (1) (b) renders unlawful discrimination by a principal against a contract worker on the ground of the contract worker's disability if taking into account the contract worker's past training, qualifications and experience relevant to working as a contract worker and, if the person is already working for the principal as a contract worker, the contract worker's performance as a contract worker, and all other relevant factors that it is reasonable to 40

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SCHEDULE 3—AMENDMENTS RELATING TO DISABILITY—  
*continued*

take into account, the contract worker because of his or her disability:

- 5           (a) would be unable to carry out the inherent requirements of a contract worker; or
- (b) would, in order to carry out those requirements, require services or facilities that are not required by persons without that disability and the provision of which
- 10           would impose an unjustifiable hardship on the principal.

**Partnerships**

49G. (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 disability:

- 15           (a) in the arrangements made for the purpose of determining who should be offered a position as partner in the firm; or
- 20           (b) in determining who should be offered a position as partner in the firm; or
- (c) in the terms on which the person is offered a position as partner in the firm.

25           (2) It is unlawful for a firm consisting of 6 or more partners to discriminate against a partner on the ground of disability:

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

35           (3) Nothing in subsection (1) (b) or (2) (b) renders unlawful discrimination by a person against another person on the ground of the other person's disability if taking into account the other person's past training, qualifications and experience relevant to the proposed partnership or the partnership and, if the other person is already a partner, the other person's performance as a partner, and all other relevant factors that it is reasonable to take into account, the other

40           person because of his or her disability:



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SCHEDULE 3—AMENDMENTS RELATING TO DISABILITY—  
*continued*

- (a) would be unable to carry out the inherent requirements of a partner in the proposed partnership or the partnership; or 5
- (b) would, in order to carry out those requirements, require services or facilities that are not required by persons without that disability and the provision of which would impose an unjustifiable hardship on the partnership. 10

**Discrimination by local government councillors**

49H. It is unlawful for any member or members of a council of a local government area when acting (whether alone or together) in the course of his, her or their official functions to discriminate against another member of the council on the ground of disability. 15

**Industrial organisations**

49I. (1) It is unlawful for an industrial organisation to discriminate against a person who is not a member of the industrial organisation on the ground of disability: 20

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

(2) It is unlawful for an industrial organisation to discriminate against a person who is a member of the industrial organisation on the ground of disability: 25

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

(3) Nothing in subsection (2) (a) renders it unlawful to discriminate against a person on the ground of disability where, because of the person's disability, the person requires the benefit to be provided in a special manner and the benefit cannot be provided in that manner by the industrial organisation without unjustifiable hardship to it. 35



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SCHEDULE 3—AMENDMENTS RELATING TO DISABILITY—  
*continued*

**Qualifying bodies**

5           49J. (1) It is unlawful for an authority or body which is empowered to confer, renew or extend an authorisation or a qualification that is needed for or facilitates the practice of a profession, the carrying on of a trade or the engaging in of an occupation to discriminate against a person on the ground of disability:

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

             (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

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

             (2) Nothing in subsection (1) (a) or (c) renders unlawful discrimination by an authority or body against a person on the ground of the person's disability if taking into account the person's past training, qualifications and experience relevant to the particular profession, trade or occupation and, if the person is already a member of the profession, carrying on the trade or engaged in the occupation, the person's performance in the profession trade or occupation, and all other relevant factors that it is reasonable to take into account, the person because of his or her disability would be unable to carry out the inherent requirements of the profession, trade or occupation.

**Employment agencies**

30           49K. (1) It is unlawful for an employment agency to discriminate against a person on the ground of disability:

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

35           (b) in the terms on which it offers to provide him or her with any of its services; or

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

40           (2) Nothing in this section renders unlawful discrimination by an employment agency against a person on the ground of the person's disability if taking into account the person's past

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*continued***

training, qualifications and experience relevant to the work sought, and all other relevant factors that it is reasonable to take into account, the person because of his or her disability would be unable to carry out the inherent requirements of the work sought. 5

**Division 3—Discrimination in other areas****Education**

49L. (1) It is unlawful for an educational authority to discriminate against a person on the ground of disability: 10

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

(b) in the terms on which it is prepared to admit him or her as a student. 15

(2) It is unlawful for an educational authority to discriminate against a student on the ground of disability:

(a) by denying him or her access, or limiting his or her access, to any benefit provided by the educational authority; or 20

(b) by expelling him or her; or

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

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

(a) a private educational authority; or

(b) a refusal or failure to accept a 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 a disability which is not the same as that of the applicant. 25 30

(4) Nothing in subsection (1) (a) or (2) (b) renders it unlawful to discriminate against a person on the ground of disability where, because of the person's disability, the person requires services or facilities that are not required by students who do not have a disability and the provision of which would impose unjustifiable hardship on the educational authority. 35



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*continued*

5 (5) Nothing in subsection (2) (a) renders it unlawful to discriminate against a person on the ground of disability where, because of the person's disability, the person requires the benefit to be provided in a special manner and the benefit cannot without unjustifiable hardship be so provided by the educational authority.

**Provision of goods and services**

10 49M. (1) It is unlawful for a person who provides, for payment or not, goods or services to discriminate against a person on the ground of disability:

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

20 (2) Nothing in this section renders it unlawful to discriminate against a person on the ground of the person's disability if the provision of the goods or services would impose unjustifiable hardship on the person who provides the goods or services.

**Accommodation**

25 49N. (1) It is unlawful for a person, whether as principal or agent, to discriminate against a person on the ground of disability:

- 30 (a) by refusing the person's application for accommodation; or  
(b) in the terms on which the person is offered accommodation; or  
(c) by deferring the person's application for accommodation or according the person a lower order of precedence in any list of applicants for that accommodation.

35 (2) It is unlawful for a person, whether as principal or agent, to discriminate against a person on the ground of disability:

- (a) by denying the person access, or limiting the person's access, to any benefit associated with accommodation occupied by the person; or



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*continued*

- (b) by evicting the person; or
- (c) by subjecting the person to any other detriment.
- (3) Nothing in this section applies to or in respect of the provision of accommodation in premises if: 5
  - (a) the person who provides or proposes to provide the accommodation or a near relative of that person resides, and intends to continue to reside, on those premises; and 10
  - (b) the accommodation provided in those premises is for no more than 6 persons.
- (4) Nothing in this section applies to the provision of accommodation in premises where special services or facilities would be required by the person with a disability and the provision of such special services or facilities would impose unjustifiable hardship on the person providing or proposing to provide the accommodation whether as principal or agent. 15
- (5) Nothing in this section applies to the provision of accommodation to persons who have a particular disability by a charitable body or other body that does not distribute its profits to members. 20
- (6) Nothing in subsection (2) (a) renders it unlawful to discriminate against a person on the ground of disability where, because of the person's disability, the person requires the benefit to be provided in a special manner and the benefit cannot without unjustifiable hardship be so provided by the person who provides the accommodation. 25
- Registered clubs** 30
  - 49O. (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 disability:
    - (a) by refusing or failing to accept the person's application for membership; or 35
    - (b) in the terms on which it is prepared to admit the person 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 disability: 40

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*continued***

5 (a) by denying the person access, or limiting the person's access, to any benefit provided by the registered club; or

(b) by depriving the person of membership or varying the terms of the person's membership; or

(c) by subjecting the person to any other detriment.

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

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

(a) the essential character of the registered club; and

20 (b) the extent to which the affairs of the registered club are so conducted that the persons primarily enjoying the benefits of membership are persons who have the particular disability specified in the principal object; and

(c) any other relevant circumstance.

25 (5) Nothing in subsection (2) (a) renders it unlawful to discriminate against a person on the ground of disability where, because of the person's disability, the person requires the benefit to be provided in a special manner and the benefit cannot without unjustifiable hardship be so provided by the registered club.

**Division 4—Exceptions to Part 4A****30 Public health**

49P. Nothing in this Part renders unlawful discrimination against a person on the ground of disability if the disability concerned is an infectious disease and the discrimination is reasonably necessary to protect public health.

**35 Superannuation, insurance**

49Q. Nothing in this Part renders unlawful discrimination against a person on the ground of disability in the terms or

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SCHEDULE 3—AMENDMENTS RELATING TO DISABILITY—  
*continued*

conditions appertaining to a superannuation or provident fund or scheme or 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 terms or conditions:

(i) are based upon actuarial or statistical data on which it is reasonable to rely; and

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

(b) in a case where no such actuarial or statistical data is available and cannot reasonably be obtained—the terms or conditions are reasonable having regard to any other relevant factors,

and the source on which any data referred to in paragraph (a) 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) or (b) are disclosed to the Tribunal, where the Tribunal so requires.

**Sport**

49R. Nothing in this Part renders unlawful discrimination against a person on the ground of disability, being discrimination consisting of the exclusion of the person from a sporting activity:

(a) if the person is not reasonably capable of performing the actions reasonably required in relation to the sporting activity; or

(b) if the persons who participate or are to participate in the sporting activity are selected by a method which is reasonable on the basis of their skills and abilities relevant to the sporting activity and relative to each other; or

(c) if the sporting activity is conducted only for persons who have a particular disability and the person does not have that disability.



**SCHEDULE 4—MISCELLANEOUS AMENDMENTS**

(Sec. 3)

(1) The whole Act (except section 4):

- 5 (a) Omit "a trade union" wherever occurring, insert instead "an industrial organisation".
- (b) Omit "the trade union" wherever occurring, insert instead "the industrial organisation".

(2) Section 4 (**Definitions**):

- 10 (a) Insert in section 4 (1) in alphabetical order:
- "associate" of a person means:
- (a) any person with whom the person associates, whether socially or in business or commerce, or otherwise; and
- (b) any person who is wholly or mainly dependent on, or a member of the household of, the person;
- "homosexual" means male or female homosexual;
- "relative" of a person means any person to whom the person is related by blood, marriage, affinity or adoption;
- 15 (b) Omit the definition of "registered club" in section 4 (1), insert instead:
- "registered club" has the same meaning as in the Registered Clubs Act 1976;
- 20 (c) Omit the definition of "trade union" in section 4 (1) and insert in alphabetical order:
- "industrial organisation" means an industrial organisation or non-industrial organisation within the meaning of the Industrial Relations Act 1991 or an organisation registered under the Industrial Relations Act 1988 of the Commonwealth;
- 25
- 30

(3) Section 4A:

After section 4, insert:

**More than one ground for discrimination**

- 35 4A. If something is done on more than one ground, it is for the purposes of this Act taken to have been done on

*Anti-Discrimination (Amendment) 1994*SCHEDULE 4—MISCELLANEOUS AMENDMENTS—*continued*

whichever of those grounds is the dominant ground (with the result that this Act will apply only if that dominant ground is a ground of unlawful discrimination under this Act).

