

Version No. 020
Equal Opportunity Act 1995

Act No. 42/1995

Version incorporating amendments as at 7 May 1998

TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
PART 1—PRELIMINARY	1
1. Purposes	1
2. Commencement	1
3. Objectives	2
4. Definitions	2
5. Act binds the Crown	11
PART 2—WHAT IS PROHIBITED DISCRIMINATION?	12
6. Attributes	12
7. Meaning of discrimination	12
8. Direct discrimination	13
9. Indirect discrimination	13
10. Motive is irrelevant to discrimination	14
11. Discrimination by acting with others and by not acting	14
12. Exceptions and exemptions	15
PART 3—WHEN IS DISCRIMINATION PROHIBITED?	16
Division 1—Discrimination in employment	16
13. Discrimination against job applicants	16
14. Discrimination against employees	16
15. Discrimination against contract workers	17
16. Exception—domestic or personal services	17
17. Exception—genuine occupational requirements	17
18. Exception—political employment	19
19. Exception—welfare services	19
20. Exception—family employment	19
21. Exception—small business	19
22. Exception—special services or facilities	20
23. Exception—reasonable terms of employment	21
24. Exception—standards of dress and behaviour	21
25. Exception—care of children	22

<i>Section</i>	<i>Page</i>
26. Exception—compulsory retirement of judicial officers	22
27. Exception—youth wages	22
27A. Exception—early retirement schemes	23
28. Exemption—single sex accommodation	23
29. <i>Repealed</i>	23
Division 2—Discrimination in employment-related areas	23
30. Discrimination in establishing firms	23
31. Discrimination by firms	23
32. Exception—special services or facilities	24
33. Exception—reasonable terms of partnership	25
34. Discrimination by industrial organisations	25
35. Discrimination by qualifying bodies	26
36. Exception—reasonable terms of qualification	26
Division 3—Discrimination in education	27
37. Discrimination by educational authorities	27
38. Exception—educational institutions for particular groups	27
39. Exception—special services or facilities	28
40. Exception—standards of dress and behaviour	28
41. Exception—age-based admission schemes and age quotas	29
Division 4—Discrimination in the provision of goods and services and disposal of land	29
42. Discrimination in the provision of goods and services	29
43. Exception—insurance	29
44. Exception—credit providers	30
45. Exception—supervision of children	31
46. Exception—special manner of providing a service	31
47. Discrimination in the disposal of land	31
48. Exception—disposal by will or gift	32
Division 5—Discrimination in accommodation	32
49. Discrimination in offering to provide accommodation	32
50. Discrimination in providing accommodation	33
51. Discrimination by refusing to allow alterations	33
52. Discrimination by refusing to allow guide dogs	34
53. Exception—accommodation unsuitable for children	34
54. Exception—shared accommodation	34
55. Exception—welfare measures	35
56. Exception—accommodation for students	35
57. Exception—accommodation for commercial sexual services	35
58. Application of this Division	35
Division 6—Discrimination by clubs and club members	36
59. Discrimination against applicants for membership	36

<i>Section</i>	<i>Page</i>
60. Discrimination against club members	37
61. Exception—clubs for disadvantaged people or minority cultures	37
62. Exception—clubs and benefits for particular age groups	37
63. Exception—separate access to benefits for men and women	38
Division 7—Discrimination in sport	38
64. Definitions	38
65. Discrimination in sport	39
66. Exception—competitive sporting activities	39
Division 8—Discrimination in local government	40
67. Discrimination by councillors	40
68. Exception—political belief or activity	40
PART 4—GENERAL EXCEPTIONS TO AND EXEMPTIONS FROM THE PROHIBITION OF DISCRIMINATION	41
69. Things done with statutory authority	41
70. Things done to comply with orders of courts and tribunals	41
71. Pensions	41
72. Superannuation—existing fund conditions	41
73. Superannuation—new fund conditions	42
74. Charities	43
75. Religious bodies	43
76. Religious schools	44
77. Religious beliefs or principles	45
78. Private clubs	45
79. Legal incapacity and age of majority	45
80. Protection of health, safety and property	45
81. Age benefits and concessions	46
82. Welfare measures and special needs	46
83. Exemptions by the Tribunal	46
84. Exemptions to allow compulsory retirement in the public sector	47
PART 5—PROHIBITION OF SEXUAL HARASSMENT	49
85. What is sexual harassment?	49
86. Harassment by employers and employees	49
87. Harassment in common workplaces	50
88. Harassment by partners	50
89. Harassment in industrial organisations	51
90. Harassment by members of qualifying bodies	51
91. Harassment in educational institutions	52
92. Harassment in the provision of goods and services	52
93. Harassment in the provision of accommodation	52
94. Harassment in clubs	53
95. Harassment in local government	53

<i>Section</i>	<i>Page</i>
PART 6—PROHIBITION OF OTHER CONDUCT AND VICARIOUS LIABILITY FOR DISCRIMINATION	54
Division 1—Victimisation	54
96. Prohibition of victimisation	54
97. What is victimisation?	54
Division 2—Authorising or assisting discrimination	55
98. Prohibition of authorising or assisting discrimination	55
99. Liability of person who authorises or assists	55
Division 3—Discriminatory requests for information	55
100. Prohibition on requesting discriminatory information	55
101. Exception—information required for non-discriminatory purposes	56
Division 4—Vicarious liability	56
102. Vicarious liability of employers and principals	56
103. Exception to vicarious liability	56
PART 7—COMPLAINTS AND THEIR RESOLUTION	57
Division 1—Making a complaint	57
104. Who may complain?	57
105. How to complain	58
106. Commission must assist complainants	58
Division 2—Procedure after a complaint is made	58
107. Commission must notify respondent	58
108. Commission may decline to entertain some complaints	58
109. Respondent may apply to Tribunal to strike out complaint or any part of complaint	60
110. Commission may dismiss a stale complaint	61
111. Minister may refer a complaint direct to Tribunal	61
112. Commission to refer complaints for conciliation	61
113. What happens if conciliation is inappropriate?	62
Division 3—Conciliation of Complaints	62
114. Conciliation by the Chief Conciliator	62
115. Conciliation agreements	63
116. Evidence of conciliation is inadmissible	64
117. What happens if conciliation fails or is inappropriate?	64
118. Complaints about the conduct of conciliation	65
Division 4—Expedited complaints	65
119. Application to have a complaint expedited	65

<i>Section</i>	<i>Page</i>
120. Grounds for expediting a complaint	66
121. Review of Commission's determination	66
122. Time limits for conciliation of expedited complaints	67
123. Time limit for referring expedited complaints to Tribunal	68
124. Party may apply for referral to Tribunal without conciliation	69
Division 5—Special complaints	69
125. What is a special complaint?	69
126. Referral of special complaints to Supreme Court	70
127. Supreme Court to determine whether complaint is a special complaint	70
128. Procedure if Supreme Court determines complaint is a special complaint	71
129. Costs of special complaint proceedings	72
130. Appeal to Court of Appeal	73
Division 6—Interim orders and preliminary conferences	73
131. Tribunal may make interim orders before hearing	73
132. Preliminary conferences	74
133. Party may object to member hearing the complaint	75
Division 7—Jurisdiction of the Tribunal	75
134. When may the Tribunal hear a complaint?	75
135. Time limits for expedited complaints	76
136. What may the Tribunal decide?	76
137. Tribunal may make interim orders during hearing	77
138. Order for costs	77
139. Tribunal must give reasons	77
140. Enforcement of monetary orders	78
Division 8—Procedure of the Tribunal	78
141. Tribunal must act fairly	78
142. Tribunal is not bound by the rules of evidence	78
143. Proceedings to be public unless Tribunal orders otherwise	79
144. Who may appear before the Tribunal?	79
145. Tribunal may join other parties or grant leave to intervene	80
146. Tribunal may amend the complaint	80
147. Tribunal must give notice of proceedings and allow witnesses	80
148. Tribunal may take evidence on oath or affirmation	81
149. Tribunal may retain and copy documents	81
Division 9—Appeals from the Tribunal	81
150. Who may appeal?	81
151. Appellant must notify the other parties	82
152. Tribunal may state special case for Supreme Court	82

<i>Section</i>	<i>Page</i>
Division 10—General	82
153. Reconstitution of Tribunal	82
154. Directions	83
155. Time limits	83
PART 8—INVESTIGATIONS BY THE COMMISSION AND TRIBUNAL	84
156. How may an investigation be initiated?	84
157. What matters may be investigated?	84
158. How is an investigation conducted?	85
159. Inquiries and orders by the Tribunal	85
PART 9—ADMINISTRATION	87
Division 1—The Commission	87
160. Continuation of Commission	87
161. Functions and powers of Commission	87
162. Commission's educative and research functions	88
163. Membership of Commission	89
164. Terms of office	89
165. Resignation and removal	89
166. Filling casual vacancies	89
167. Chairperson	90
168. Acting members	90
169. Payment of members	91
170. Procedure of Commission	91
171. Effect of vacancy or defect	91
172. Delegation by Commission	92
Division 2—Chief Conciliator	92
173. Appointment of Chief Conciliator	92
174. Term of office	92
175. Resignation and removal	92
176. Acting Chief Conciliator	93
177. Payment of Chief Conciliator	93
178. Functions, powers and duties of Chief Conciliator	93
179. Delegation by Chief Conciliator	94
Division 3—Anti-Discrimination Tribunal	94
180. Establishment of Tribunal	94
181. Functions, powers and duties of Tribunal	94
182. Constitution of Tribunal	94
183. Arrangement of Tribunal business	95
184. Appointment of President and Deputy Presidents	95

<i>Section</i>	<i>Page</i>
185. Terms of office	96
186. Acting members	96
187. Payment of members	97
188. Resignation and removal	97
189. Effect of vacancy or defect	98
190. Meetings of the Tribunal	98
Division 4—General provisions for the Commission and Tribunal	99
191. Registrar and staff	99
192. Secrecy	99
193. Protection from liability	101
194. Annual reports	102
PART 10—OFFENCES	103
Division 1—Discriminatory advertising	103
195. Offence of discriminatory advertising	103
196. Defence	103
197. Proceedings for the offence of discriminatory advertising	103
Division 2—Other offences	104
198. Compliance with orders of Tribunal and conciliation agreements	104
199. Failing to appear before Tribunal	104
200. Failing to give evidence or produce documents	104
201. Compliance with notice of Chief Conciliator to attend or produce documents	105
202. Contempt of Tribunal or Commission	105
203. False or misleading information	106
204. Protection against self-incrimination	106
205. Offences are to be dealt with summarily	106
206. Who may bring proceedings for offences?	106
PART 11—GENERAL	107
207. Review of Victorian legislation	107
208. Proceedings against unincorporated associations	107
209. Contravention does not create civil or criminal liability	107
210. Protection of people giving evidence and information	107
211. Supreme Court—limitation of jurisdiction	108
212. Regulations	108
PART 12—REPEALS, AMENDMENTS AND TRANSITIONAL PROVISIONS	110
213. Definitions	110
214. <i>Repealed</i>	110
215. Commission members to continue in office	110

<i>Section</i>	<i>Page</i>
216. Board members to become Tribunal members	110
217. Dealing with complaints already lodged	111
218. Dealing with new complaints	112
219. Current investigations and inquiries	113
220. <i>Repealed</i>	113
221. Temporary exemptions continue	113
222. References to the Board	114
222A. Transitional	114
223–225. <i>Repealed</i>	115
PART 13—<i>Repealed</i>	115
226. <i>Repealed</i>	115

SCHEDULES 1, 2—<i>Repealed</i>	116
=====	
NOTES	117
1. General Information	117
2. Table of Amendments	118
3. Explanatory Details	119
INDEX	120

Version No. 020
Equal Opportunity Act 1995
Act No. 42/1995

Version incorporating amendments as at 7 May 1998

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. *Purposes*

The purposes of this Act are—

- (a) to re-enact and extend the law relating to equal opportunity and discrimination;
- (b) to remove compulsory retirement provisions from Acts;
- (c) to repeal the **Equal Opportunity Act 1984** and make consequential amendments to other Acts.