- (4) Section 7: 5
- Omit the section, insert instead:
- What constitutes discrimination on the ground of race**
7. (1) A person (“**the perpetrator**”) discriminates against another person (“**the aggrieved person**”) on the ground of race if, on the ground of the aggrieved person’s race or the race of a relative or associate of the aggrieved person, the perpetrator: 10
- (a) treats the aggrieved person less favourably than in the same circumstances, or in circumstances which are not materially different, the perpetrator treats or would treat a person of a different race or who has such a relative or associate of a different race; or 15
  - (b) segregates the aggrieved person from persons of a different race or from persons who have such a relative or associate of a different race; or 20
  - (c) requires the aggrieved person to comply with a requirement or condition with which a substantially higher proportion of persons not of that race, or who have such a relative or associate not of that race, comply or are able to comply, being a requirement which is not reasonable having regard to the circumstances of the case and with which the aggrieved person does not or is not able to comply. 25
- (2) For the purposes of subsection (1) (a) and (b), something is done on the ground of a person’s race if it is done on the ground of the person’s race, a characteristic that appertains generally to persons of that race or a characteristic that is generally imputed to persons of that race. 30
- (5) Sections 8–13, 17–20A:
- Omit “on the ground of his race” wherever occurring, insert instead “on the ground of race”. 35

*Anti-Discrimination (Amendment) 1994*SCHEDULE 4—MISCELLANEOUS AMENDMENTS—*continued*

## (6) Section 10B:

After section 10A, insert:

**Discrimination by local government councillors**

- 5        10B. It is unlawful for any member or members of a council of a local government area when acting (whether alone or together) in the course of his, her or their official functions to discriminate against another member of the council on the ground of race.

## 10        (7) Section 21:

Omit the section, insert instead:

**Special needs programs and activities**

- 15        21. Nothing in this Part applies to or in respect of anything done in affording persons of a particular race access to facilities, services or opportunities to meet their special needs or to promote equal or improved access for them to facilities, services and opportunities.

(8) Section 24 (**What constitutes discrimination on the ground of sex**):

- 20        (a) Omit section 24 (1), insert instead:

- 25        (1) A person ("**the perpetrator**") discriminates against another person ("**the aggrieved person**") on the ground of sex if, on the ground of the aggrieved person's sex or the sex of a relative or associate of the aggrieved person, the perpetrator:

- 30            (a) treats the aggrieved person less favourably than in the same circumstances, or in circumstances which are not materially different, the perpetrator treats or would treat a person of the opposite sex or who does not have such a relative or associate of that sex; or
- 35            (b) requires the aggrieved person to comply with a requirement or condition with which a substantially higher proportion of persons of the opposite sex, or who do not have such a relative or associate of that sex, comply or are able to comply, being a requirement which is not reasonable having regard to the circumstances of the case and with which the aggrieved person does not or is not able to comply.



*Anti-Discrimination (Amendment) 1994*SCHEDULE 4—MISCELLANEOUS AMENDMENTS—*continued*

- (1A) For the purposes of subsection (1) (a), something is done on the ground of a person's sex if it is done on the ground of the person's sex, a characteristic that appertains generally to persons of that sex or a characteristic that is generally imputed to persons of that sex. 5
- (b) From section 24 (1A), omit "(1A) For the purposes of subsection (1), but without limiting the generality of that subsection", insert instead "(1B) For the purposes of this section, but without limiting the generality of this section". 10
- (c) Omit section 24 (3).
- (9) Sections 25–35:  
Omit "on the ground of his sex" wherever occurring, insert instead "on the ground of sex".
- (10) Section 25: 15  
Omit "her sex" wherever occurring, insert instead "sex".
- (11) Section 27B:  
After section 27A, insert:  
**Discrimination by local government councillors**  
27B. It is unlawful for any member or members of a council of a local government area when acting (whether alone or together) in the course of his, her or their official functions to discriminate against another member of the council on the ground of sex. 20
- (12) Sections 36, 49 (**Superannuation**): 25  
Omit "scheme.", insert instead:  
scheme, where:  
(a) the terms or conditions:  
(i) are based upon actuarial or statistical data on which it is reasonable to rely; and 30  
(ii) are reasonable having regard to the data and any other relevant factors; or  
(b) in a case where no such actuarial or statistical data is available and cannot reasonably be obtained—the terms or conditions are reasonable having regard to any other relevant factors, 35

SCHEDULE 4—MISCELLANEOUS AMENDMENTS—*continued*

5 and the source on which any data referred to in paragraph (a) 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) or (b) are disclosed to the Tribunal, where the Tribunal so requires.

(13) Section 39 (**What constitutes discrimination on the ground of marital status**):

(a) Omit section 39 (1), insert instead:

10 (1) A person ("**the perpetrator**") discriminates against another person ("**the aggrieved person**") on the ground of marital status if, on the ground of the aggrieved person's marital status or the marital status of a relative or associate of the aggrieved person, the perpetrator:

15 (a) treats the aggrieved person less favourably than in the same circumstances, or in circumstances which are not materially different, the perpetrator treats or would treat a person of a different marital status or who does not have such a relative or associate of that marital status; or

20 (b) requires the aggrieved person to comply with a requirement or condition with which a substantially higher proportion of persons of a different marital status, or who do not have such a relative or associate of that marital status, comply or are able to comply, being a requirement which is not reasonable having regard to the circumstances of the case and with which the aggrieved person does not or is not able to comply.

25 (1A) For the purposes of subsection (1) (a), something is done on the ground of a person's marital status if it is done on the ground of the person's marital status, a characteristic that appertains generally to persons of that marital status or a characteristic that is generally imputed to persons of that marital status.

30 (b) Omit section 39 (3).

(14) Sections 40–48A:

Omit "on the ground of his marital status" wherever occurring, insert instead "on the ground of marital status".

*Anti-Discrimination (Amendment) 1994***SCHEDULE 4—MISCELLANEOUS AMENDMENTS—*continued*****(15) Section 42B:**

After section 42A, insert:

**Discrimination by local government councillors**

42B. It is unlawful for any member or members of a council of a local government area when acting (whether alone or together) in the course of his, her or their official functions to discriminate against another member of the council on the ground of marital status.

5

**(16) Section 47:**

10

Omit the section, insert instead:

**Provision of goods and services**

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

15

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

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

**(17) Section 49ZG:**

20

Omit the section, insert instead:

**What constitutes discrimination on the ground of homosexuality**

49ZG. (1) A person ("the perpetrator") discriminates against another person ("the aggrieved person") on the ground of homosexuality if, on the ground of the aggrieved person's homosexuality or the homosexuality of a relative or associate of the aggrieved person, the perpetrator:

25

(a) treats the aggrieved person less favourably than in the same circumstances, or in circumstances which are not materially different, the perpetrator treats or would treat a person who he or she did not think was a homosexual person or who does not have such a relative or associate who he or she thinks was a homosexual person; or

30

35



*Anti-Discrimination (Amendment) 1994*SCHEDULE 4—MISCELLANEOUS AMENDMENTS—*continued*

5 (b) requires the aggrieved person to comply with a  
requirement or condition with which a substantially  
higher proportion of persons who are not homosexual  
persons, or who do not have such a relative or  
associate who is a homosexual person, comply or are  
able to comply, being a requirement which is not  
reasonable having regard to the circumstances of the  
10 case and with which the aggrieved person does not or  
is not able to comply.

(2) For the purposes of subsection (1) (a), something is  
done on the ground of a person's homosexuality if it is done  
on the ground of the person's homosexuality, a characteristic  
that appertains generally to homosexual persons or a  
15 characteristic that is generally imputed to homosexual  
persons.

(18) Sections 49ZH–49ZR:

Omit “on the ground of his homosexuality” wherever  
occurring, insert instead “on the ground of homosexuality”.

20 (19) Section 49ZKA:

After section 49ZK, insert:

**Discrimination by local government councillors**

25 49ZKA. It is unlawful for any member or members of a  
council of a local government area when acting (whether  
alone or together) in the course of his, her or their official  
functions to discriminate against another member of the  
council on the ground of homosexuality.

(20) Section 49ZYI (as inserted by the Anti-Discrimination (Age  
Discrimination) Amendment Act 1993):

30 Omit the section, insert instead:

**Junior employees**

35 49ZYI. (1) Nothing in section 49ZYB (1) applies to or in  
respect of the offering of employment to persons who are  
under 21 years of age or the terms on which employment is  
offered to persons who are under 21 years of age.

(2) Nothing in section 49ZYB (2) (a) applies to or in  
respect of the terms or conditions of employment that are  
afforded to employees who are under 21 years of age.

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(3) This section ceases to operate on a day appointed by proclamation for the purposes of this section, being a day that is not earlier than 2 years after the date of commencement of this Part.

5

**(21) Section 51 (Advertisements):**

Omit the penalty at the end of section 51 (2), insert instead:

Maximum penalty: 50 penalty units in the case of a body corporate or 10 penalty units in any other case.

**(22) Sections 52, 53:**

10

Omit the sections, insert instead:

**Aiding and abetting etc.**

52. It is unlawful for a person to cause, instruct, induce, aid or permit another person to do an act that is unlawful by reason of a provision of this Act.

15

**Liability of principals and employers**

53. (1) An act done by a person as the agent or employee of the person's principal or employer which if done by the principal or employer would be a contravention of this Act is taken to have been done by the principal or employer also unless the principal or employer did not, either before or after the doing of the act, authorise the agent or employee, either expressly or by implication, to do the act.

20

(2) If both the principal or employer and the agent or employee who did the act are subject to any liability arising under this Act in respect of the doing of the act, they are jointly and severally subject to that liability.

25

**(23) Section 54 (Acts done under statutory authority etc.):**

(a) From section 54 (1) (d), omit "including an order or award", insert instead "not including an order or award".

30

(b) Omit section 54 (1) (e).

(c) Omit section 54 (2).

**(24) Section 56 (Religious bodies):**

In section 56 (d), before "practice", insert "act or".

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## (25) Section 59:

Omit the section, insert instead:

5        **Establishments providing housing accommodation for aged persons**

10        59. Nothing in this Act affects any rule or practice of an establishment which provides housing accommodation for aged persons, whether by statute or otherwise, whereby admission to the establishment is restricted to persons of a particular sex, marital status or race.

(26) Section 87 (**Definitions**):

- 15        (a) Omit the definition of “racial vilification complaint”.  
       (b) In the definition of “representative body”, omit “a racial group”, insert instead “a group”.  
       (c) Insert in alphabetical order:  
           “**vilification complaint**” means a complaint in respect of a contravention of section 20C or 49ZXB.

(27) Section 88 (**Making of complaints**):

- 20        (a) Omit section 88 (1A)–(2A), insert instead:  
           (1A) A complaint may be lodged under subsection (1) by a representative body on behalf of a named person or named persons, but only if the representative body has satisfied the President that:  
           (a) each person on whose behalf the complaint is lodged consents to the complaint being lodged by the body on his or her behalf; and  
           (b) the body has a sufficient interest in the complaint.  
           (1B) A representative body has a sufficient interest in a complaint only if the conduct that constitutes the alleged contravention concerned is a matter of genuine concern to the body because of the way conduct of that nature adversely affects or has the potential to adversely affect the interests of the body or the interests or welfare of the group of people it represents.  
           (1C) The President may require a representative body which has lodged a complaint to nominate a person to appear for the representative body in conciliation proceedings concerning the complaint before the President.