2. *Commencement*

- (1) Part 1 comes into operation on the day on which this Act receives the Royal Assent.

S. 2(2)
repealed by
No. 84/1997
s. 40(a).

* * * * *

- (3) Subject to sub-section (4), the remaining provisions of this Act come into operation on a day or days to be proclaimed.
- (4) If a provision referred to in sub-section (3) does not come into operation within a period of 12 months beginning on, and including, the day on which this Act receives the Royal Assent, it

comes into operation on the first day after the end of that period.

3. Objectives

The objectives of this Act are—

- (a) to promote recognition and acceptance of everyone's right to equality of opportunity;
- (b) to eliminate, as far as possible, discrimination against people by prohibiting discrimination on the basis of various attributes;
- (c) to eliminate, as far as possible, sexual harassment;
- (d) to provide redress for people who have been discriminated against or sexually harassed.

4. Definitions

In this Act—

"accommodation" includes—

- (a) business premises;
- (b) a house or flat;
- (c) a hotel or motel;
- (d) a boarding house or hostel;
- (e) a caravan or caravan site;
- (f) a mobile home or mobile home site;
- (g) a camping site;

"appointed member of the Commission" means a member of the Commission other than the Chief Conciliator;

"attribute" means an attribute in section 6;

"carer" means a person on whom another person is wholly or substantially dependent for

ongoing care and attention, other than a person who provides that care and attention wholly or substantially on a commercial basis;

"Chief Conciliator" means the Chief Conciliator of the Commission;

"child" means a person under the age of 18 years;

"club", except in section 78, means a social, recreational, sporting or community service club, or a community service organisation—

- (a) that occupies any Crown land; or
- (b) that directly or indirectly receives any financial assistance from the State or a municipal council;

"Commission" means the Equal Opportunity Commission continued in existence by section 160;

"complainant" means a person who lodges a complaint or on whose behalf a complaint is lodged;

"complaint" means a complaint lodged under section 105;

"de facto spouse" means a person who is living with a person of the opposite sex as if they were married although they are not;

"Deputy President" means a Deputy President of the Tribunal;

"detriment" includes humiliation and denigration;

"discrimination" has the meaning given in Part 2;

"educational authority" means the person or body administering an educational institution;

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

"employee" includes—

- (a) a person employed under a contract of service, whether or not under an Australian Workplace Agreement, certified agreement, employment agreement or award within the meaning of the Workplace Relations Act 1996 of the Commonwealth;
- (b) a person employed under the **Public Sector Management Act 1992** or appointed to a statutory office;
- (c) a person engaged under a contract for services;
- (d) a person who is engaged to perform any work the remuneration for which is based wholly or partly on commission—

S. 4 def. of "employee" amended by Nos 22/1996 s. 11(1)(a), 84/1997 s. 19(a).

but does not include an unpaid worker or volunteer;

"employer" includes—

- (a) a person who employs another person under a contract of service, whether or not under an Australian Workplace Agreement, certified agreement, employment agreement or award within the meaning of the Workplace

S. 4 def. of "employer" amended by Nos 22/1996 s. 11(1)(b), 84/1997 s. 19(b).

Equal Opportunity Act 1995
Act No. 42/1995

Relations Act 1996 of the
 Commonwealth;

- (b) a person who engages another person under a contract for services;
- (c) a person who engages another person to perform any work the remuneration for which is based wholly or partly on commission—

but does not include a person who employs another person on an unpaid or voluntary basis;

S. 4 def. of
 "employment"
 " amended by
 Nos 22/1996
 s. 11(1)(c),
 84/1997
 s. 19(c).

"employment" includes—

- (a) employment under a contract of service, whether or not under an Australian Workplace Agreement, certified agreement, employment agreement or award within the meaning of the Workplace Relations Act 1996 of the Commonwealth;
- (b) employment under the **Public Sector Management Act 1992** or under a statutory appointment;
- (c) engagement under a contract for services;
- (d) work that is remunerated wholly or partly on commission—

but does not include work on a voluntary or unpaid basis;

"employment agent" means a person who carries on a business of providing services for the purpose of finding employment for people seeking to be employed or procuring employees for people seeking to employ them, or both;

"enactment" means a rule, regulation, by-law, local law, order, Order in Council, proclamation or other instrument of a legislative character;

"expedited complaint" means a complaint that has been expedited under section 119 or 121;

"firm" has the same meaning as in the **Partnership Act 1958**;

"guide dog" means a dog that is trained to assist a person who has a visual, hearing or mobility impairment;

"home", in relation to a person, means a private residence of that person;

"impairment" means—

- (a) total or partial loss of a bodily function;
- (b) the presence in the body of organisms that may cause disease;
- (c) total or partial loss of a part of the body;
- (d) malfunction of a part of the body, including—
 - (i) a mental or psychological disease or disorder;
 - (ii) a condition or disorder that results in a person learning more slowly than people who do not have that condition or disorder;
- (e) malformation or disfigurement of a part of the body;

"industrial activity" means—

- (a) being or not being a member of, or joining, not joining or refusing to join, an industrial organisation;
- (b) participating in, not participating in or refusing to participate in a lawful activity organised or promoted by an industrial organisation;

"industrial organisation" means—

- (a) an organisation of employees;
- (b) an organisation of employers;
- (c) any other organisation established for the purposes of people who carry on a particular industry, trade, profession, business or employment;

"lawful sexual activity" means engaging in, not engaging in or refusing to engage in a lawful sexual activity;

"lawyer" means a barrister and solicitor of the Supreme Court;

"marital status" means a person's status of being—

- (a) single;
- (b) married;
- (c) a de facto spouse;
- (d) married but living separately and apart from his or her spouse;
- (e) divorced;
- (f) widowed;

"member", in relation to the Tribunal, includes the President and Deputy Presidents;

"occupational qualification" means an authorisation or qualification that is needed for, or facilitates—

- (a) the practice of a profession;
- (b) the carrying on of a trade or business;
- (c) the engaging in of any other occupation or employment;

"parent" includes—

- (a) step-parent;
- (b) adoptive parent;
- (c) foster parent;
- (d) guardian;

"parental status" means the status of being a parent or not being a parent;

S. 4 def. of "parental status" inserted by No. 84/1997 s. 20(1).

"party", in relation to a complaint or proceedings before the Tribunal, means the complainant, the respondent, any third party joined by the Tribunal and any person granted leave to intervene;

"person" includes an unincorporated association and, in relation to a natural person, means a person of any age;

"physical features" means a person's height, weight, size or other bodily characteristics;

"political belief or activity" means—

- (a) holding or not holding a lawful political belief or view;
- (b) engaging in, not engaging in or refusing to engage in a lawful political activity;

"President" means the President of the Tribunal;

"proceedings", in relation to the Tribunal, means all proceedings before the Tribunal in relation to a complaint, including applications for interim orders and applications under sections 109, 121 and 124;

"qualifying body" means a person or body that is empowered to confer, renew or extend an occupational qualification;

"race" includes—

- (a) colour;
- (b) descent or ancestry;
- (c) nationality or national origin;
- (d) ethnicity or ethnic origin;
- (e) if 2 or more distinct races are collectively referred to as a race—
 - (i) each of those distinct races;
 - (ii) that collective race;

"Registrar" means the Registrar of the Tribunal;

"relative", in relation to a person, means—

- (a) a spouse or de facto spouse of that person;
 - (b) a parent or grandparent of that person or of a spouse or de facto spouse of that person;
 - (c) a child (whether or not under the age of 18 years) or grandchild of that person or of a spouse or de facto spouse of that person;
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- (d) a brother or sister of that person or of a spouse or de facto spouse of that person;
 - (e) a child (whether or not under the age of 18 years) of a brother or sister of that person or of a brother or sister of a spouse or de facto spouse of that person;
 - (f) a child (whether or not under the age of 18 years) of a brother or sister of a parent of that person or of a brother or sister of a parent of a spouse or de facto spouse of that person;

"religious belief or activity" means—

- (a) holding or not holding a lawful religious belief or view;
- (b) engaging in, not engaging in or refusing to engage in a lawful religious activity;

"respondent" means a person about whom a complaint has been lodged under section 105;

"services" includes, without limiting the generality of the word—

- (a) access to and use of any place that members of the public are permitted to enter;
- (b) banking services, the provision of loans or finance, financial accommodation, credit guarantees and insurance;
- (c) provision of entertainment, recreation or refreshment;
- (d) services connected with transportation or travel;

- (e) services of any profession, trade or business, including those of an employment agent;
- (f) services provided by a government department, public authority, State owned enterprise or municipal council—

but does not include education or training in an educational institution;

"State owned enterprise" has the same meaning as in the **State Owned Enterprises Act 1992**;

"terms" includes conditions;

"Tribunal" means the Anti-Discrimination Tribunal established by section 180.

5. Act binds the Crown

This Act binds the Crown in right of Victoria and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

PART 2—WHAT IS PROHIBITED DISCRIMINATION?

6. *Attributes*

The following are the attributes on the basis of which discrimination is prohibited in the areas of activity set out in Part 3—

- (a) age;
- (b) impairment;
- (c) industrial activity;
- (d) lawful sexual activity;
- (e) marital status;
- (f) physical features;
- (g) political belief or activity;
- (h) pregnancy;
- (i) race;
- (j) religious belief or activity;
- (k) sex;
- (l) parental status or status as a carer;

S. 6(l)
substituted by
No. 84/1997
s. 20(2).

- (m) personal association (whether as a relative or otherwise) with a person who is identified by reference to any of the above attributes.

7. *Meaning of discrimination*

- (1) Discrimination means direct or indirect discrimination on the basis of an attribute.

- (2) Discrimination on the basis of an attribute includes discrimination on the basis—
- (a) that a person has that attribute or had it at any time, whether or not he or she had it at the time of the discrimination;
 - (b) of a characteristic that a person with that attribute generally has;
 - (c) of a characteristic that is generally imputed to a person with that attribute;
 - (d) that a person is presumed to have that attribute or to have had it at any time.