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(1D) A vilification complaint cannot be lodged under this section unless each person on whose behalf the complaint is lodged:

(a) has the characteristic that was the ground for the conduct that constitutes the alleged contravention concerned; or 5

(b) claims to have that characteristic and there is no sufficient reason to doubt that claim.

(2) If a person is under the age of 18 years or has a disability, his or her complaint may be lodged on his or her behalf by another person, but only if: 10

(a) the President is satisfied that the person on whose behalf the complaint is to be lodged consents to the complaint being lodged on his or her behalf by the other person; and 15

(b) in the case of a complaint to be lodged on behalf of a person (whether or not a person who has a disability) who is under the age of 18 years, the other person who is to lodge the complaint is, or does so with the consent of, the person's parent or guardian. 20

(2A) When a complaint is lodged on behalf of another person ("**the complainant**") pursuant to subsection (2):

(a) the person who lodges the complaint is, for the purposes of this Division, taken to have the same rights, obligations and interests with respect to the investigation or referral of the complaint as the complainant; and 25

(b) the complaint is, for the purposes of this Part, taken to have been lodged by the complainant on his or her own behalf (except to the extent necessary to give effect to subsection (2)). 30

(b) From section 88 (2B), omit "intellectually handicapped".

(c) After section 88 (2B), insert:

(2C) A person who because of any disability is incapable of consenting to the making of a complaint on his or her behalf is taken to have consented to the making of the 35

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complaint on his or her behalf if that consent is given by the person's parent or guardian or by anyone else who the President is satisfied has a genuine concern for the person's welfare.

(28) Section 89B (**Prosecution for serious vilification**):

(a) From section 89B (1) (a), omit "racial".

(b) After "20D" wherever occurring, insert "or 49ZXC".

## (29) Section 90A:

After section 90, insert:

**Withdrawal of complaint**

90A. (1) The President may decide not to proceed with a complaint if satisfied that the person or (in the case of a complaint made on behalf of more than one person) each person on whose behalf the complaint was made does not wish to proceed with the complaint, in which case no further action is required to be taken on the complaint.

(2) The President may amend a complaint made on behalf of more than one person to remove a person as a person on whose behalf the complaint was made if the President is satisfied that the person does not wish to proceed with the complaint.

(3) The President is to give notice in writing of any decision by the President under this section to the complainant and respondent under the complaint concerned and to each person on whose behalf the complaint was made.

(30) Section 92 (**Resolution of complaint by conciliation**):

Omit the penalty at the end of section 92 (3), insert instead:

Maximum penalty: 50 penalty units in the case of a body corporate or 10 penalty units in any other case.

(31) Section 98 (**Joinder of parties by the Tribunal**):

At the end of the section, insert:

(2) If a person is joined as a party to the inquiry as a complainant or respondent, the person is for the purposes of this Part taken to be a complainant or respondent (as appropriate) in relation to the complaint concerned.

*Anti-Discrimination (Amendment) 1994***SCHEDULE 4—MISCELLANEOUS AMENDMENTS—continued**

- (32) Section 101B (**Holding of inquiry**):  
 Omit the penalty at the end of section 101B (5), insert instead:  
 Maximum penalty (subsection (5)): 50 penalty units in the case of a body corporate or 10 penalty units in any other case. 5
- (33) Section 110A (**Publication of proceedings etc.**):  
 Omit the penalty at the end of section 110A (3), insert instead: 10  
 Maximum penalty (subsection (3)): 50 penalty units in the case of a body corporate or 10 penalty units in any other case.
- (34) Section 111 (**Tribunal may dismiss frivolous etc. complaints**): 15  
 (a) After section 111 (1), insert:  
 (1A) The Tribunal may dismiss a complaint if satisfied that the person or (in the case of a complaint made on behalf of more than one person) each person on whose behalf the complaint was made does not wish to proceed with the complaint. 20  
 (1B) The Tribunal may amend a complaint made on behalf of more than one person to remove a person as a person on whose behalf the complaint was made if the Tribunal is satisfied that the person does not wish to proceed with the complaint. 25  
 (b) In section 111 (2), omit “under subsection (1)”, insert instead “under this section”.
- (35) Section 113 (**Order or other decision of the Tribunal**):  
 (a) From section 113 (1) (b) (iiia) and (iiib), omit “racial” wherever occurring. 30  
 (b) From section 113 (2), omit “racial vilification”.  
 (c) Omit section 113 (3), insert instead:  
 (3) In making an order for damages under this section concerning a complaint lodged on behalf of a person or persons, the Tribunal may make such order as it thinks fit as to the application of those damages for the benefit of the person or persons. 35



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5 (4) If 2 or more vilification complaints are made in respect of the same public act of the respondent and those complaints are found to be substantiated, the Tribunal must not make an order or orders for damages under this section that would cause the respondent to pay more than \$40,000 in the aggregate in respect of that public act.

(36) **Section 116 (Compliance with order of the Tribunal):**

10 Omit the penalty at the end of the section, insert instead:  
Maximum penalty: 50 penalty units in the case of a body corporate or 10 penalty units in any other case.

(37) **Section 124 (Obstruction):**

15 Omit the penalty at the end of the section, insert instead:  
Maximum penalty: 50 penalty units in the case of a body corporate or 10 penalty units in any other case.

(38) **Section 126A:**

After section 126, insert:

**Exemption for special needs programs and activities**

20 126A. (1) Nothing in Parts 3–4C renders unlawful anything done by a person in good faith for the purposes of or in the course of any program or activity for which certification is in force under this section as a special needs program or activity.

25 (2) The appropriate authority may certify a program or activity to be a special needs program or activity if satisfied that its purpose or primary purpose is the promotion of access, for members of a group of persons affected by any form of unlawful discrimination to which this Act applies in an area of discrimination to which this Act applies, to facilities, services or opportunities to meet their special needs  
30 or the promotion of equal or improved access for them to facilities, services and opportunities.

*Anti-Discrimination (Amendment) 1994***SCHEDULE 4—MISCELLANEOUS AMENDMENTS—*continued***

(3) The “**appropriate authority**” for the purposes of this section is:

- (a) in the case of a program or activity for which a Government Department or a public or local authority is responsible—the Minister responsible for the Department or authority; or 5
- (b) in any other case—the Minister administering this section. 10

(4) Certification for a program or activity remains in force for the period specified in the certification or (if no period is specified) until the certification is withdrawn. 10

(5) Certification may be withdrawn by the appropriate authority at any time by giving notice in writing to the person who appears to the appropriate authority to be the person who is in charge of the program or who has responsibility for the activity concerned. 15

(39) Section 128:

Omit the section, insert instead:

**Savings and transitional provisions** 20

128. Schedule 1 has effect.

(40) Schedule 1:

At the end of the Act, insert:

**SCHEDULE 1—SAVINGS AND TRANSITIONAL PROVISIONS** 25

(Sec. 128)

**Part 1—Preliminary**

**Regulations**

1. (1) The regulations may include provisions of a savings or transitional nature consequent on the enactment of the Anti-Discrimination (Amendment) Act 1994. 30

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to that Act or from a later date.

*Anti-Discrimination (Amendment) 1994*SCHEDULE 4—MISCELLANEOUS AMENDMENTS—*continued*

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

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

**Part 2—Anti-Discrimination (Amendment) Act 1994****Definition**

2. In this Part:

15 “the amending Act” means the Anti-Discrimination (Amendment) Act 1994.

**Operation of amendments**

3. Except as otherwise provided by this Part:

- 20 (a) an amendment made by the amending Act does not apply to or in respect of anything done or omitted to be done before the commencement of the amendment; and
- (b) this Act continues to apply to anything done or omitted before the commencement of such an amendment as if the amendment had not been made.

**Complaints by representative bodies**

25 4. The amendments made by the amending Act to sections 87 and 88 extend to apply in respect of an act done before the commencement of the amendments.

**Complaints not pursued**

30 5. Section 90A (as inserted by the amending Act) and the amendments made by the amending Act to section 111 extend to complaints lodged before the commencement of that section and those amendments.

**Joinder of parties**

35 6. The amendments made by the amending Act to section 98 extend to notice of joinder given by the Tribunal before the commencement of the amendments.



*Anti-Discrimination (Amendment) 1994***SCHEDULE 4—MISCELLANEOUS AMENDMENTS—*continued*****Industrial awards and agreements**

7. The amendments made by the amending Act to section 54 do not apply in respect of any order, award or agreement in force immediately before the commencement of those amendments until the first anniversary of the commencement of those amendments. 5

**Superannuation**

8. The amendments made by the amending Act to sections 36 and 49 (Superannuation), and section 49Q (Superannuation) as inserted by the amending Act, are not limited in their operation to superannuation or provident funds or schemes begun after the commencement of those amendments or that section and extend to apply in respect of such a fund or scheme begun before that commencement. 10  
15

**SCHEDULE 5—AMENDMENTS FOR GENDER  
NEUTRAL LANGUAGE**

(Sec. 3)

- (1) Section 4 (**Definitions**):
- From the definition of “near relative” in section 4 (1), omit “his spouse, parent, child, grandparent, grandchild, brother or sister”, insert instead “the spouse, parent, child, grandparent, grandchild, brother or sister of the person”. 20
- (2) From sections 8, 25, 40 and 49ZH, omit “he” wherever occurring, insert instead “the employer”. 25
- (3) From sections 8 (2), 25 (2), 40 (2) and 49ZH, omit “him” wherever occurring, insert instead “the employee”. 30
- (4) From sections 8 (1), 9 (1), 10A (1), 11, 17 (1), 20, 20A, 28, 31A (1), 33 (2), 34, 34A, 43, 46A (1), 48, 48A, 49ZG (1), 49ZL, 49ZO (1), 49ZQ and 49ZR, omit “his” wherever occurring (except where otherwise amended by this Act), insert instead “the person’s”. 35
- (5) From sections 8 (2), 25 (2), 40 (2) and 49ZH (2), omit “his” wherever occurring (except where otherwise amended by this Act), insert instead “the employee’s”. 35

*Anti-Discrimination (Amendment) 1994*

SCHEDULE 5—AMENDMENTS FOR GENDER  
NEUTRAL LANGUAGE—*continued*

- (6) From sections 9, 10, 26, 27, 41, 42, 49ZI and 49ZJ, omit “he” wherever occurring, insert instead “the principal”.
- 5 (7) From sections 9 (1), 11, 13, 15, 17 (1), 18, 19, 20, 20A, 26 (1), 28, 30, 31A (1) (b), 32, 33 (1), 34, 34A, 41, 43, 45, 46A (1), 48, 48A, 49ZG (1), 49ZI (1) (c), 49ZL, 49ZN, 49ZO (1), 49ZP, 49ZQ, 49ZR, 50 and 54, omit “him” wherever occurring, insert instead “the person”.
- 10 (8) From sections 9 (2), 10, 26 (2), 41 (2), 49ZI (2), 79, 80 (2) (b), 81 (2), 84 and 112 (1), omit “him” wherever occurring, insert instead “him or her”.
- (9) From sections 9 (2), 10, 26 (2), 27, 41 (2), 42, 49ZI (2), 49ZJ, 69E (2), 80 (2), 84, 94 (1), 114 (1) and 124, omit “his” wherever occurring (except where otherwise amended by this Act), insert instead “his or her”.
- 15 (10) From sections 10A (1) (a), 27A (1) (a), 42A (1) (a) and 49ZK (1) (a), omit “they make or he makes” wherever occurring, insert instead “made”.
- 20 (11) Omit sections 10A (1) (c), 27A (1) (c), 42A (1) (c) and 49ZK (1) (c), insert instead:
- (c) in the terms on which the person is offered a position as partner in the firm.
- (12) From sections 10A (2), 27A (2), 42A (2) and 49ZK (2), omit “his” wherever occurring, insert instead “the partner’s”.
- 25 (13) From sections 10A (2), 27A (2), 42A (2) and 49ZK (2), omit “him” wherever occurring, insert instead “the partner”.
- (14) From sections 17 (2), 31A (2), 46A (2) and 49ZO (2), omit “his” wherever occurring, insert instead “the student’s”.
- 30 (15) From sections 17 (2), 31A (2), 46A (2) and 49ZO (2), omit “him” wherever occurring, insert instead “the student”.