8. *Direct discrimination*

- (1) Direct discrimination occurs if a person treats, or proposes to treat, someone with an attribute less favourably than the person treats or would treat someone without that attribute, or with a different attribute, in the same or similar circumstances.
- (2) In determining whether a person directly discriminates it is irrelevant—
- (a) whether or not that person is aware of the discrimination or considers the treatment less favourable;
 - (b) whether or not the attribute is the only or dominant reason for the treatment, as long as it is a substantial reason.

9. *Indirect discrimination*

- (1) Indirect discrimination occurs if a person imposes, or proposes to impose, a requirement, condition or practice—
- (a) that someone with an attribute does not or cannot comply with; and
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- (b) that a higher proportion of people without that attribute, or with a different attribute, do or can comply with; and
 - (c) that is not reasonable.
- (2) Whether a requirement, condition or practice is reasonable depends on all the relevant circumstances of the case, including—
- (a) the consequences of failing to comply with the requirement, condition or practice;
 - (b) the cost of alternative requirements, conditions or practices;
 - (c) the financial circumstances of the person imposing, or proposing to impose, the requirement, condition or practice.
- (3) In determining whether a person indirectly discriminates it is irrelevant whether or not that person is aware of the discrimination.

10. *Motive is irrelevant to discrimination*

In determining whether or not a person discriminates, the person's motive is irrelevant.

11. *Discrimination by acting with others and by not acting*

It is irrelevant whether discrimination occurs by a person—

- (a) acting alone or in association with any other person;
- (b) doing an act or omitting to do an act.

12. *Exceptions and exemptions*

This Act does not prohibit discrimination if an exception in Part 3 (whether or not in the same Division as the provision prohibiting the discrimination) or Part 4 or an exemption under Part 4 applies.

PART 3—WHEN IS DISCRIMINATION PROHIBITED?

Division 1—Discrimination in employment

13. *Discrimination against job applicants*

An employer must not discriminate against a person—

- (a) in determining who should be offered employment;
- (b) in the terms on which employment is offered to the person;
- (c) by refusing or deliberately omitting to offer employment to the person;
- (d) by denying the person access to a guidance program, an apprenticeship training program or other occupational training or retraining program.

14. *Discrimination against employees*

An employer must not discriminate against an employee—

- (a) by denying or limiting access by the employee to opportunities for promotion, transfer or training or to any other benefits connected with the employment;
- (b) by dismissing the employee or otherwise terminating his or her employment;
- (c) by denying the employee access to a guidance program, an apprenticeship training program or other occupational training or retraining program;
- (d) by subjecting the employee to any other detriment.

15. *Discrimination against contract workers*

- (1) A principal must not discriminate against a contract worker—
- (a) in the terms on which the principal allows the contract worker to work;
 - (b) by not allowing the contract worker to work or continue to work;
 - (c) by denying or limiting access by the contract worker to any benefit connected with the work;
 - (d) by subjecting the contract worker to any other detriment.
- (2) Sub-section (1) does not apply to anything done or omitted to be done by a principal in relation to a contract worker that would not contravene this Act if done or omitted to be done by the employer of that contract worker.
- (3) In this section—
- "contract worker"** means a person who does work for a principal under a contract between the person's employer and the principal;
- "principal"** means a person who contracts with another person for work to be done by employees of the other person.

S. 16
amended by
No. 84/1997
s. 21.

16. *Exception—domestic or personal services*

An employer may discriminate in determining who should be offered employment in relation to the provision of domestic or personal services in, or in relation to, any person's home.

17. *Exception—genuine occupational requirements*

- (1) An employer may limit the offering of employment to people of one sex if it is a genuine
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occupational requirement of the employment that the employees be people of that sex.

- (2) Without limiting the generality of sub-section (1), it is a genuine occupational requirement to be a person of a particular sex in relation to employment if—
- (a) the employment can be performed only by a person having particular physical characteristics (other than strength or stamina) that are possessed only by people of that sex; or
 - (b) the employment needs to be performed by a person of that sex to preserve decency or privacy because it involves the fitting of clothing for people of that sex; or
 - (c) the employment includes the conduct of searches of the clothing or bodies of people of that sex; or
 - (d) the employee will be required to enter a lavatory ordinarily used by people of that sex while it is in use by people of that sex; or
 - (e) the employee will be required to enter areas ordinarily used only by people of that sex while those people are in a state of undress.
- (3) An employer may limit the offering of employment—
- (a) to people of a particular age, sex or race;
 - (b) to people with or without a particular impairment—

in relation to a dramatic or an artistic performance, entertainment, photographic or modelling work or any other employment, if it is necessary to do so for reasons of authenticity or credibility.

- (4) An employer may discriminate on the basis of physical features in the offering of employment in relation to a dramatic or an artistic performance, photographic or modelling work or any similar employment.

18. Exception—political employment

An employer may discriminate on the basis of political belief or activity in the offering of employment to another person as a ministerial adviser, member of staff of a political party, member of the electorate staff of any person or any similar employment.

19. Exception—welfare services

An employer may limit the offering of employment to people with a particular attribute in relation to the provision of services for the promotion of the welfare or advancement of people with the same attribute, if those services can be provided most effectively by people with that attribute.

20. Exception—family employment

- (1) An employer may limit the offering of employment, in a business carried on by him or her, to people who are his or her relatives.
- (2) For the purposes of this section a person who holds a controlling interest in a body corporate is to be taken to be—
- (a) carrying on the business; and
 - (b) the employer of the employees—
- of the body corporate.

21. Exception—small business

- (1) An employer may discriminate in determining who should be offered employment if the
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employer employs no more than the equivalent of 5 people on a full-time basis (including the people to whom employment is offered).

- (2) In ascertaining the number of people employed for the purposes of sub-section (1), the following people are not included—
- (a) relatives of the employer; and
 - (b) people employed to provide domestic or personal services in, or in relation to, the employer's home.
- (3) For the purposes of this section—
- (a) a person who holds a controlling interest in a body corporate is to be taken to be the employer of the employees of the body corporate;
 - (b) a body corporate is to be taken to be the employer of the employees of any of its related bodies corporate (within the meaning of section 9 of the Corporations Law);
 - (c) "**full-time basis**" means a minimum of 30 hours a week.

22. Exception—special services or facilities

- (1) An employer may discriminate against another person on the basis of impairment in any of the areas specified in section 13 or 14 if—
- (a) in order to perform the genuine and reasonable requirements of the employment—
 - (i) the other person requires or would require special services or facilities; and

- (ii) it is not reasonable in the circumstances for those special services or facilities to be provided; or
 - (b) the other person cannot or could not adequately perform the genuine and reasonable requirements of the employment even after the provision of special services or facilities.
- (2) In determining whether or not a person can or could adequately perform the requirements of the employment, all relevant factors and circumstances must be considered, including—
 - (a) the person's training, qualifications and experience;
 - (b) the person's current performance in the employment, if applicable.

23. *Exception—reasonable terms of employment*

An employer may set reasonable terms or requirements of employment, or make reasonable variations to those terms or requirements, to take into account—

- (a) the reasonable and genuine requirements of the employment;
- (b) any special limitations that a person's impairment or physical features imposes on his or her capacity to undertake the employment;
- (c) any special services or facilities that are required to enable him or her to undertake the employment or to facilitate the conduct of the employment.

24. *Exception—standards of dress and behaviour*

An employer may set and enforce standards of dress, appearance and behaviour for employees

that are reasonable having regard to the nature and circumstances of the employment.

25. Exception—care of children

- (1) Nothing in section 13 or 14 applies to discrimination by an employer against an employee or prospective employee if—
 - (a) the employment involves the care, instruction or supervision of children; and
 - (b) the employer genuinely believes that the discrimination is necessary to protect the physical, psychological or emotional well-being of the children; and
 - (c) having regard to all the relevant circumstances, including, if applicable, the conduct of the employee or prospective employee, the employer has a rational basis for that belief.
- (2) Sub-section (1) does not apply to employment by a post-secondary education provider (within the meaning of the **Tertiary Education Act 1993**) or a TAFE college.

26. Exception—compulsory retirement of judicial officers

Nothing in this Division applies to the compulsory retirement on the basis of age of, or the failure to appoint a person on the basis of age as—

- (a) a judge of the Supreme Court or the County Court; or
- (b) a magistrate or bail justice.

27. Exception—youth wages

An employer may pay an employee who is under the age of 21 years according to the employee's age.

S. 27A
inserted by
No. 82/1996
s. 76.

27A. Exception—early retirement schemes

- (1) In deciding the terms on which to offer an employee an incentive to resign or retire, an employer may take into account the age of the employee and any eligibility of the employee to receive a retirement benefit from a superannuation fund.
- (2) Sub-section (1) applies, and is deemed always to have applied, to anything done by an employer on or after 1 January 1996.

28. Exemption—single sex accommodation

The Tribunal, by granting an exemption under section 83, may authorise an employer to limit the offering of employment to people of one sex if they will be required to live in communal accommodation provided by the employer that is not suitable for occupation by people of both sexes.

S. 29
repealed by
No. 42/1995
s. 225.

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Division 2—Discrimination in employment-related areas

30. Discrimination in establishing firms

A person who intends to establish a firm comprising 5 or more partners must not discriminate against another person in the terms on which the other person is invited to become a partner.

31. Discrimination by firms

- (1) This section applies to firms comprising 5 or more partners.

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- (2) A firm to which this section applies must not discriminate against a person—
- (a) in deciding who should be invited to become a partner;
 - (b) in the terms on which the person is invited to become a partner.
- (3) A firm to which this section applies must not discriminate against a partner of that firm—
- (a) by denying or limiting access by the partner to any benefit arising from partnership in the firm;
 - (b) by expelling the partner from the firm;
 - (c) by subjecting the partner to any other detriment.

32. *Exception—special services or facilities*

- (1) A firm, or a person intending to establish a firm, may discriminate against a person seeking admission to the firm as a partner or against a partner in the firm on the basis of impairment if—
- (a) in order to perform the genuine and reasonable requirements of partnership in the firm—
 - (i) the person or partner requires or would require special services or facilities; and
 - (ii) it is not reasonable in the circumstances for those special services or facilities to be provided; or
 - (b) the person or partner cannot or could not adequately perform the genuine and reasonable requirements of partnership in the firm even after the provision of special services or facilities.

- (2) In determining whether or not a person can or could adequately perform the requirements of partnership, all relevant factors and circumstances must be considered, including—
- (a) the person's training, qualifications and experience;
 - (b) the person's current performance as a partner, if applicable.

33. *Exception—reasonable terms of partnership*

A firm, or a person intending to establish a firm, may set reasonable terms or requirements of partnership, or make reasonable variations to those terms or requirements, to take into account—

- (a) the reasonable and genuine requirements of partnership in the firm;
- (b) any special limitations that a person's impairment or physical features imposes on his or her capacity to undertake the obligations of partnership in the firm;
- (c) any special services or facilities that are required to enable him or her to undertake those obligations or to facilitate the performance of those obligations.

34. *Discrimination by industrial organisations*

- (1) An industrial organisation, or a member of the committee of management or other governing body of an industrial organisation, must not discriminate against a person—
- (a) in deciding who may join the organisation;
 - (b) by refusing or failing to accept the person's application for membership;
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- (c) in the terms on which it admits the person to membership.
 - (2) An industrial organisation, or a member of the committee of management or other governing body of an industrial organisation, must not discriminate against a member of the organisation—
 - (a) by denying or limiting access to any benefit arising from membership;
 - (b) by depriving the member of membership;
 - (c) by varying the terms of membership;
 - (d) by subjecting the member to any other detriment.

35. *Discrimination by qualifying bodies*

- (1) A qualifying body must not discriminate against a person—
 - (a) by refusing or failing to confer, renew or extend an occupational qualification;
 - (b) in the terms on which it confers, renews or extends an occupational qualification;
 - (c) by varying the terms on which an occupational qualification is held;
 - (d) by revoking or withdrawing an occupational qualification;
 - (e) by subjecting the person to any other detriment.
- (2) A reference to a qualifying body in this section includes a reference to each member of the qualifying body.

36. *Exception—reasonable terms of qualification*

A qualifying body may set reasonable terms in relation to an occupational qualification, or make

reasonable variations to those terms, to take into account any special limitations that a person's impairment or physical features imposes on his or her capacity to practise the profession, carry on the trade or business or engage in the occupation or employment to which the qualification relates.

Division 3—Discrimination in education

37. *Discrimination by educational authorities*

- (1) An educational authority must not discriminate against a person—
 - (a) in deciding who should be admitted as a student;
 - (b) by refusing, or failing to accept, the person's application for admission as a student;
 - (c) in the terms on which the authority admits the person as a student.
- (2) An educational authority must not discriminate against a student—
 - (a) by denying or limiting access to any benefit provided by the authority;
 - (b) by expelling the student;
 - (c) by subjecting the student to any other detriment.

38. *Exception—educational institutions for particular groups*

An educational authority that operates an educational institution or program wholly or mainly for students of a particular sex, race, religious belief, age or age group or students with a general or particular impairment may exclude—

- (a) people who are not of the particular sex, race, religious belief, age or age group; or
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(b) people who do not have a general, or the particular, impairment—

from that institution or program.

39. *Exception—special services or facilities*

An educational authority may discriminate against a person on the basis of impairment if—

- (a) in order to participate or continue to participate in, or to derive or continue to derive substantial benefit from, the educational program of the authority—
 - (i) the person requires or would require special services or facilities; and
 - (ii) it is not reasonable in the circumstances for those special services or facilities to be provided; or
- (b) the person could not participate or continue to participate in, or derive or continue to derive substantial benefit from, the educational program even after the provision of special services or facilities.

40. *Exception—standards of dress and behaviour*

- (1) An educational authority may set and enforce reasonable standards of dress, appearance and behaviour for students.
- (2) In relation to a school, without limiting the generality of what constitutes a reasonable standard of dress, appearance or behaviour, a standard must be taken to be reasonable if the educational authority administering the school has taken into account the views of the school community in setting the standard.

41. Exception—age-based admission schemes and age quotas

An educational authority may select students for an educational program on the basis of an admission scheme—

- (a) that has a minimum qualifying age; or
- (b) that imposes quotas in relation to students of different ages or age groups.

Division 4—Discrimination in the provision of goods and services and disposal of land**42. Discrimination in the provision of goods and services**

- (1) A person must not discriminate against another person—
 - (a) by refusing to provide goods or services to the other person;
 - (b) in the terms on which goods or services are provided to the other person;
 - (c) by subjecting the other person to any other detriment in connection with the provision of goods or services to him or her.
- (2) Sub-section (1) applies whether or not the goods or services are provided for payment.

43. Exception—insurance

- (1) An insurer may discriminate against another person by refusing to provide an insurance policy to the other person, or in the terms on which an insurance policy is provided, if—
 - (a) the discrimination is permitted under the Sex Discrimination Act 1984 or the Disability Discrimination Act 1992 of the Commonwealth; or
 - (b) the discrimination is based on—
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- (i) actuarial or statistical data on which it is reasonable for the insurer to rely; or
 - (ii) if there is no such data, on other data on which it is reasonable to rely—
and is reasonable having regard to that data and any other relevant factors; or
 - (c) if neither of the above paragraphs applies, the discrimination is reasonable having regard to any relevant factors.
- (2) In this section—
- "insurance policy"** includes an annuity, a life assurance policy, an accident insurance policy and an illness insurance policy;
- "insurer"** means a person who is in the business of providing insurance policies.

44. Exception—credit providers

- (1) A credit provider may discriminate against an applicant for credit on the basis of age by refusing to provide credit, or on the terms on which credit is provided, if the criteria for refusal or the terms imposed—
 - (a) are based on—
 - (i) actuarial or statistical data on which it is reasonable for the credit provider to rely; or
 - (ii) if there is no such data, on other data on which it is reasonable to rely; and
 - (b) are reasonable having regard to that data and any other relevant factors.
 - (2) In this section **"credit provider"** means a person who provides credit in the course of a business carried on by that person.
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45. *Exception—supervision of children*

A person may require, as a term of providing goods or services to a child, that the child be accompanied or supervised by an adult if there is a reasonable risk that, if unaccompanied or unsupervised, the child may—

- (a) cause a disruption;
- (b) endanger himself or herself or any other person.

46. *Exception—special manner of providing a service*

A person may refuse to provide a service, or set reasonable terms for the provision of a service, to another person if the service would be required to be provided in a special manner because of the other person's impairment or physical features and—

- (a) the person cannot reasonably provide the service in that manner; or
- (b) the person can only reasonably provide the service in that manner on more onerous terms than the person could reasonably provide the service to a person without that impairment or those physical features.

47. *Discrimination in the disposal of land*

- (1) A person must not discriminate against another person—
 - (a) by refusing to dispose of any land to the other person;
 - (b) in the terms on which any land is offered to the other person.
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- (2) Sub-section (1) does not apply to the disposal or offering of a leasehold interest in land for the purpose of accommodation.
 - (3) The provisions of this section apply despite anything to the contrary—
 - (a) in any Act, other than this Act;
 - (b) in any document affecting or relating to the land;
 - (c) if section 97 of the **Transfer of Land Act 1958** or the **Subdivision Act 1988** applies to the land, in any document created by or in relation to a service company or body corporate referred to or established under either of those Acts in relation to the land.
 - (4) A person is not personally liable for breach of any covenant or obligation contained in any document referred to in sub-section (3) if the person would have contravened this section if the person had complied with the covenant or obligation.

48. Exception—disposal by will or gift

A person may discriminate against another person in the disposal of land by will or as a gift.

Division 5—Discrimination in accommodation

49. Discrimination in offering to provide accommodation

A person must not discriminate against another person—

- (a) by refusing, or failing to accept, the other person's application for accommodation;
- (b) in the way in which the other person's application for accommodation is processed;

- (c) in the terms on which accommodation is offered to the other person.

50. *Discrimination in providing accommodation*

A person must not discriminate against another person—

- (a) by varying the terms on which the accommodation is provided to the other person;
- (b) by denying or limiting access by the other person to any benefit associated with the accommodation;
- (c) by evicting the other person from the accommodation;
- (d) by refusing to extend or renew the provision of accommodation to the other person;
- (e) in the terms on which the provision of accommodation to the other person is extended or renewed;
- (f) by subjecting the other person to any other detriment in connection with the provision of accommodation to that person.

51. *Discrimination by refusing to allow alterations*

- (1) A person who has provided accommodation to another person with an impairment must allow the other person to make reasonable alterations to that accommodation to meet his or her special needs if—
 - (a) the alterations are at the expense of the other person; and
 - (b) the alterations do not require any alterations to the premises of another occupier; and
 - (c) the action required to restore the accommodation to the condition it was in
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- before the alterations is reasonably practicable in the circumstances; and
- (d) the other person agrees to restore the accommodation to its previous condition before leaving it and it is reasonably likely that he or she will do so.
- (2) This section is in addition to, and does not affect or take away from, any requirements imposed by or under the **Building Act 1993**.

52. *Discrimination by refusing to allow guide dogs*

- (1) A person must not refuse to provide accommodation to a person with a visual, hearing or mobility impairment because that person has a guide dog.
- (2) A person must not require, as a term of providing accommodation to a person with a visual, hearing or mobility impairment who has a guide dog—
- (a) that the dog be kept elsewhere;
 - (b) that the person pay an extra charge because of the dog.
- (3) This section does not affect the liability of the person with the guide dog for any damage caused by the dog.

53. *Exception—accommodation unsuitable for children*

A person may refuse to provide accommodation to a child or a person with a child if the premises, because of their design or location, are unsuitable or inappropriate for occupation by a child.

54. *Exception—shared accommodation*

A person may discriminate in deciding who is to occupy residential accommodation—

- (a) in which the person or a relative of the person lives and intends to continue to live; and
- (b) that is for no more than 6 people in addition to the people referred to in paragraph (a).

55. *Exception—welfare measures*

A person may refuse to provide accommodation to another person in a hostel or similar institution established wholly or mainly for the welfare of persons of a particular sex, age, race or religious belief if the other person is not of that sex, age, race or religious belief.

56. *Exception—accommodation for students*

An educational authority that operates an educational institution wholly or mainly for students of a particular sex, race, religious belief, age or age group, or students with a general or particular impairment may provide accommodation wholly or mainly for—

- (a) students of that sex, race, religious belief, age or age group; or
- (b) students with a general, or the particular, impairment.

57. *Exception—accommodation for commercial sexual services*

A person may refuse to provide accommodation to another person if the other person intends to use the accommodation for, or in connection with, a lawful sexual activity on a commercial basis.

58. *Application of this Division*

- (1) The provisions of this Division apply despite anything to the contrary—
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- (a) in any Act, other than this Act;
 - (b) in any document affecting or relating to the land;
 - (c) if the relevant accommodation is on land to which section 97 of the **Transfer of Land Act 1958** or the **Subdivision Act 1988** applies, in any document created by or in relation to a service company or body corporate referred to or established under either of those Acts in relation to the land.
- (2) A person is not personally liable for breach of any covenant or obligation contained in any document referred to in sub-section (1) if the person would have contravened a provision of this Division if the person had complied with the covenant or obligation.

Division 6—Discrimination by clubs and club members

59. *Discrimination against applicants for membership*

A club, or a member of the committee of management or other governing body of a club, must not discriminate against a person who applies for membership of the club—

- (a) in determining the terms of a particular category or type of membership of the club;
 - (b) in the arrangements made for deciding who should be offered membership;
 - (c) by refusing, or failing to accept, the person's application for membership;
 - (d) in the way in which the person's application is processed;
 - (e) in the terms on which the person is admitted as a member.
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60. *Discrimination against club members*

A club, or a member of the committee of management or other governing body of a club, must not discriminate against a member of the club—

- (a) by refusing, or failing to accept, the member's application for a different category or type of membership;
- (b) by denying or limiting access to any benefit provided by the club;
- (c) by varying the terms of membership;
- (d) by depriving the member of membership;
- (e) by subjecting the member to any other detriment.