*Anti-Discrimination (Amendment) 1994*

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SCHEDULE 5—AMENDMENTS FOR GENDER  
NEUTRAL LANGUAGE—*continued*

- (16) From sections 18, 33 (1) (b), 34 (1) (b), 48, 49ZF, 49ZG, 49ZP (b), 49ZQ (1) (b), 69L (2), 82 (2), 84 (3) and (4), 85 and 86, omit "he" wherever occurring, insert instead "he or she". 5
- (17) From section 20 (1) (b), 22, 69E (3), 69K (3), 74 and 122HG (2), omit "he" wherever occurring, insert instead "the person".
- (18) From sections 25 (3), 40 (3) and 49ZH (3) (b), omit "his" wherever occurring, insert instead "the employer's".
- (19) From sections 27, 42 and 49ZJ, omit "him" wherever occurring, insert instead "the contract worker". 10
- (20) Section 31:  
Omit the section, insert instead:
- Exception—genuine occupational qualification**
31. (1) Nothing in this Division renders unlawful discrimination against a person on the ground of the person's sex where being a person of a particular sex is a genuine occupational qualification for the job. 15
- (2) Being a person of a particular sex is a genuine occupational qualification for a job where any one or more of the following requirements is satisfied: 20
- (a) the essential nature of the job calls for a person of that sex for reasons of physiognomy or physique, excluding physical strength or stamina, or, in dramatic performances or other entertainment, for reasons of authenticity, so that the essential nature of the job would be materially different if carried out by a person of the opposite sex; or 25
- (b) the job needs to be held by a person of that sex to preserve decency or privacy because it involves the fitting of a person's clothing; or 30
- (c) the job requires the holder of the job to enter a lavatory ordinarily used by persons of that sex while it is used by persons of that sex; or
- (d) the job requires the holder of the job to search persons of that sex; or 35



SCHEDULE 5—AMENDMENTS FOR GENDER  
NEUTRAL LANGUAGE—*continued*

- 5 (e) the job requires the holder of the job to enter areas  
ordinarily used by persons of that sex while in a state  
of undress or while bathing or showering; or
- (f) the job requires the holder of the job to live in  
premises provided by the employer and:
- 10 (i) those premises are not equipped with separate  
sleeping accommodation for persons of the  
opposite sex and sanitary facilities which could  
be used by persons of the opposite sex in privacy  
from persons of that sex; and
- 15 (ii) it is not reasonable to expect the employer either  
to equip those premises with accommodation and  
facilities of that kind or to provide other  
premises for persons of the opposite sex; or
- 20 (g) the job requires the holder of the job to keep persons of  
that sex in custody in a prison or other institution or in  
part of a prison or other institution; or
- (h) the holder of the job provides persons of that sex with  
personal services relating to their welfare or education,  
or similar personal services, and they or a substantial  
number of them might reasonably object to its being  
carried out by a person of the opposite sex; or
- 25 (i) the job is one of two to be held by a married couple.
- (3) Being a person of a particular sex is a genuine  
occupational qualification for a prescribed job or a job of a  
prescribed class or description.
- 30 (4) Nothing in subsection (2) limits the Governor's power  
to make a regulation for the purposes of subsection (3).
- (21) From section 32 (1) (b), omit "he", insert instead "the holder".
- (22) From section 51 (4), omit "he", insert instead "he or she".
- (23) From sections 69A (2), 69E (2) and 69K (2), omit "he" wherever  
occurring, insert instead "the judicial member".

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SCHEDULE 5—AMENDMENTS FOR GENDER  
NEUTRAL LANGUAGE—*continued*

- (24) From sections 69F, 69H, 75 and 77, omit “he” wherever occurring, insert instead “the member”.
- (25) From sections 69F, 69I, 73, 75 and 78, omit “his” wherever occurring, insert instead “the member’s”. 5
- (26) From sections 69G (2) and 76, omit “him” wherever occurring, insert instead “the Governor”.
- (27) From section 69J, omit “him”, insert instead “the member”.
- (28) In sections 75 (c) and 87, after “himself” wherever occurring, insert “or herself”. 10
- (29) From sections 81 (1), 90 (1) and 94A (2), omit “his” wherever occurring, insert instead “the President’s”.
- (30) From sections 81 (5), 122 (2) and 122HE (5), omit “him” wherever occurring, insert instead “the Minister”. 15
- (31) From section 84 (2), omit “he” wherever occurring, insert instead “the full-time member”.
- (32) From sections 88 (2B), 89, 89A, 91 (2), 92 (2), 94 (1) and 94A (5), omit “him” wherever occurring, insert instead “the President”. 20
- (33) From sections 89A, 90 (1), 92 (1) and 94 (1), omit “he” wherever occurring, insert instead “the President”.
- (34) From section 101 (1) (b), omit “his or its solicitor or counsel or an agent”, insert instead “a solicitor, by counsel or by an agent”.
- (35) Section 122HE: 25
- (a) From section 122HE (1), omit “his”, insert instead “the Director’s”.
- (b) From section 122HE (2), omit “him”, insert instead “the acting Director”.
- (36) From sections 122HG (1) and 122I (3) and (4), omit “his” wherever occurring, insert instead “the Director’s”. 30

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*Anti-Discrimination (Amendment) 1994*

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**SCHEDULE 5—AMENDMENTS FOR GENDER  
NEUTRAL LANGUAGE—*continued***

(37) Section 122I:

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- (a) From section 122I (2), omit “him”, insert instead “the Director”.
  - (b) From section 122I (3), omit “he”, insert instead “the Director”.
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# **ANTI-DISCRIMINATION (AMENDMENT) ACT 1994 No. 28**

**NEW SOUTH WALES**



## **TABLE OF PROVISIONS**

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# ANTI-DISCRIMINATION (AMENDMENT) ACT 1994 No. 28

NEW SOUTH WALES



Act No. 28, 1994

An Act to amend the Anti-Discrimination Act 1977 to make provision with respect to HIV/AIDS vilification and to make further provision with respect to racial vilification, racial discrimination and discrimination on the ground of disability, and to make miscellaneous amendments with respect to the grounds of discrimination, complaints procedure, the liability of principals and employers, penalties, exemptions and other matters; and for other purposes. [Assented to 30 May 1994]



*Anti-Discrimination (Amendment) Act 1994 No. 28*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Anti-Discrimination (Amendment) Act 1994.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Amendment of Anti-Discrimination Act 1977 No. 48**

3. The Anti-Discrimination Act 1977 is amended as set out in Schedules 1–5.

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**SCHEDULE 1—AMENDMENTS RELATING TO THE  
DEFINITION OF “RACE” AND PENALTIES  
FOR RACIAL VILIFICATION**

(Sec. 3)

(1) Section 4 (**Definitions**):

Omit the definition of “race” in section 4 (1), insert instead:  
“race” includes colour, nationality, descent and ethnic,  
ethno-religious or national origin;

(2) Section 20D (**Offence of serious racial vilification**):

From section 20D (1), omit “10 penalty units”, insert instead  
“50 penalty units”.

**SCHEDULE 2—AMENDMENTS RELATING TO HIV/AIDS  
VILIFICATION**

(Sec. 3)

**Part 4F:**

After Part 4E, insert:

**PART 4F—HIV/AIDS VILIFICATION**

**Definitions**

49ZXA. In this Part:

*Anti-Discrimination (Amendment) Act 1994 No. 28*

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**SCHEDULE 2—AMENDMENTS RELATING TO HIV/AIDS  
VILIFICATION—*continued***

**“HIV/AIDS infected”** means infected by the Human Immunodeficiency Virus or having the medical condition known as Acquired Immunodeficiency Syndrome;

**“public act”** includes:

- (a) any form of communication to the public, including speaking, writing, printing, displaying notices, broadcasting, telecasting, screening and playing of tapes or other recorded material; and
- (b) any conduct (not being a form of communication referred to in paragraph (a)) observable by the public, including actions and gestures and the wearing or display of clothing, signs, flags, emblems and insignia; and
- (c) the distribution or dissemination of any matter to the public with knowledge that the matter promotes or expresses hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground that the person is or members of the group are HIV/AIDS infected or thought to be HIV/AIDS infected (whether or not actually HIV/AIDS infected).

**HIV/AIDS vilification unlawful**

49ZXB. (1) It is unlawful for a person, by a public act, to incite hatred towards, serious contempt for, or severe ridicule of a person or group of persons on the ground that the person is or members of the group are HIV/AIDS infected or thought to be HIV/AIDS infected (whether or not actually HIV/AIDS infected).

(2) Nothing in this section renders unlawful:

- (a) a fair report of a public act referred to in subsection (1); or
- (b) a communication or the distribution or dissemination of any matter comprising a publication referred to in Division 3 of Part 3 of the Defamation Act 1974 or which is otherwise subject to a defence of absolute privilege in proceedings for defamation; or

*Anti-Discrimination (Amendment) Act 1994 No. 28*

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**SCHEDULE 2—AMENDMENTS RELATING TO HIV/AIDS  
VILIFICATION—*continued***

- (c) a public act, done reasonably and in good faith, for academic, artistic, scientific, research or religious discussion or instruction purposes or for other purposes in the public interest, including discussion or debate about and expositions of any act or matter.

**Offence of serious HIV/AIDS vilification**

49ZXC. (1) A person must not, by a public act, incite hatred towards, serious contempt for, or severe ridicule of a person or group of persons on the ground that the person is or members of the group are HIV/AIDS infected or thought to be HIV/AIDS infected (whether or not actually HIV/AIDS infected) by means which include:

- (a) threatening physical harm towards, or towards any property of, the person or group of persons; or
- (b) inciting others to threaten physical harm towards, or towards any property of, the person or group of persons.