61. *Exception—clubs for disadvantaged people or minority cultures*

A club, or a member of the committee of management or other governing body of a club, may exclude from membership a person who is not a member of the group of people with an attribute for whom the club was established if the club operates principally—

- (a) to prevent or reduce disadvantage suffered by people of that group; or
- (b) to preserve a minority culture.

62. *Exception—clubs and benefits for particular age groups*

- (1) A club, or a member of the committee of management or other governing body of a club, may exclude a person from membership if—
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(a) the club exists principally to provide benefits for people of a particular age group; and

(b) the person is not in that age group.

(2) A club, or a member of the committee of management or other governing body of a club, may restrict a benefit to members who are members of a particular age group, if it is reasonable to do so in the circumstances.

63. *Exception—separate access to benefits for men and women*

A club, or a member of the committee of management or other governing body of a club, may limit a member's access to a benefit on the basis of the member's sex if—

(a) it is not practicable for men and women to enjoy the benefit at the same time; and

(b) either—

(i) access to the same or an equivalent benefit is provided for men and women separately; or

(ii) men and women are each entitled to a reasonably equivalent opportunity to enjoy the benefit.

Division 7—Discrimination in sport

64. *Definitions*

In this Division—

"competitive sporting activity" includes any exhibition or demonstration of a sport, but does not include—

- (a) the coaching of people engaged in a sporting activity;
- (b) the umpiring or refereeing of a sporting activity;
- (c) the administration of a sporting activity;
- (d) the non-competitive practice of a sport;

"participating in a sporting activity" includes—

- (a) coaching people involved in a sporting activity;
- (b) umpiring or refereeing a sporting activity;
- (c) participating in the administration of a sporting activity;

"sport" and **"sporting activity"** include game and pastime.

65. *Discrimination in sport*

A person must not discriminate against another person—

- (a) by refusing or failing to select the other person in a sporting team;
- (b) by excluding the other person from participating in a sporting activity.

66. *Exception—competitive sporting activities*

- (1) A person may exclude people of one sex from participating in a competitive sporting activity in which the strength, stamina or physique of competitors is relevant.
- (2) A person may restrict participation in a competitive sporting activity—
 - (a) to people who can effectively compete;
 - (b) to people of a specified age or age group;
 - (c) to people with a general or particular impairment.
- (3) Sub-section (1) does not apply to a sporting activity for children under the age of 12 years.

Division 8—Discrimination in local government

67. *Discrimination by councillors*

A councillor of a municipal council must not discriminate against—

- (a) another councillor of that council;
- (b) a member of a committee of that council who is not a councillor of that council—

in the performance of his or her public functions.

68. *Exception—political belief or activity*

Section 67 does not apply to discrimination on the basis of political belief or activity.

**PART 4—GENERAL EXCEPTIONS TO AND EXEMPTIONS
FROM THE PROHIBITION OF DISCRIMINATION**

69. *Things done with statutory authority*

- (1) A person may discriminate if the discrimination is necessary to comply with, or is authorised by, a provision of—
 - (a) an Act, other than this Act;
 - (b) an enactment, other than an enactment under this Act.
- (2) For the purpose of sub-section (1), it is not necessary that the provision refer to discrimination, as long as it authorises or necessitates the relevant conduct that would otherwise constitute discrimination.
- (3) Section 47(3) and 58(1) prevail over this section to the extent of any inconsistency between them.

70. *Things done to comply with orders of courts and tribunals*

A person may discriminate if the discrimination is necessary to comply with—

- (a) an order of the Tribunal;
- (b) an order of any other tribunal or any court.

71. *Pensions*

Nothing in Part 3 affects discriminatory provisions relating to pensions.

72. *Superannuation—existing fund conditions*

- (1) A person may discriminate by retaining an existing superannuation fund condition in relation to a person who—
 - (a) is a member of that fund at the commencement of this section; or

(b) becomes a member of that fund within a period of 12 months after the commencement of this section.

(2) In this section "**existing superannuation fund condition**" means, in relation to a superannuation fund, a condition of the fund, or of membership of the fund, that is in operation at the commencement of this section.

73. Superannuation—new fund conditions

(1) A person may discriminate against another person on the basis of age by imposing conditions in relation to a superannuation fund if—

(a) the discrimination occurs in the application of prescribed standards under the Superannuation Entities (Taxation) Act 1987 or Superannuation Industry (Supervision) Act 1993 of the Commonwealth; or

(b) the discrimination is required to comply with, obtain benefits, or avoid penalties under any other Commonwealth Act; or

(c) the discrimination is based on—

(i) actuarial or statistical data on which it is reasonable to rely; or

(ii) if there is no such data, on other data on which it is reasonable to rely—

and is reasonable having regard to that data and any other relevant factors; or

(d) if none of the above paragraphs applies, the discrimination is reasonable having regard to any relevant factors.

- (2) A person may discriminate against another person—
- (a) on the basis of sex or marital status, by imposing conditions in relation to a superannuation fund if the discrimination is permitted under the Sex Discrimination Act 1984 of the Commonwealth;
 - (b) on the basis of impairment, by imposing conditions in relation to a superannuation fund if the discrimination is permitted under the Disability Discrimination Act 1992 of the Commonwealth.

74. Charities

- (1) Nothing in Part 3 (including sections 47 and 58)—
- (a) affects a provision of a deed, will or other instrument that confers charitable benefits, or enables charitable benefits to be conferred;
 - (b) prohibits anything that is done in order to give effect to such a provision.
- (2) This section applies to an instrument made before, on or after the commencement of this section.
- (3) In this section "**charitable benefits**" means benefits exclusively charitable according to Victorian law.

75. Religious bodies

- (1) Nothing in Part 3 applies to—
- (a) the ordination or appointment of priests, ministers of religion or members of a religious order;
 - (b) the training or education of people seeking ordination or appointment as priests, ministers of religion or members of a religious order;
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- (c) the selection or appointment of people to perform functions in relation to, or otherwise participate in, any religious observance or practice.
 - (2) Nothing in Part 3 applies to anything done by a body established for religious purposes that—
 - (a) conforms with the doctrines of the religion; or
 - (b) is necessary to avoid injury to the religious sensitivities of people of the religion.
 - (3) Without limiting the generality of its application, sub-section (2) includes anything done in relation to the employment of people in any educational institution under the direction, control or administration of a body established for religious purposes.

76. *Religious schools*

- (1) This section applies to a person or body (other than a body established for religious purposes) that—
 - (a) establishes an educational institution to be conducted in accordance with religious beliefs or principles; or
 - (b) directs, controls or administers an educational institution conducted in accordance with religious beliefs or principles.
 - (2) Nothing in Part 3 applies to anything done by a person or body to which this section applies in the course of establishing, directing, controlling or administering the educational institution (including the employment of people in the institution) that is in accordance with the relevant religious beliefs or principles.
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77. Religious beliefs or principles

Nothing in Part 3 applies to discrimination by a person against another person if the discrimination is necessary for the first person to comply with the person's genuine religious beliefs or principles.

78. Private clubs

- (1) Nothing in Part 3 applies to the exclusion of people from a private club or from any part of the activities or premises of a private club.
- (2) In this section, "**private club**" means a social, recreational, sporting or community service club or a community service organisation, other than one that—
 - (a) occupies any Crown land; or
 - (b) directly or indirectly receives any financial assistance from the State or a municipal council.

79. Legal incapacity and age of majority

- (1) Nothing in this Act is intended to affect the law in relation to the legal capacity or incapacity of any person or the age of majority.
- (2) A person may discriminate against another person who is subject to a legal incapacity that is relevant to the transaction or activity in which they are involved.

80. Protection of health, safety and property

- (1) A person may discriminate against another person on the basis of impairment or physical features if the discrimination is reasonably necessary—
 - (a) to protect the health or safety of any person (including the person discriminated against) or of the public generally;
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(b) to protect the property of any person
(including the person discriminated against)
or any public property.

(2) A person may discriminate against another person on the basis of pregnancy if the discrimination is reasonably necessary to protect the health or safety of any person (including the person discriminated against).

81. *Age benefits and concessions*

A person may provide benefits, including concessions, to another person based on age.

82. *Welfare measures and special needs*

(1) Nothing in Part 3 applies to anything done in relation to the provision to people with a particular attribute of special services, benefits or facilities that are designed—

(a) to meet the special needs of those people; or

(b) to prevent or reduce a disadvantage suffered by those people in relation to their education, accommodation, training or welfare.

(2) Without limiting the generality of sub-section

(1)—

(a) a person may grant a woman any right, privilege or benefit in relation to pregnancy or childbirth;

(b) a person may provide, or restrict the offering of, holiday tours to people of a particular age or age group.

83. *Exemptions by the Tribunal*

(1) The Tribunal, by notice published in the Government Gazette, may grant an exemption—

(a) from any of the provisions of this Act in relation to—

Equal Opportunity Act 1995
Act No. 42/1995

- (i) a person or class of people; or
 - (ii) an activity or class of activities; or
 - (b) in the circumstances referred to in section 28; or
 - (c) from any of the provisions of this Act in any other circumstances specified by the Tribunal.
- (2) An exemption remains in force for the period, not exceeding 3 years, that is specified in the notice.
- (3) The Tribunal, by notice published in the Government Gazette—
- (a) may renew an exemption from time to time for the period, not exceeding 3 years, specified in the notice;
 - (b) may revoke an exemption with effect from the date specified in the notice, which must be a date not less than 3 months after the date the notice is published.
- (4) If the Tribunal revokes an exemption granted on the application of a person it must notify that person in writing at least 3 months before the date the revocation is to come into effect.
- (5) For the purposes of granting, reviewing or revoking an exemption under this section, the procedure of the Tribunal is at the discretion of the person constituting or presiding over the Tribunal.

S. 83(5)
substituted by
No. 84/1997
s. 22.

S. 84
amended by
No. 22/1996
s. 11(2).

84. Exemptions to allow compulsory retirement in the public sector

On the application of any Minister, the Minister, in writing, may grant an exemption from Part 3 to allow the compulsory retirement on the basis of age of any class of people employed—

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- (a) under the **Public Sector Management Act 1992**;
 - (b) under the **Teaching Service Act 1981**;
 - (c) under the **Police Regulation Act 1958**;
 - (d) by a public hospital within the meaning of the **Health Services Act 1988**.
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PART 5—PROHIBITION OF SEXUAL HARASSMENT

85. *What is sexual harassment?*

- (1) For the purpose of this Act, a person sexually harasses another person if he or she—
- (a) makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person; or
 - (b) engages in any other unwelcome conduct of a sexual nature in relation to the other person—

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated.

- (2) In sub-section (1) "**conduct of a sexual nature**" includes—
- (a) subjecting a person to any act of physical intimacy;
 - (b) making, orally or in writing, any remark or statement with sexual connotations to a person or about a person in his or her presence;
 - (c) making any gesture, action or comment of a sexual nature in a person's presence.

86. *Harassment by employers and employees*

- (1) An employer must not sexually harass—
- (a) a person seeking employment with that employer;
 - (b) an employee of that employer.
- (2) An employee must not sexually harass—
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- (a) another person employed by his or her employer;
 - (b) his or her employer;
 - (c) a person seeking employment with his or her employer.
- (3) For the purposes of this section—
- (a) a municipal councillor is to be taken to be an employer of employees of that council;
 - (b) a member of the governing body (however called) of a body corporate or unincorporated association is to be taken to be an employer of employees of that body corporate or unincorporated association.

87. *Harassment in common workplaces*

- (1) A person must not sexually harass another person at a place that is a workplace of both of them.
- (2) For the purposes of this section it is irrelevant—
 - (a) whether each person is an employer, an employee or neither; and
 - (b) if they are employees, whether their employers are the same or different.
- (3) In this section "**workplace**" means any place where a person attends for the purpose of carrying out any functions in relation to his or her employment, occupation, business, trade or profession and need not be a person's principal place of business or employment.

88. *Harassment by partners*

A partner in a firm must not sexually harass—

- (a) a person seeking admission to that firm as a partner;
- (b) another partner in that firm.

89. Harassment in industrial organisations

- (1) A member of an industrial organisation must not sexually harass—
 - (a) a person seeking to become a member of that organisation;
 - (b) another member of that organisation;
 - (c) an employee of that organisation.
- (2) An employee of an industrial organisation must not sexually harass—
 - (a) a person seeking to become a member of that organisation;
 - (b) a member of that organisation.

90. Harassment by members of qualifying bodies

- (1) A member of a qualifying body must not sexually harass—
 - (a) a person seeking action in connection with an occupational qualification;
 - (b) another member of that qualifying body;
 - (c) an employee of that qualifying body.
 - (2) An employee of a qualifying body must not sexually harass—
 - (a) a person seeking action in connection with an occupational qualification;
 - (b) a member of that qualifying body.
 - (3) In this section "**action in connection with an occupational qualification**" means conferring, renewing, extending, revoking or withdrawing an occupational qualification.
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91. *Harassment in educational institutions*

- (1) An employee of an educational institution must not sexually harass—
 - (a) a person seeking admission to that institution as a student;
 - (b) a student at that institution.
- (2) A student at an educational institution must not sexually harass—
 - (a) another student at that institution;
 - (b) an employee of that institution;
 - (c) a member of the educational authority administering that institution.
- (3) A member of an educational authority must not sexually harass—
 - (a) a person seeking admission to the institution administered by the authority as a student;
 - (b) a student at that institution.

92. *Harassment in the provision of goods and services*

- (1) A person must not sexually harass another person in the course of providing, or offering to provide, goods or services to that other person.
- (2) A person must not sexually harass another person in the course of receiving or selecting goods or services provided by that other person.
- (3) This section applies whether or not the goods or services are provided or received for payment.

93. *Harassment in the provision of accommodation*

A person must not sexually harass another person in the course of providing, or offering to provide, accommodation to that other person.

94. *Harassment in clubs*

A member of a club, including a member of the committee of management or other governing body, must not sexually harass—

- (a) a person seeking to become a member of the club;
- (b) another member of the club;
- (c) an employee of the club.

95. *Harassment in local government*

A councillor of a municipal council must not sexually harass—

- (a) another councillor of that council;
 - (b) a member of a committee of that council who is not a councillor of that council.
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**PART 6—PROHIBITION OF OTHER CONDUCT AND
VICARIOUS LIABILITY FOR DISCRIMINATION**

Division 1—Victimisation

96. *Prohibition of victimisation*

A person must not victimise another person.

97. *What is victimisation?*

- (1) A person victimises another person if the person subjects or threatens to subject the other person to any detriment because the other person, or a person associated with the other person—
- (a) has made a complaint against any person;
 - (b) has brought any other proceedings under this Act against any person;
 - (c) has given evidence or information, or produced a document, in connection with any proceedings under this Act;
 - (d) has attended a preliminary conference under Part 7;
 - (e) has otherwise done anything in accordance with this Act in relation to any person;
 - (f) has alleged that any person has contravened a provision of Part 3, 5 or 6, unless the allegation is false and was not made in good faith;
 - (g) has refused to do anything that would contravene a provision of Part 3, 5 or 6—

or because the person believes that the other person or the associate has done or intends to do any of those things.

- (2) It is sufficient for sub-section (1)(f) that the allegation states the act or omission that would constitute the contravention without actually stating that this Act, or a provision of this Act, has been contravened.
- (3) In determining whether a person victimises another person it is irrelevant—
 - (a) whether or not a factor in sub-section (1) is the only or dominant reason for the treatment or threatened treatment as long as it is a substantial reason;
 - (b) whether the person acts alone or in association with any other person.

Division 2—Authorising or assisting discrimination

98. *Prohibition of authorising or assisting discrimination*

A person must not request, instruct, induce, encourage, authorise or assist another person to contravene a provision of Part 3, 5 or 6.

99. *Liability of person who authorises or assists*

If, as a result of a person doing any of the things specified in section 98, the other person contravenes a provision of Part 3, 5 or 6, both persons must be taken to have contravened the provision and a complaint about the contravention may be lodged against either or both of them.

Division 3—Discriminatory requests for information

100. *Prohibition on requesting discriminatory information*

- (1) A person must not request or require another person to supply information that could be used by the first person to form the basis of discrimination against the other person.

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- (2) For the purpose of sub-section (1) it is irrelevant whether the request or requirement is made orally, in writing, in an application form or otherwise.

101. *Exception—information required for non-discriminatory purposes*

A person does not contravene section 100 if the information is reasonably requested or required for a purpose that does not or would not involve or lead to a contravention of this Act.

Division 4—Vicarious liability

102. *Vicarious liability of employers and principals*

If a person in the course of employment or while acting as an agent—

- (a) contravenes a provision of Part 3, 5 or 6; or
- (b) engages in any conduct that would, if engaged in by the person's employer or principal, contravene a provision of Part 3, 5 or 6—

both the person and the employer or principal must be taken to have contravened the provision, and a complaint about the contravention may be lodged against either or both of them.

103. *Exception to vicarious liability*

An employer or principal is not vicariously liable for a contravention of a provision of Part 3, 5 or 6 by an employee or agent if the employer or principal proves, on the balance of probabilities, that the employer or principal took reasonable precautions to prevent the employee or agent contravening the Act.

PART 7—COMPLAINTS AND THEIR RESOLUTION

Division 1—Making a complaint

104. *Who may complain?*

- (1) The following may complain to the Commission—
 - (a) a person who claims that another person has contravened a provision of Part 3, 5 or 6 in relation to that person;
 - (b) if that person is unable to complain because of impairment—
 - (i) a person authorised by that person to act on his or her behalf; or
 - (ii) if that person is unable to authorise another person, any other person on his or her behalf;
 - (c) if that person is a child—
 - (i) the child; or
 - (ii) a parent of the child on the child's behalf; or
 - (iii) if the Commission is satisfied that the child or a parent of the child so consents, any other person on the child's behalf.
- (2) An authorisation under sub-section (1)(b)(i) may be given—
 - (a) in writing; or
 - (b) in any other manner approved by the Commission.

S. 104(3)
re-numbered
as s. 104(2) by
No. 22/1996
s. 11(3)(a).

(3) Two or more people may complain jointly.

S. 104(4)
re-numbered
as s. 104(3) by
No. 22/1996
s. 11(3)(b).

(4) It is not necessary for the alleged contravention to relate exclusively to the complainant.

S. 104(5)
re-numbered
as s. 104(4) by
No. 22/1996
s. 11(3)(c).

105. *How to complain*

- (1) A person complains to the Commission by lodging a written complaint with the Commission by hand, facsimile or other electronic transmission or post.
- (2) A complaint must set out details of the alleged contravention.

106. *Commission must assist complainants*

The Commission must assist a complainant in formulating his or her complaint.

Division 2—Procedure after a complaint is made

107. *Commission must notify respondent*

The Commission must notify the respondent in writing of the complaint as soon as practicable after receiving it.

108. *Commission may decline to entertain some complaints*

- (1) If the Commission considers that a complaint—
 - (a) is frivolous, vexatious, misconceived or lacking in substance; or
 - (b) involves subject matter that would be more appropriately dealt with by a tribunal (other than the Tribunal) or a court; or
- (ba) involves subject matter that has been adequately dealt with by a tribunal or court;

S. 108(1)
amended by
No. 84/1997
s. 23(1)(b).

S. 108(1)(ba)
inserted by
No. 84/1997
s. 23(1)(a).

Equal Opportunity Act 1995
Act No. 42/1995

or

- (c) relates to an alleged contravention of the Act that took place more than 12 months before the complaint was lodged—

the Commission may decline to entertain the complaint by notifying the complainant and the respondent in writing within 60 days after the day the complaint was lodged.

S. 108(1A)
inserted by
No. 84/1997
s. 23(2).

- (1A) Before declining to entertain a complaint, the Commission may, by written notice, invite any person—

- (a) to attend before the Commission, or a member or member of staff of the Commission, for the purpose of discussing the subject matter of the complaint;
- (b) to produce any documents specified in the notice.

S. 108(1B)
inserted by
No. 84/1997
s. 23(2).

- (1B) The period of 60 days referred to in sub-section (1) is suspended while any application to the Tribunal under section 109 in relation to the complaint is pending.
- (2) Within 60 days after receiving the Commission's notice declining to entertain a complaint, the complainant, by written notice, may require the Commission to refer the complaint to the Tribunal for hearing under Division 7.
- (3) The Commission must comply with a notice under sub-section (2).
- (4) If the complainant does not notify the Commission under sub-section (2), the Commission may dismiss the complaint and the complainant may take no further action under this Act in relation to the subject matter of the complaint.
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(5) As soon as possible after a dismissal under sub-section (4), the Commission must, by written notice, notify the complainant and the respondent of the dismissal.

S. 108(5)
inserted by
No. 84/1997
s. 23(3).

(6) The Commission may, by notice in writing given to the complainant and the respondent, extend the period of 60 days referred to in sub-section (1) by a period not exceeding 10 days if the Commission considers it necessary or desirable to do so in the interests of justice or fairness.

S. 108(6)
inserted by
No. 84/1997
s. 23(3).

109. Respondent may apply to Tribunal to strike out complaint or any part of complaint

(1) A respondent may apply in writing to the Tribunal to have a complaint or any part of it struck out on the grounds that it is frivolous, vexatious, misconceived or lacking in substance.

S. 109(1)
amended by
No. 84/1997
s. 24(1).

(2) The application may be made at any time—

S. 109(2)
substituted by
No. 84/1997
s. 24(2).

(a) before the respondent has been given a notice to attend under section 114(2)(a) or has otherwise been notified by the Commission or the Chief Conciliator of a date for conciliation; or

(b) after the conciliation has been completed and before the Tribunal commences to hear the complaint.

(3) The Tribunal must begin to hear the application within 14 days after receiving it and must determine it as expeditiously as possible.