Maximum penalty: In the case of an individual—50 penalty units or imprisonment for 6 months, or both. In the case of a corporation—100 penalty units.

(2) A person is not to be prosecuted for an offence under this section unless the Attorney General has consented to the prosecution.

**SCHEDULE 3—AMENDMENTS RELATING TO DISABILITY**

(Sec. 3)

(1) Section 4 (**Definitions**):

- (a) Omit the definitions of “intellectual impairment”, “intellectually handicapped person”, “physical impairment” and “physically handicapped person” in section 4 (1).
- (b) Insert in section 4 (1) in alphabetical order:

“**disability**” means:

- (a) total or partial loss of a person’s bodily or mental functions or of a part of a person’s body; or
- (b) the presence in a person’s body of organisms causing or capable of causing disease or illness; or



**SCHEDULE 3—AMENDMENTS RELATING TO DISABILITY—**  
*continued*

- (c) the malfunction, malformation or disfigurement of a part of a person's body; or
- (d) a disorder or malfunction that results in a person learning differently from a person without the disorder or malfunction; or
- (e) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour;

(c) Omit section 4 (5) and (6).

(2) Part 4A:

Omit Parts 4A and 4B, insert instead:

**PART 4A—DISCRIMINATION ON THE GROUND  
OF DISABILITY**

**Division 1—General**

**Disability includes past, future and presumed disability**

49A. A reference in this Part to a person's disability is a reference to a disability:

- (a) that a person has; or
- (b) that a person is thought to have (whether or not the person in fact has the disability); or
- (c) that a person had in the past, or is thought to have had in the past (whether or not the person in fact had the disability); or
- (d) that a person will have in the future, or that it is thought a person will have in the future (whether or not the person in fact will have the disability).

**What constitutes discrimination on the ground of disability**

49B. (1) A person ("the perpetrator") discriminates against another person ("the aggrieved person") on the ground of disability if, on the ground of the aggrieved person's disability or the disability of a relative or associate of the aggrieved person, the perpetrator:

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SCHEDULE 3—AMENDMENTS RELATING TO DISABILITY—  
*continued*

- (a) treats the aggrieved person less favourably than in the same circumstances, or in circumstances which are not materially different, the perpetrator treats or would treat a person who does not have that disability or who does not have such a relative or associate who has that disability; or
  - (b) requires the aggrieved person to comply with a requirement or condition with which a substantially higher proportion of persons who do not have that disability, or who do not have such a relative or associate who has that disability, comply or are able to comply, being a requirement which is not reasonable having regard to the circumstances of the case and with which the aggrieved person does not or is not able to comply.
- (2) For the purposes of subsection (1) (a), something is done on the ground of a person's disability if it is done on the ground of the person's disability, a characteristic that appertains generally to persons who have that disability or a characteristic that is generally imputed to persons who have that disability.
- (3) For the purposes of, but without limiting, this section, the fact that a person who has a disability of or relating to vision, hearing or mobility has, or may be accompanied by, a dog which assists the person in respect of that disability, is taken to be a characteristic that appertains generally to persons who have that disability, but nothing in this Act affects the liability of any such person for any injury, loss or damage caused by the dog.
- (4) A reference in this section to persons who have a disability ("the particular disability") is a reference to persons who have the particular disability or who have a disability that is substantially the same as the particular disability.

**What constitutes unjustifiable hardship**

49C. In determining what constitutes unjustifiable hardship for the purposes of this Part, all relevant circumstances of the particular case are to be taken into account including:

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**SCHEDULE 3—AMENDMENTS RELATING TO DISABILITY—  
*continued***

- (a) the nature of the benefit or detriment likely to accrue or be suffered by any persons concerned; and
- (b) the effect of the disability of a person concerned; and
- (c) the financial circumstances and the estimated amount of expenditure required to be made by the person claiming unjustifiable hardship.

**Division 2—Discrimination in work**

**Discrimination against applicants and employees**

49D. (1) It is unlawful for an employer to discriminate against a person on the ground of disability:

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

(2) It is unlawful for an employer to discriminate against an employee on the ground of disability:

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

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

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

(4) Nothing in subsection (1) (b) or (2) (c) renders unlawful discrimination by an employer against a person on the ground of the person's disability if taking into account the



**SCHEDULE 3—AMENDMENTS RELATING TO DISABILITY—  
*continued***

person's past training, qualifications and experience relevant to the particular employment and, if the person is already employed by the employer, the person's performance as an employee, and all other relevant factors that it is reasonable to take into account, the person because of his or her disability:

- (a) would be unable to carry out the inherent requirements of the particular employment; or
- (b) would, in order to carry out those requirements, require services or facilities that are not required by persons without that disability and the provision of which would impose an unjustifiable hardship on the employer.

(5) For the purposes of subsection (3) (b), a corporation is taken to be the employer of the employees of any other corporation which, with respect to the firstmentioned corporation, is taken to be a related corporation within the meaning of the Corporations Law.

**Discrimination against commission agents**

49E. (1) It is unlawful for a principal to discriminate against a person on the ground of disability:

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

(2) It is unlawful for a principal to discriminate against a commission agent on the ground of disability:

- (a) in the terms or conditions which the principal affords him or her as a commission agent; or
- (b) by denying him or her access, or limiting his or her access, to opportunities for promotion, transfer or training, or to any other benefits associated with his or her position as a commission agent; or

**SCHEDULE 3—AMENDMENTS RELATING TO DISABILITY—**  
*continued*

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

(3) Nothing in subsection (1) (b) or (2) (c) renders unlawful discrimination by a principal against a person on the ground of the person's disability if taking into account the person's past training, qualifications and experience relevant to engagement as a commission agent and, if the person is already engaged by the principal as a commission agent, the person's performance as a commission agent, and all other relevant factors that it is reasonable to take into account, the person because of his or her disability:

- (a) would be unable to carry out the inherent requirements of a commission agent; or
- (b) would, in order to carry out those requirements, require services or facilities that are not required by persons without that disability and the provision of which would impose an unjustifiable hardship on the principal.

**Discrimination against contract workers**

49F. (1) It is unlawful for a principal to discriminate against a contract worker on the ground of disability:

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

(2) Nothing in subsection (1) (b) renders unlawful discrimination by a principal against a contract worker on the ground of the contract worker's disability if taking into account the contract worker's past training, qualifications and experience relevant to working as a contract worker and, if the person is already working for the principal as a contract worker, the contract worker's performance as a contract worker, and all other relevant factors that it is reasonable to

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SCHEDULE 3—AMENDMENTS RELATING TO DISABILITY—  
*continued*

take into account, the contract worker because of his or her disability:

- (a) would be unable to carry out the inherent requirements of a contract worker; or
- (b) would, in order to carry out those requirements, require services or facilities that are not required by persons without that disability and the provision of which would impose an unjustifiable hardship on the principal.

**Partnerships**

49G. (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 disability:

- (a) in the arrangements made for the purpose of determining who should be offered a position as partner in the firm; or
- (b) in determining who should be offered a position as partner in the firm; or
- (c) in the terms on which the person is offered a position as partner in the firm.

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

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

(3) Nothing in subsection (1) (b) or (2) (b) renders unlawful discrimination by a person against another person on the ground of the other person's disability if taking into account the other person's past training, qualifications and experience relevant to the proposed partnership or the partnership and, if the other person is already a partner, the other person's performance as a partner, and all other relevant factors that it is reasonable to take into account, the other person because of his or her disability:



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SCHEDULE 3—AMENDMENTS RELATING TO DISABILITY—  
*continued*

- (a) would be unable to carry out the inherent requirements of a partner in the proposed partnership or the partnership; or
- (b) would, in order to carry out those requirements, require services or facilities that are not required by persons without that disability and the provision of which would impose an unjustifiable hardship on the partnership.

**Discrimination by local government councillors**

49H. It is unlawful for any member or members of a council of a local government area when acting (whether alone or together) in the course of his, her or their official functions to discriminate against another member of the council on the ground of disability.

**Industrial organisations**

49I. (1) It is unlawful for an industrial organisation to discriminate against a person who is not a member of the industrial organisation on the ground of disability:

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

(2) It is unlawful for an industrial organisation to discriminate against a person who is a member of the industrial organisation on the ground of disability:

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

(3) Nothing in subsection (2) (a) renders it unlawful to discriminate against a person on the ground of disability where, because of the person's disability, the person requires the benefit to be provided in a special manner and the benefit cannot be provided in that manner by the industrial organisation without unjustifiable hardship to it.

**SCHEDULE 3—AMENDMENTS RELATING TO DISABILITY—**  
*continued***Qualifying bodies**

49J. (1) It is unlawful for an authority or body which is empowered to confer, renew or extend an authorisation or a qualification that is needed for or facilitates the practice of a profession, the carrying on of a trade or the engaging in of an occupation to discriminate against a person on the ground of disability:

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

(2) Nothing in subsection (1) (a) or (c) renders unlawful discrimination by an authority or body against a person on the ground of the person's disability if taking into account the person's past training, qualifications and experience relevant to the particular profession, trade or occupation and, if the person is already a member of the profession, carrying on the trade or engaged in the occupation, the person's performance in the profession trade or occupation, and all other relevant factors that it is reasonable to take into account, the person because of his or her disability would be unable to carry out the inherent requirements of the profession, trade or occupation.

**Employment agencies**

49K. (1) It is unlawful for an employment agency to discriminate against a person on the ground of disability:

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

(2) Nothing in this section renders unlawful discrimination by an employment agency against a person on the ground of the person's disability if taking into account the person's past



**SCHEDULE 3—AMENDMENTS RELATING TO DISABILITY—  
*continued***

training, qualifications and experience relevant to the work sought, and all other relevant factors that it is reasonable to take into account, the person because of his or her disability would be unable to carry out the inherent requirements of the work sought.

**Division 3—Discrimination in other areas****Education**

49L. (1) It is unlawful for an educational authority to discriminate against a person on the ground of disability:

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

(2) It is unlawful for an educational authority to discriminate against a student on the ground of disability:

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

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

- (a) a private educational authority; or
- (b) a refusal or failure to accept a 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 a disability which is not the same as that of the applicant.

(4) Nothing in subsection (1) (a) or (2) (b) renders it unlawful to discriminate against a person on the ground of disability where, because of the person's disability, the person requires services or facilities that are not required by students who do not have a disability and the provision of which would impose unjustifiable hardship on the educational authority.



**SCHEDULE 3—AMENDMENTS RELATING TO DISABILITY—  
*continued***

(5) Nothing in subsection (2) (a) renders it unlawful to discriminate against a person on the ground of disability where, because of the person's disability, the person requires the benefit to be provided in a special manner and the benefit cannot without unjustifiable hardship be so provided by the educational authority.

**Provision of goods and services**

49M. (1) It is unlawful for a person who provides, for payment or not, goods or services to discriminate against a person on the ground of disability:

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

(2) Nothing in this section renders it unlawful to discriminate against a person on the ground of the person's disability if the provision of the goods or services would impose unjustifiable hardship on the person who provides the goods or services.

**Accommodation**

49N. (1) It is unlawful for a person, whether as principal or agent, to discriminate against a person on the ground of disability:

- (a) by refusing the person's application for accommodation; or
- (b) in the terms on which the person is offered accommodation; or
- (c) by deferring the person's application for accommodation or according the person 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 a person on the ground of disability:

- (a) by denying the person access, or limiting the person's access, to any benefit associated with accommodation occupied by the person; or

**SCHEDULE 3—AMENDMENTS RELATING TO DISABILITY—**  
*continued*

(b) by evicting the person; or

(c) by subjecting the person 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 this section applies to the provision of accommodation in premises where special services or facilities would be required by the person with a disability and the provision of such special services or facilities would impose unjustifiable hardship on the person providing or proposing to provide the accommodation whether as principal or agent.

(5) Nothing in this section applies to the provision of accommodation to persons who have a particular disability by a charitable body or other body that does not distribute its profits to members.

(6) Nothing in subsection (2) (a) renders it unlawful to discriminate against a person on the ground of disability where, because of the person's disability, the person requires the benefit to be provided in a special manner and the benefit cannot without unjustifiable hardship be so provided by the person who provides the accommodation.

**Registered clubs**

49O. (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 disability:

(a) by refusing or failing to accept the person's application for membership; or

(b) in the terms on which it is prepared to admit the person 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 disability:

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**SCHEDULE 3—AMENDMENTS RELATING TO DISABILITY—**  
*continued*

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

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

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

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

(5) Nothing in subsection (2) (a) renders it unlawful to discriminate against a person on the ground of disability where, because of the person's disability, the person requires the benefit to be provided in a special manner and the benefit cannot without unjustifiable hardship be so provided by the registered club.

**Division 4—Exceptions to Part 4A**

**Public health**

49P. Nothing in this Part renders unlawful discrimination against a person on the ground of disability if the disability concerned is an infectious disease and the discrimination is reasonably necessary to protect public health.

**Superannuation, insurance**

49Q. Nothing in this Part renders unlawful discrimination against a person on the ground of disability in the terms or



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**SCHEDULE 3—AMENDMENTS RELATING TO DISABILITY—**  
*continued*

conditions appertaining to a superannuation or provident fund or scheme or 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 terms or conditions:
  - (i) are based upon actuarial or statistical data on which it is reasonable to rely; and
  - (ii) are reasonable having regard to the data and any other relevant factors; or
- (b) in a case where no such actuarial or statistical data is available and cannot reasonably be obtained—the terms or conditions are reasonable having regard to any other relevant factors,

and the source on which any data referred to in paragraph (a) 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) or (b) are disclosed to the Tribunal, where the Tribunal so requires.

**Sport**

49R. Nothing in this Part renders unlawful discrimination against a person on the ground of disability, being discrimination consisting of the exclusion of the person from a sporting activity:

- (a) if the person is not reasonably capable of performing the actions reasonably required in relation to the sporting activity; or
- (b) if the persons who participate or are to participate in the sporting activity are selected by a method which is reasonable on the basis of their skills and abilities relevant to the sporting activity and relative to each other; or
- (c) if the sporting activity is conducted only for persons who have a particular disability and the person does not have that disability.

**SCHEDULE 4—MISCELLANEOUS AMENDMENTS**

(Sec. 3)

- (1) The whole Act (except section 4):
  - (a) Omit “a trade union” wherever occurring, insert instead “an industrial organisation”.
  - (b) Omit “the trade union” wherever occurring, insert instead “the industrial organisation”.
- (2) Section 4 (**Definitions**):
  - (a) Insert in section 4 (1) in alphabetical order:
 

“**associate**” of a person means:

    - (a) any person with whom the person associates, whether socially or in business or commerce, or otherwise; and
    - (b) any person who is wholly or mainly dependent on, or a member of the household of, the person;

“**homosexual**” means male or female homosexual;

“**relative**” of a person means any person to whom the person is related by blood, marriage, affinity or adoption;
  - (b) Omit the definition of “registered club” in section 4 (1), insert instead:
 

“**registered club**” has the same meaning as in the Registered Clubs Act 1976;
  - (c) Omit the definition of “trade union” in section 4 (1) and insert in alphabetical order:
 

“**industrial organisation**” means an industrial organisation or non-industrial organisation within the meaning of the Industrial Relations Act 1991 or an organisation registered under the Industrial Relations Act 1988 of the Commonwealth;
- (3) Section 4A:
 

After section 4, insert:

**Act done because of unlawful discrimination and for other reasons**

4A. If:

  - (a) an act is done for 2 or more reasons; and

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(b) one of the reasons consists of unlawful discrimination under this Act against a person (whether or not it is the dominant or a substantial reason for doing the act), then, for the purposes of this Act, the act is taken to be done for that reason.

**(4) Section 7:**

Omit the section, insert instead:

**What constitutes discrimination on the ground of race**

7. (1) A person ("**the perpetrator**") discriminates against another person ("**the aggrieved person**") on the ground of race if, on the ground of the aggrieved person's race or the race of a relative or associate of the aggrieved person, the perpetrator:

- (a) treats the aggrieved person less favourably than in the same circumstances, or in circumstances which are not materially different, the perpetrator treats or would treat a person of a different race or who has such a relative or associate of a different race; or
- (b) segregates the aggrieved person from persons of a different race or from persons who have such a relative or associate of a different race; or
- (c) requires the aggrieved person to comply with a requirement or condition with which a substantially higher proportion of persons not of that race, or who have such a relative or associate not of that race, comply or are able to comply, being a requirement which is not reasonable having regard to the circumstances of the case and with which the aggrieved person does not or is not able to comply.

(2) For the purposes of subsection (1) (a) and (b), something is done on the ground of a person's race if it is done on the ground of the person's race, a characteristic that appertains generally to persons of that race or a characteristic that is generally imputed to persons of that race.

**(5) Sections 8–13, 17–20A:**

Omit "on the ground of his race" wherever occurring, insert instead "on the ground of race".



SCHEDULE 4—MISCELLANEOUS AMENDMENTS—*continued*

## (6) Section 10B:

After section 10A, insert:

**Discrimination by local government councillors**

10B. It is unlawful for any member or members of a council of a local government area when acting (whether alone or together) in the course of his, her or their official functions to discriminate against another member of the council on the ground of race.

## (7) Section 21:

Omit the section, insert instead:

**Special needs programs and activities**

21. Nothing in this Part applies to or in respect of anything done in affording persons of a particular race access to facilities, services or opportunities to meet their special needs or to promote equal or improved access for them to facilities, services and opportunities.

(8) Section 24 (**What constitutes discrimination on the ground of sex**):

(a) Omit section 24 (1), insert instead:

(1) A person ("**the perpetrator**") discriminates against another person ("**the aggrieved person**") on the ground of sex if, on the ground of the aggrieved person's sex or the sex of a relative or associate of the aggrieved person, the perpetrator:

- (a) treats the aggrieved person less favourably than in the same circumstances, or in circumstances which are not materially different, the perpetrator treats or would treat a person of the opposite sex or who does not have such a relative or associate of that sex; or
- (b) requires the aggrieved person to comply with a requirement or condition with which a substantially higher proportion of persons of the opposite sex, or who do not have such a relative or associate of that sex, comply or are able to comply, being a requirement which is not reasonable having regard to the circumstances of the case and with which the aggrieved person does not or is not able to comply.

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SCHEDULE 4—MISCELLANEOUS AMENDMENTS—*continued*

(1A) For the purposes of subsection (1) (a), something is done on the ground of a person's sex if it is done on the ground of the person's sex, a characteristic that appertains generally to persons of that sex or a characteristic that is generally imputed to persons of that sex.

(b) From section 24 (1A), omit "(1A) For the purposes of subsection (1), but without limiting the generality of that subsection", insert instead "(1B) For the purposes of this section, but without limiting the generality of this section".

(c) Omit section 24 (3).

(9) Sections 25–35:

Omit "on the ground of his sex" wherever occurring, insert instead "on the ground of sex".

(10) Section 25:

Omit "her sex" wherever occurring, insert instead "sex".

(11) Section 27B:

After section 27A, insert:

**Discrimination by local government councillors**

27B. It is unlawful for any member or members of a council of a local government area when acting (whether alone or together) in the course of his, her or their official functions to discriminate against another member of the council on the ground of sex.

(12) Sections 36, 49 (**Superannuation**):

Omit "scheme.", insert instead:

scheme, where:

(a) the terms or conditions:

(i) are based upon actuarial or statistical data on which it is reasonable to rely; and

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

(b) in a case where no such actuarial or statistical data is available and cannot reasonably be obtained—the terms or conditions are reasonable having regard to any other relevant factors,

**SCHEDULE 4—MISCELLANEOUS AMENDMENTS—continued**

and the source on which any data referred to in paragraph (a) 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) or (b) are disclosed to the Tribunal, where the Tribunal so requires.

**(13) Section 39 (What constitutes discrimination on the ground of marital status):**

**(a) Omit section 39 (1), insert instead:**

(1) A person ("**the perpetrator**") discriminates against another person ("**the aggrieved person**") on the ground of marital status if, on the ground of the aggrieved person's marital status or the marital status of a relative or associate of the aggrieved person, the perpetrator:

- (a) treats the aggrieved person less favourably than in the same circumstances, or in circumstances which are not materially different, the perpetrator treats or would treat a person of a different marital status or who does not have such a relative or associate of that marital status; or
- (b) requires the aggrieved person to comply with a requirement or condition with which a substantially higher proportion of persons of a different marital status, or who do not have such a relative or associate of that marital status, comply or are able to comply, being a requirement which is not reasonable having regard to the circumstances of the case and with which the aggrieved person does not or is not able to comply.

(1A) For the purposes of subsection (1) (a), something is done on the ground of a person's marital status if it is done on the ground of the person's marital status, a characteristic that appertains generally to persons of that marital status or a characteristic that is generally imputed to persons of that marital status.

**(b) Omit section 39 (3).**

**(14) Sections 40–48A:**

Omit "on the ground of his marital status" wherever occurring, insert instead "on the ground of marital status".



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SCHEDULE 4—MISCELLANEOUS AMENDMENTS—*continued*

(15) Section 42B:

After section 42A, insert:

**Discrimination by local government councillors**

42B. It is unlawful for any member or members of a council of a local government area when acting (whether alone or together) in the course of his, her or their official functions to discriminate against another member of the council on the ground of marital status.