(4) In determining the application—

(a) the Tribunal must allow both the complainant and the respondent the opportunity to make both oral and written submissions;

(b) in all other respects—

S. 109(5)
substituted by
No. 84/1997
s. 24(3).

- (i) the procedure of the Tribunal is at its own discretion;
- (ii) Division 8, other than sections 141, 142, 146, 148 and 149, does not apply.

- (5) The Tribunal must, by written notice, notify the Commission as soon as practicable of the result of an application under this section.

110. *Commission may dismiss a stale complaint*

S. 110(1A)
inserted by
No. 84/1997
s. 25.

- (1) The Commission may dismiss a complaint if the Commission has had no substantive response from the complainant in the period of 12 months following a request by the Commission for a response in relation to the complaint.
- (1A) As soon as possible after a dismissal under sub-section (1), the Commission must, by written notice, notify the complainant and the respondent of the dismissal.
- (2) A complainant may take no further action under this Act in relation to the subject matter of a complaint dismissed under this section.

111. *Minister may refer a complaint direct to Tribunal*

If the Minister considers that the subject matter of a complaint raises an issue of important public policy, the Minister may refer the complaint direct to the Tribunal to be heard under Division 7, whether or not the Commission has considered it or the complaint is in the process of being conciliated.

112. *Commission to refer complaints for conciliation*

- (1) If the Commission considers it reasonably possible that a complaint may be conciliated successfully the Commission must refer the complaint to the Chief Conciliator.
 - (2) Sub-section (1) does not apply to a complaint—
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- (a) that the Commission has declined to entertain under section 108 or dismissed under section 110;
 - (b) that the Minister has referred to the Tribunal under section 111;
 - (c) if an application to the Tribunal by a respondent under section 109 is pending.

113. *What happens if conciliation is inappropriate?*

- (1) If the Commission does not consider it reasonably possible that a complaint may be conciliated successfully it must notify the complainant and the respondent in writing.
- (2) Within 60 days after receiving the Commission's notice under sub-section (1), the complainant, by written notice, may require the Commission to refer the complaint to the Tribunal for hearing under Division 7.
- (3) The Commission must comply with a notice from the complainant under sub-section (2).
- (4) If the complainant does not notify the Commission under sub-section (2), the Commission may dismiss the complaint and the complainant may take no further action under this Act in relation to the subject matter of the complaint.
- (5) As soon as possible after a dismissal under sub-section (4), the Commission must, by written notice, notify the complainant and the respondent of the dismissal.

S. 113(1)
amended by
No. 84/1997
s. 26(1).

S. 113(5)
inserted by
No. 84/1997
s. 26(2).

Division 3—Conciliation of Complaints

114. *Conciliation by the Chief Conciliator*

Equal Opportunity Act 1995
Act No. 42/1995

- (1) The Chief Conciliator must make all reasonable endeavours to conciliate a complaint referred to him or her under section 112 or 122.
- (2) The Chief Conciliator may, by written notice, require any person—
 - (a) to attend before him or her for the purpose of discussing the subject matter of the complaint;
 - (b) to produce any documents specified in the notice.

115. Conciliation agreements

- (1) If, following conciliation, the parties to the complaint reach agreement with respect to the subject matter of the complaint—
 - (a) at the request of any party made within 30 days after agreement is reached, a written record of the agreement is to be prepared by the parties or the Chief Conciliator; and
 - (b) the record must be signed by or on behalf of each party and certified by the Chief Conciliator; and
 - (c) the Chief Conciliator must give each party a copy of the signed and certified record.
- (2) Any party, after notifying in writing the other party, may lodge a copy of the signed and certified record with the President for registration.
- (3) Subject to sub-section (4), the President must register the record and give a certified copy of the registered record to each party.
- (4) If the President considers that it may not be practicable to enforce, or to supervise compliance with, a conciliation agreement, the President may refuse to register the record of agreement.

S. 115(1)(a)
amended by
No. 84/1997
s. 27(1).

S. 115(2)
substituted by
No. 84/1997
s. 27(2).

S. 115(3)
substituted by
No. 84/1997
s. 27(2).

S. 115(4)
inserted by
No. 84/1997
s. 27(2).

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- (5) On registration, the record must be taken to be an order of the Tribunal in accordance with its terms and may be enforced accordingly.
 - (6) The refusal of the President to register the record does not affect the validity of the agreement.

S. 115(5)
inserted by
No. 84/1997
s. 27(2).

S. 115(6)
inserted by
No. 84/1997
s. 27(2).

116. *Evidence of conciliation is inadmissible*

Evidence of anything said or done in the course of a conciliation is not admissible in proceedings before the Tribunal or any other legal proceedings relating to the subject matter of the complaint.

117. *What happens if conciliation fails or is inappropriate?*

- (1) If the Chief Conciliator—
 - (a) does not consider it reasonably possible that a complaint may be conciliated successfully;
or
 - (b) has attempted unsuccessfully to conciliate the complaint—

S. 117(1)
amended by
No. 84/1997
s. 28(1).

he or she must notify the complainant and the respondent in writing and the Commission.

- (2) Within 60 days after receiving a notice under sub-section (1), the complainant, by written notice, may require the Commission to refer the complaint to the Tribunal for hearing under Division 7.
- (3) The Commission must comply with a notice from the complainant under sub-section (2).
- (4) If the complainant does not notify the Commission under sub-section (2), the Commission may dismiss the complaint and the complainant may take no further action under this Act in relation to the subject matter of the complaint.

S. 117(5)
inserted by
No. 84/1997
s. 28(2).

- (5) As soon as possible after a dismissal under subsection (4), the Commission must, by written notice, notify the complainant and the respondent of the dismissal.

118. *Complaints about the conduct of conciliation*

- (1) Any party to a conciliation may make a written complaint to the Commission about the method of conducting the conciliation, either during the course of the conciliation or after the conciliation has been completed.
- (2) If the complaint is made during the conciliation, the Commission may—
- (a) investigate the complaint;
 - (b) issue directions about how to proceed with the conciliation.
- (3) If the complaint is made after the conciliation has been completed, the Commission may—
- (a) investigate the complaint;
 - (b) issue directions about how to conduct any future conciliation—
- but the Commission may not interfere with the outcome of the conciliation.

Division 4—Expedited complaints

119. *Application to have a complaint expedited*

- (1) A complainant or respondent may apply in writing to the Commission for a determination that the complaint be expedited.
- (2) Within 10 days after receiving an application for expedition, the Commission must—
- (a) determine the application;

S. 119(2)
amended by
No. 84/1997
s. 29.

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- (b) give a copy of the determination to the complainant and the respondent.

120. *Grounds for expediting a complaint*

- (1) The Commission may determine that a complaint be expedited only if the Commission considers it reasonably possible that the complaint may be conciliated successfully and—
- (a) if the application for expedition is made by a complainant, that there are special circumstances requiring a speedy resolution of the complaint;
 - (b) if the application for expedition is made by a respondent, that the complaint relates to a policy decision of the respondent, the implementation or proposed implementation of which is alleged to be discriminatory.
- (2) Without limiting the generality of sub-section (1)(a), special circumstances must be taken to exist if the complaint—
- (a) relates to an emergency health matter;
 - (b) relates to sexual harassment in employment and that employment is continuing in the same or similar circumstances.

S. 120(1)
amended by
No. 84/1997
s. 40(b).

121. *Review of Commission's determination*

- (1) A respondent or complainant may apply in writing to the Tribunal for review of the Commission's determination under section 119.
- (2) The application must be made within 7 days after the applicant is given a copy of the determination.
- (3) The Tribunal must begin to hear the application within 14 days after receiving it and must determine it as expeditiously as possible.

- (4) In determining the application—
- (a) the Tribunal must allow both the complainant and the respondent the opportunity to make both oral and written submissions;
 - (b) in all other respects—
 - (i) the procedure of the Tribunal is at its own discretion;
 - (ii) Division 8, other than sections 141, 142, 146, 148 and 149, does not apply.

S. 121(5)
repealed by
No. 84/1997
s. 30.

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122. *Time limits for conciliation of expedited complaints*

- (1) The Commission must refer an expedited complaint to the Chief Conciliator, and the Chief Conciliator must commence conciliation of the complaint, as soon as practicable after the Commission or the Tribunal has determined that it is an expedited complaint.
- (2) Subject to this section, if the conciliation has not been successfully completed within 30 days after that determination, the Chief Conciliator must notify the Commission and the parties.
- (3) If the Chief Conciliator receives notice of an application under section 124, he or she must cease to deal with the complaint until the Tribunal has determined the application.
- (4) If the Tribunal refuses the application, the Chief Conciliator must—
 - (a) commence, or resume, conciliation as soon as practicable after the refusal; and

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- (b) notify the Commission and the parties if the conciliation has not been successfully completed within 30 days after the refusal.
 - (5) If the Tribunal makes an interim order under section 131, the Chief Conciliator must—
 - (a) commence, or resume, conciliation as soon as practicable after the making of the order; and
 - (b) notify the Commission and the parties if the conciliation has not been successfully completed within 30 days after the making of the order.
 - (6) The time period in sub-section (2) is suspended from the time an application referred to in sub-section (4) or (5) is made until the time the Tribunal determines it.

123. *Time limit for referring expedited complaints to Tribunal*

- (1) Within 30 days after receiving notice under section 122(2), (4) or (5), the complainant, by written notice, may require the Commission to refer the complaint to the Tribunal for hearing under Division 7.
- (2) The Commission must comply with a notice from the complainant under sub-section (1).
- (3) If the complainant does not notify the Commission under sub-section (1), the Commission may dismiss the complaint and the complainant may take no further action under this Act in relation to the subject matter of the complaint.
- (4) As soon as possible after a dismissal under sub-section (3), the Commission must, by written notice, notify the complainant and the respondent of the dismissal.

S. 123(4)
inserted by
No. 84/1997
s. 31.

124. Party may apply for referral to Tribunal without conciliation

- (1) A complainant or respondent may apply in writing to the Tribunal to have an expedited complaint referred to the Tribunal for hearing under Division 7 without the complaint going to conciliation.
- (2) The application must be made within 7 days after the applicant is given notice under section 114(2) to attend the conciliation.
- (3) The Tribunal must begin to hear the application within 14 days after receiving it and must determine it as expeditiously as possible.
- (4) In determining the application—
 - (a) the Tribunal must allow both the complainant and the respondent the opportunity to make both oral and written submissions;
 - (b) in all other respects—
 - (i) the procedure of the Tribunal is at its own discretion;
 - (ii) Division 8, other than sections 141, 142, 146, 148 and 149, does not apply.

S. 124(5)
repealed by
No. 84/1997
s. 30.

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Division 5—Special complaints

125. What is a special complaint?

A special complaint is—

- (a) a complaint that has been referred to the Tribunal by the Minister under section 111; or
- (b) a complaint the resolution of which may have significant social, economic or financial effects on the community or a section of the community; or
- (c) a complaint the subject matter of which involves issues of a particular complexity and the resolution of which may establish important precedents in the interpretation or application of this Act.