(16) Section 47:

Omit the section, insert instead:

**Provision of goods and services**

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

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

(17) Section 49ZG:

Omit the section, insert instead:

**What constitutes discrimination on the ground of homosexuality**

49ZG. (1) A person ("the perpetrator") discriminates against another person ("the aggrieved person") on the ground of homosexuality if, on the ground of the aggrieved person's homosexuality or the homosexuality of a relative or associate of the aggrieved person, the perpetrator:

- (a) treats the aggrieved person less favourably than in the same circumstances, or in circumstances which are not materially different, the perpetrator treats or would treat a person who he or she did not think was a homosexual person or who does not have such a relative or associate who he or she thinks was a homosexual person; or

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(b) requires the aggrieved person to comply with a requirement or condition with which a substantially higher proportion of persons who are not homosexual persons, or who do not have such a relative or associate who is a homosexual person, comply or are able to comply, being a requirement which is not reasonable having regard to the circumstances of the case and with which the aggrieved person does not or is not able to comply.

(2) For the purposes of subsection (1) (a), something is done on the ground of a person's homosexuality if it is done on the ground of the person's homosexuality, a characteristic that appertains generally to homosexual persons or a characteristic that is generally imputed to homosexual persons.

(18) Sections 49ZH–49ZR:

Omit “on the ground of his homosexuality” wherever occurring, insert instead “on the ground of homosexuality”.

(19) Section 49ZKA:

After section 49ZK, insert:

**Discrimination by local government councillors**

49ZKA. It is unlawful for any member or members of a council of a local government area when acting (whether alone or together) in the course of his, her or their official functions to discriminate against another member of the council on the ground of homosexuality.

(20) Section 49ZYI (as inserted by the Anti-Discrimination (Age Discrimination) Amendment Act 1993):

Omit the section, insert instead:

**Junior employees**

49ZYI. (1) Nothing in section 49ZYB (1) applies to or in respect of the offering of employment to persons who are under 21 years of age or the terms on which employment is offered to persons who are under 21 years of age.

(2) Nothing in section 49ZYB (2) (a) applies to or in respect of the terms or conditions of employment that are afforded to employees who are under 21 years of age.

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SCHEDULE 4—MISCELLANEOUS AMENDMENTS—*continued*

(3) This section ceases to operate on a day appointed by proclamation for the purposes of this section, being a day that is not earlier than 2 years after the date of commencement of this Part.

(21) Section 51 (**Advertisements**):

Omit the penalty at the end of section 51 (2), insert instead:

Maximum penalty: 50 penalty units in the case of a body corporate or 10 penalty units in any other case.

(22) Sections 52, 53:

Omit the sections, insert instead:

**Aiding and abetting etc.**

52. It is unlawful for a person to cause, instruct, induce, aid or permit another person to do an act that is unlawful by reason of a provision of this Act.

**Liability of principals and employers**

53. (1) An act done by a person as the agent or employee of the person's principal or employer which if done by the principal or employer would be a contravention of this Act is taken to have been done by the principal or employer also unless the principal or employer did not, either before or after the doing of the act, authorise the agent or employee, either expressly or by implication, to do the act.

(2) If both the principal or employer and the agent or employee who did the act are subject to any liability arising under this Act in respect of the doing of the act, they are jointly and severally subject to that liability.

(23) Section 54 (**Acts done under statutory authority etc.**):

(a) From section 54 (1) (d), omit "including an order or award", insert instead "not including an order or award".

(b) Omit section 54 (1) (e).

(c) Omit section 54 (2).

(24) Section 56 (**Religious bodies**):

In section 56 (d), before "practice", insert "act or".



**SCHEDULE 4—MISCELLANEOUS AMENDMENTS—continued****(25) Section 59:**

Omit the section, insert instead:

**Establishments providing housing accommodation for aged persons**

59. Nothing in this Act affects any rule or practice of an establishment which provides housing accommodation for aged persons, whether by statute or otherwise, whereby admission to the establishment is restricted to persons of a particular sex, marital status or race.

**(26) Section 87 (Definitions):**

- (a) Omit the definition of “racial vilification complaint”.
- (b) In the definition of “representative body”, omit “a racial group”, insert instead “a group”.
- (c) Insert in alphabetical order:

“**vilification complaint**” means a complaint in respect of a contravention of section 20C or 49ZXB.

**(27) Section 88 (Making of complaints):**

- (a) Omit section 88 (1A)–(2A), insert instead:

(1A) A complaint may be lodged under subsection (1) by a representative body on behalf of a named person or named persons, but only if the representative body has satisfied the President that:

- (a) each person on whose behalf the complaint is lodged consents to the complaint being lodged by the body on his or her behalf; and
- (b) the body has a sufficient interest in the complaint.

(1B) A representative body has a sufficient interest in a complaint only if the conduct that constitutes the alleged contravention concerned is a matter of genuine concern to the body because of the way conduct of that nature adversely affects or has the potential to adversely affect the interests of the body or the interests or welfare of the group of people it represents.

(1C) The President may require a representative body which has lodged a complaint to nominate a person to appear for the representative body in conciliation proceedings concerning the complaint before the President.

SCHEDULE 4—MISCELLANEOUS AMENDMENTS—*continued*

(1D) A vilification complaint cannot be lodged under this section unless each person on whose behalf the complaint is lodged:

- (a) has the characteristic that was the ground for the conduct that constitutes the alleged contravention concerned; or
- (b) claims to have that characteristic and there is no sufficient reason to doubt that claim.

(2) If a person is under the age of 18 years or has a disability, his or her complaint may be lodged on his or her behalf by another person, but only if:

- (a) the President is satisfied that the person on whose behalf the complaint is to be lodged consents to the complaint being lodged on his or her behalf by the other person; and
- (b) in the case of a complaint to be lodged on behalf of a person (whether or not a person who has a disability) who is under the age of 18 years, the other person who is to lodge the complaint is, or does so with the consent of, the person's parent or guardian.

(2A) When a complaint is lodged on behalf of another person ("**the complainant**") pursuant to subsection (2):

- (a) the person who lodges the complaint is, for the purposes of this Division, taken to have the same rights, obligations and interests with respect to the investigation or referral of the complaint as the complainant; and
- (b) the complaint is, for the purposes of this Part, taken to have been lodged by the complainant on his or her own behalf (except to the extent necessary to give effect to subsection (2)).

(b) From section 88 (2B), omit "intellectually handicapped".

(c) After section 88 (2B), insert:

(2C) A person who because of any disability is incapable of consenting to the making of a complaint on his or her behalf is taken to have consented to the making of the

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**SCHEDULE 4—MISCELLANEOUS AMENDMENTS—*continued***

complaint on his or her behalf if that consent is given by the person's parent or guardian or by anyone else who the President is satisfied has a genuine concern for the person's welfare.

**(28) Section 89B (Prosecution for serious vilification):**

- (a) From section 89B (1) (a), omit "racial".
- (b) After "20D" wherever occurring, insert "or 49ZXC".

**(29) Section 90A:**

After section 90, insert:

**Withdrawal of complaint**

90A. (1) The President may decide not to proceed with a complaint if satisfied that the person or (in the case of a complaint made on behalf of more than one person) each person on whose behalf the complaint was made does not wish to proceed with the complaint, in which case no further action is required to be taken on the complaint.

(2) The President may amend a complaint made on behalf of more than one person to remove a person as a person on whose behalf the complaint was made if the President is satisfied that the person does not wish to proceed with the complaint.

(3) The President is to give notice in writing of any decision by the President under this section to the complainant and respondent under the complaint concerned and to each person on whose behalf the complaint was made.

**(30) Section 92 (Resolution of complaint by conciliation):**

Omit the penalty at the end of section 92 (3), insert instead:

Maximum penalty: 50 penalty units in the case of a body corporate or 10 penalty units in any other case.

**(31) Section 98 (Joinder of parties by the Tribunal):**

At the end of the section, insert:

(2) If a person is joined as a party to the inquiry as a complainant or respondent, the person is for the purposes of this Part taken to be a complainant or respondent (as appropriate) in relation to the complaint concerned.



**SCHEDULE 4—MISCELLANEOUS AMENDMENTS—*continued*****(32) Section 101B (Holding of inquiry):**

Omit the penalty at the end of section 101B (5), insert instead:

Maximum penalty (subsection (5)): 50 penalty units in the case of a body corporate or 10 penalty units in any other case.

**(33) Section 110A (Publication of proceedings etc.):**

Omit the penalty at the end of section 110A (3), insert instead:

Maximum penalty (subsection (3)): 50 penalty units in the case of a body corporate or 10 penalty units in any other case.

**(34) Section 111 (Tribunal may dismiss frivolous etc. complaints):****(a) After section 111 (1), insert:**

(1A) The Tribunal may dismiss a complaint if satisfied that the person or (in the case of a complaint made on behalf of more than one person) each person on whose behalf the complaint was made does not wish to proceed with the complaint.

(1B) The Tribunal may amend a complaint made on behalf of more than one person to remove a person as a person on whose behalf the complaint was made if the Tribunal is satisfied that the person does not wish to proceed with the complaint.

**(b) In section 111 (2), omit “under subsection (1)”, insert instead “under this section”.****(35) Section 113 (Order or other decision of the Tribunal):****(a) From section 113 (1) (b) (iiia) and (iiib), omit “racial” wherever occurring.****(b) From section 113 (2), omit “racial vilification”.****(c) Omit section 113 (3), insert instead:**

(3) In making an order for damages under this section concerning a complaint lodged on behalf of a person or persons, the Tribunal may make such order as it thinks fit as to the application of those damages for the benefit of the person or persons.

**SCHEDULE 4—MISCELLANEOUS AMENDMENTS—*continued***

(4) If 2 or more vilification complaints are made in respect of the same public act of the respondent and those complaints are found to be substantiated, the Tribunal must not make an order or orders for damages under this section that would cause the respondent to pay more than \$40,000 in the aggregate in respect of that public act.

(36) **Section 116 (Compliance with order of the Tribunal):**

Omit the penalty at the end of the section, insert instead:

Maximum penalty: 50 penalty units in the case of a body corporate or 10 penalty units in any other case.

(37) **Section 124 (Obstruction):**

Omit the penalty at the end of the section, insert instead:

Maximum penalty: 50 penalty units in the case of a body corporate or 10 penalty units in any other case.

(38) **Section 126A:**

After section 126, insert:

**Exemption for special needs programs and activities**

126A. (1) Nothing in Parts 3–4C renders unlawful anything done by a person in good faith for the purposes of or in the course of any program or activity for which certification is in force under this section as a special needs program or activity.

(2) The appropriate authority may certify a program or activity to be a special needs program or activity if satisfied that its purpose or primary purpose is the promotion of access, for members of a group of persons affected by any form of unlawful discrimination to which this Act applies in an area of discrimination to which this Act applies, to facilities, services or opportunities to meet their special needs or the promotion of equal or improved access for them to facilities, services and opportunities.

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**SCHEDULE 4—MISCELLANEOUS AMENDMENTS—*continued***

(3) The “**appropriate authority**” for the purposes of this section is:

- (a) in the case of a program or activity for which a Government Department or a public or local authority is responsible—the Minister responsible for the Department or authority; or
- (b) in any other case—the Minister administering this section.

(4) Certification for a program or activity remains in force for the period specified in the certification or (if no period is specified) until the certification is withdrawn.

(5) Certification may be withdrawn by the appropriate authority at any time by giving notice in writing to the person who appears to the appropriate authority to be the person who is in charge of the program or who has responsibility for the activity concerned.

(39) Section 128:

Omit the section, insert instead:

**Savings and transitional provisions**

128. Schedule 1 has effect.

(40) Schedule 1:

At the end of the Act, insert:

**SCHEDULE 1—SAVINGS AND TRANSITIONAL PROVISIONS**

(Sec. 128)

**Part 1—Preliminary**

**Regulations**

1. (1) The regulations may include provisions of a savings or transitional nature consequent on the enactment of the Anti-Discrimination (Amendment) Act 1994.

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to that Act or from a later date.



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**SCHEDULE 4—MISCELLANEOUS AMENDMENTS—*continued***

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

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

**Part 2—Anti-Discrimination (Amendment) Act 1994**

**Definition**

2. In this Part:

“the amending Act” means the Anti-Discrimination (Amendment) Act 1994.

**Operation of amendments**

3. Except as otherwise provided by this Part:

- (a) an amendment made by the amending Act does not apply to or in respect of anything done or omitted to be done before the commencement of the amendment; and
- (b) this Act continues to apply to anything done or omitted before the commencement of such an amendment as if the amendment had not been made.

**Complaints by representative bodies**

4. The amendments made by the amending Act to sections 87 and 88 extend to apply in respect of an act done before the commencement of the amendments.

**Complaints not pursued**

5. Section 90A (as inserted by the amending Act) and the amendments made by the amending Act to section 111 extend to complaints lodged before the commencement of that section and those amendments.

**Joinder of parties**

6. The amendments made by the amending Act to section 98 extend to notice of joinder given by the Tribunal before the commencement of the amendments.

**SCHEDULE 4—MISCELLANEOUS AMENDMENTS—*continued*****Industrial awards and agreements**

7. The amendments made by the amending Act to section 54 do not apply in respect of any order, award or agreement in force immediately before the commencement of those amendments until the first anniversary of the commencement of those amendments.

**Superannuation**

8. The amendments made by the amending Act to sections 36 and 49 (Superannuation), and section 49Q (Superannuation) as inserted by the amending Act, are not limited in their operation to superannuation or provident funds or schemes begun after the commencement of those amendments or that section and extend to apply in respect of such a fund or scheme begun before that commencement.

**SCHEDULE 5—AMENDMENTS FOR GENDER  
NEUTRAL LANGUAGE**

(Sec. 3)

**(1) Section 4 (Definitions):**

From the definition of “near relative” in section 4 (1), omit “his spouse, parent, child, grandparent, grandchild, brother or sister”, insert instead “the spouse, parent, child, grandparent, grandchild, brother or sister of the person”.

(2) From sections 8, 25, 40 and 49ZH, omit “he” wherever occurring, insert instead “the employer”.

(3) From sections 8 (2), 25 (2), 40 (2) and 49ZH, omit “him” wherever occurring, insert instead “the employee”.

(4) From sections 8 (1), 9 (1), 10A (1), 11, 17 (1), 20, 20A, 28, 31A (1), 33 (2), 34, 34A, 43, 46A (1), 48, 48A, 49ZG (1), 49ZL, 49ZO (1), 49ZQ and 49ZR, omit “his” wherever occurring (except where otherwise amended by this Act), insert instead “the person’s”.

(5) From sections 8 (2), 25 (2), 40 (2) and 49ZH (2), omit “his” wherever occurring (except where otherwise amended by this Act), insert instead “the employee’s”.

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SCHEDULE 5—AMENDMENTS FOR GENDER  
NEUTRAL LANGUAGE—*continued*

- (6) From sections 9, 10, 26, 27, 41, 42, 49ZI and 49ZJ, omit “he” wherever occurring, insert instead “the principal”.
- (7) From sections 9 (1), 11, 13, 15, 17 (1), 18, 19, 20, 20A, 26 (1), 28, 30, 31A (1) (b), 32, 33 (1), 34, 34A, 41, 43, 45, 46A (1), 48, 48A, 49ZG (1), 49ZI (1) (c), 49ZL, 49ZN, 49ZO (1), 49ZP, 49ZQ, 49ZR, 50 and 54, omit “him” wherever occurring, insert instead “the person”.
- (8) From sections 9 (2), 10, 26 (2), 41 (2), 49ZI (2), 79, 80 (2) (b), 81 (2), 84 and 112 (1), omit “him” wherever occurring, insert instead “him or her”.
- (9) From sections 9 (2), 10, 26 (2), 27, 41 (2), 42, 49ZI (2), 49ZJ, 69E (2), 80 (2), 84, 94 (1), 114 (1) and 124, omit “his” wherever occurring (except where otherwise amended by this Act), insert instead “his or her”.
- (10) From sections 10A (1) (a), 27A (1) (a), 42A (1) (a) and 49ZK (1) (a), omit “they make or he makes” wherever occurring, insert instead “made”.
- (11) Omit sections 10A (1) (c), 27A (1) (c), 42A (1) (c) and 49ZK (1) (c), insert instead:
  - (c) in the terms on which the person is offered a position as partner in the firm.
- (12) From sections 10A (2), 27A (2), 42A (2) and 49ZK (2), omit “his” wherever occurring, insert instead “the partner’s”.
- (13) From sections 10A (2), 27A (2), 42A (2) and 49ZK (2), omit “him” wherever occurring, insert instead “the partner”.
- (14) From sections 17 (2), 31A (2), 46A (2) and 49ZO (2), omit “his” wherever occurring, insert instead “the student’s”.
- (15) From sections 17 (2), 31A (2), 46A (2) and 49ZO (2), omit “him” wherever occurring, insert instead “the student”.



**SCHEDULE 5—AMENDMENTS FOR GENDER  
NEUTRAL LANGUAGE—*continued***

- (16) From sections 18, 33 (1) (b), 34 (1) (b), 48, 49ZF, 49ZG, 49ZP (b), 49ZQ (1) (b), 69L (2), 82 (2), 84 (3) and (4), 85 and 86, omit “he” wherever occurring, insert instead “he or she”.
- (17) From section 20 (1) (b), 22, 69E (3), 69K (3), 74 and 122HG (2), omit “he” wherever occurring, insert instead “the person”.
- (18) From sections 25 (3), 40 (3) and 49ZH (3) (b), omit “his” wherever occurring, insert instead “the employer’s”.
- (19) From sections 27, 42 and 49ZJ, omit “him” wherever occurring, insert instead “the contract worker”.
- (20) Section 31:

Omit the section, insert instead:

**Exception—genuine occupational qualification**

31. (1) Nothing in this Division renders unlawful discrimination against a person on the ground of the person’s sex where being a person of a particular sex is a genuine occupational qualification for the job.

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

- (a) the essential nature of the job calls for a person of that sex for reasons of physiognomy or physique, excluding physical strength or stamina, or, in dramatic performances or other entertainment, for reasons of authenticity, so that the essential nature of the job would be materially different if carried out by a person of the opposite sex; or
- (b) the job needs to be held by a person of that sex to preserve decency or privacy because it involves the fitting of a person’s clothing; or
- (c) the job requires the holder of the job to enter a lavatory ordinarily used by persons of that sex while it is used by persons of that sex; or
- (d) the job requires the holder of the job to search persons of that sex; or

SCHEDULE 5—AMENDMENTS FOR GENDER  
NEUTRAL LANGUAGE—*continued*

- (e) the job requires the holder of the job to enter areas ordinarily used by persons of that sex while in a state of undress or while bathing or showering; or
  - (f) the job requires the holder of the job to live in premises provided by the employer and:
    - (i) those premises are not equipped with separate sleeping accommodation for persons of the opposite sex and sanitary facilities which could be used by persons of the opposite sex in privacy from persons of that sex; and
    - (ii) it is not reasonable to expect the employer either to equip those premises with accommodation and facilities of that kind or to provide other premises for persons of the opposite sex; or
  - (g) the job requires the holder of the job to keep persons of that sex in custody in a prison or other institution or in part of a prison or other institution; or
  - (h) the holder of the job provides persons of that sex with personal services relating to their welfare or education, or similar personal services, and they or a substantial number of them might reasonably object to its being carried out by a person of the opposite sex; or
  - (i) the job is one of two to be held by a married couple.
- (3) Being a person of a particular sex is a genuine occupational qualification for a prescribed job or a job of a prescribed class or description.
- (4) Nothing in subsection (2) limits the Governor's power to make a regulation for the purposes of subsection (3).
- (21) From section 32 (1) (b), omit "he", insert instead "the holder".
- (22) From section 51 (4), omit "he", insert instead "he or she".
- (23) From sections 69A (2), 69E (2) and 69K (2), omit "he" wherever occurring, insert instead "the judicial member".

SCHEDULE 5—AMENDMENTS FOR GENDER  
NEUTRAL LANGUAGE—*continued*

- (24) From sections 69F, 69H, 75 and 77, omit “he” wherever occurring, insert instead “the member”.
- (25) From sections 69F, 69I, 73, 75 and 78, omit “his” wherever occurring, insert instead “the member’s”.
- (26) From sections 69G (2) and 76, omit “him” wherever occurring, insert instead “the Governor”.
- (27) From section 69J, omit “him”, insert instead “the member”.
- (28) In sections 75 (c) and 87, after “himself” wherever occurring, insert “or herself”.
- (29) From sections 81 (1), 90 (1) and 94A (2), omit “his” wherever occurring, insert instead “the President’s”.
- (30) From sections 81 (5), 122 (2) and 122HE (5), omit “him” wherever occurring, insert instead “the Minister”.
- (31) From section 84 (2), omit “he” wherever occurring, insert instead “the full-time member”.
- (32) From sections 88 (2B), 89, 89A, 91 (2), 92 (2), 94 (1) and 94A (5), omit “him” wherever occurring, insert instead “the President”.
- (33) From sections 89A, 90 (1), 92 (1) and 94 (1), omit “he” wherever occurring, insert instead “the President”.
- (34) From section 101 (1) (b), omit “his or its solicitor or counsel or an agent”, insert instead “a solicitor, by counsel or by an agent”.
- (35) Section 122HE:
  - (a) From section 122HE (1), omit “his”, insert instead “the Director’s”.
  - (b) From section 122HE (2), omit “him”, insert instead “the acting Director”.
- (36) From sections 122HG (1) and 122I (3) and (4), omit “his” wherever occurring, insert instead “the Director’s”.



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SCHEDULE 5—AMENDMENTS FOR GENDER  
NEUTRAL LANGUAGE—*continued*

(37) Section 122I:

- (a) From section 122I (2), omit “him”, insert instead “the Director”.
  - (b) From section 122I (3), omit “he”, insert instead “the Director”.
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*[Minister's second reading speech made in—  
Legislative Council on 4 May 1994  
Legislative Assembly on 12 May 1994]*