126. *Referral of special complaints to Supreme Court*

- (1) If a party to a complaint considers the complaint to be a special complaint, the party, by written notice, may require the Tribunal to refer the complaint to the Supreme Court for determination under this Division.
- (2) A notice under sub-section (1) may be given at any time after the complaint has been referred to the Tribunal by the Commission or the Minister, or the Tribunal has determined under section 124 to hear the complaint, but before the Tribunal has made an order under section 136 in relation to the complaint.
- (3) The Tribunal must comply with a notice from a party under sub-section (1).

127. *Supreme Court to determine whether complaint is a special complaint*

Equal Opportunity Act 1995

Act No. 42/1995

- (1) If a complaint is referred to the Supreme Court under section 126, the Court must determine whether or not it is a special complaint.
- (2) If the Supreme Court determines that the complaint is not a special complaint, the Court—
 - (a) must order that the complaint be referred back to the Tribunal; and
 - (b) must order that all costs relating to the referral of the complaint to the Court be paid by the party that required the referral.
- (3) The costs referred to in sub-section (2)(b) include—
 - (a) the costs reasonably incurred by each party as a result of the referral; and
 - (b) any other pecuniary loss incurred by each party because of the referral.

128. *Procedure if Supreme Court determines complaint is a special complaint*

- (1) If the Supreme Court determines that a complaint referred to it under section 126 is a special complaint, the Court must hear and determine the complaint and, for that purpose—
 - (a) the Court may make any order that the Tribunal could have made under section 136 in relation to the complaint;
 - (b) in making an order under paragraph (a) the Court must have regard to the factors in sub-section (2);
 - (c) the Court may make any interim order that the Tribunal could have made under section 137;
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- (d) Division 8 applies to the hearing as if a reference to the Tribunal in that Division were a reference to the Court.
 - (2) The factors referred to in sub-section (1)(b) are—
 - (a) the extent to which the complaint involves complex issues of policy, administration or resource allocation (whether in the private or public sector) that are unsuitable for resolution by an order requiring particular action to be taken or not taken; and
 - (b) the extent to which an order would require continued supervision by the Court, or would tend to promote the taking of further proceedings for its enforcement.
 - (3) Nothing in sub-section (2) limits the power of the Court to order the respondent to pay compensation in accordance with section 136(a)(ii).

129. *Costs of special complaint proceedings*

- (1) Subject to this section, the Supreme Court may order the payment of costs in any proceeding under section 128.
 - (2) If the special complaint was required to be referred to the Court by a party that is the State, an agency of the State or a person funded in whole or part by the State, the Court, unless there are special circumstances and regardless of which party succeeds before the Court, must order that party to pay an amount fixed by the Court that reasonably reflects the additional costs incurred by the other party as a result of the complaint having being heard and determined by the Supreme Court instead of the Tribunal.
 - (3) Sub-section (2) is in addition to, and does not affect, the Supreme Court's power, in a proceeding
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under section 128, to make any other order for costs in favour of a successful party.

- (4) Unless there are special circumstances, costs ordered under sub-section (1) must reflect—
- (a) the costs reasonably incurred by the person in whose favour the order for costs is made; and
 - (b) any other pecuniary loss incurred by the person because of the proceedings.

130. *Appeal to Court of Appeal*

Any party to proceedings before the Supreme Court under this Division may appeal to the Court of Appeal, on a question of law, from an order of the Supreme Court in those proceedings, not later than 30 days after that order was made.

Division 6—Interim orders and preliminary conferences

131. *Tribunal may make interim orders before hearing*

- (1) A complainant or the Commission may apply to the Tribunal for an interim order to prevent any party to the complaint from acting in a manner prejudicial to negotiations or conciliation or to any decision or order the Tribunal might subsequently make.
 - (2) An application may be made at any time before the complaint is referred to the Tribunal.
 - (3) In making an interim order, the Tribunal must have regard to—
 - (a) whether or not the complainant has established a prima facie case with respect to the complaint; and
 - (b) any possible detriment or advantage to the public interest in making the order; and
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- (c) any possible detriment to the complainant's case if the order is not made.
- (4) An interim order applies for the period, not exceeding 28 days, specified in it and may be extended from time to time by the Tribunal.

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S. 131(5)
repealed by
No. 84/1997
s. 30.

132. *Preliminary conferences*

- (1) Before the Tribunal proceeds to hear a complaint under Division 7, the Tribunal may authorise a member to hold a preliminary conference of the parties.
- (2) A preliminary conference may be held—
- (a) to clarify the nature or form of the complaint or identity of the parties;
 - (b) to permit an amendment to the complaint;
 - (c) to refer any matter to the Commission for investigation, negotiation or conciliation;
 - (d) to direct the parties to lodge written submissions with the Tribunal on any matter;
 - (e) to enable a party to give notice—
 - (i) that the party intends to raise questions regarding the jurisdiction of the Tribunal;
 - (ii) that the party intends to seek the leave of the Tribunal to be represented;
 - (iii) that the party intends to request that the whole or any part of the hearing be conducted in private;
 - (f) to enable a party to seek the issue of summonses to witnesses to appear before the
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Tribunal or for the production of documents to the Tribunal.

- (3) Unless the Tribunal otherwise directs, a preliminary conference must be held in private.
- (4) If at a preliminary conference the parties agree on a resolution of the complaint or any part of it, the Tribunal may make an order giving effect to that agreement.

133. *Party may object to member hearing the complaint*

- (1) A party to a complaint, or a representative of a party, who was present at a preliminary conference concerning that complaint may object to the Tribunal member who held the preliminary conference being on the panel constituting the Tribunal hearing the complaint.
- (2) The objection must be made to the Tribunal before or at the commencement of the hearing of the complaint.
- (3) If an objection is made the member must take no further part in the hearing and, if necessary, the panel must be reconstituted.

Division 7—Jurisdiction of the Tribunal

134. *When may the Tribunal hear a complaint?*

- (1) The Tribunal may hear a complaint—
 - (a) referred to it by the Commission under section 108, 113, 117 or 123;
 - (b) referred to it by the Minister under section 111;
 - (c) that it has determined under section 124 to hear without conciliation having occurred.
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- (2) The Tribunal also has the jurisdiction conferred by sections 109, 121, 124, 131, 132 and 159.

135. *Time limits for expedited complaints*

- (1) The Tribunal must commence hearing a complaint within 30 days after its referral to the Tribunal if—
- (a) the complaint was referred to it by the Minister under section 111; or
 - (b) the complaint is an expedited complaint.
- (2) The Tribunal must commence to hear an expedited complaint that it has determined under section 124 to hear without conciliation within 30 days after making that determination.
- (3) The President may extend the period of 30 days under sub-section (1) or (2) by one further period of not more than 30 days.

136. *What may the Tribunal decide?*

After hearing the evidence and representations that the parties to a complaint desire to adduce or make, the Tribunal may—

- (a) find the complaint or any part of it proven and make any one or more of the following orders—
 - (i) an order that the respondent refrain from committing any further contravention of this Act in relation to the complainant;
 - (ii) an order that the respondent pay to the complainant within a specified period an amount the Tribunal thinks fit to compensate the complainant for loss, damage or injury suffered in consequence of the contravention;

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- (iii) an order that the respondent do anything specified in the order with a view to redressing any loss, damage or injury suffered by the complainant as a result of the contravention; or
 - (b) find the complaint or any part of it proven but decline to take any further action in the matter; or
 - (c) find the complaint or any part of it not proven and make an order that the complaint or part be dismissed.

S. 137
amended by
No. 84/1997
s. 32.

137. *Tribunal may make interim orders during hearing*

The Tribunal in the course of a hearing, may make an interim order to prevent any party to the proceedings from acting in a manner prejudicial to any decision or order the Tribunal might subsequently make.

138. *Order for costs*

- (1) The Tribunal may order the payment of costs fixed by the Tribunal in any proceedings before the Tribunal.
- (2) In making an order for costs, the Tribunal, unless there are special circumstances, must fix a sum that reflects—
 - (a) the costs reasonably incurred by the person in whose favour the order for costs is made; and
 - (b) any other pecuniary loss incurred by that person because of the proceedings.
- (3) The Tribunal may order that bills of costs be assessed or settled by the Registrar.

S. 138(3)
amended by
No. 35/1996
s. 453(Sch. 1
item 27).

139. *Tribunal must give reasons*

The Tribunal, on the request of a party to any proceedings before it, must give written reasons to that party for any order it makes in relation to those proceedings.

140. *Enforcement of monetary orders*

- (1) The person to whom payment is to be made under an order referred to in section 132(4) or 136(a)(ii), an order for costs under section 138 or a record of agreement registered under section 115, may enforce that order or record by filing—
 - (a) a copy of the order or record certified by the President or the Registrar to be a true copy; and
 - (b) that person's affidavit as to the amount not paid under the order or record—
free of charge in the Magistrates' Court, the County Court or the Supreme Court.
- (2) On filing, the order or record must be taken to be an order requiring the payment of money duly made by the court in which it was filed, and may be enforced accordingly.
- (3) An order or record may be filed only once under sub-section (1).

S. 140(1)
amended by
No. 84/1997
s. 33(a)(b).

Division 8—Procedure of the Tribunal

141. *Tribunal must act fairly*

The Tribunal must act fairly and according to the substantial merits of the case in all proceedings before it.

142. *Tribunal is not bound by the rules of evidence*

- (1) Except to the extent it determines, the Tribunal is not bound by the rules of evidence or by practices and procedures applicable to courts of record.
- (2) Without limiting the generality of sub-section (1), the Tribunal may admit into evidence the contents of any document despite the non-compliance with any time limit or other requirement prescribed by the regulations in relation to that document or service of it.

143. *Proceedings to be public unless Tribunal orders otherwise*

- (1) Subject to section 132 and this section, all hearings of the Tribunal must be held in public.
- (2) The Tribunal may, of its own motion or on the application of any party to the proceedings, direct that a hearing or any part of it be held in private.
- (3) The Tribunal may order—
 - (a) that any evidence given before it;
 - (b) that the contents of any documents produced to it;
 - (c) that any information that might enable a person who has appeared before it to be identified—

must not be published except in the manner and to the persons specified by the Tribunal.

144. *Who may appear before the Tribunal?*

- (1) A person may appear before the Tribunal—
 - (a) personally; or
 - (b) if the person is a body corporate or an unincorporated association, by a director, secretary or other officer; or

(c) with the leave of the Tribunal, by a lawyer or other representative.

(2) If the Tribunal gives leave, a person may be assisted in proceedings before it by an interpreter or such other person the Tribunal considers necessary or desirable to make the proceedings intelligible to that person.

145. *Tribunal may join other parties or grant leave to intervene*

If the Tribunal considers that a person ought to be bound by, or have the benefit of, the Tribunal's determination, or is otherwise legitimately interested in proceedings before the Tribunal, the Tribunal may—

- (a) direct that the person be joined as a party; or
- (b) grant the person leave to intervene.

146. *Tribunal may amend the complaint*

The Tribunal may make any technical amendments to the complaint in proceedings before it that it sees fit.

147. *Tribunal must give notice of proceedings and allow witnesses*

- (1) The Tribunal must give a party to proceedings before it—
 - (a) reasonable notice of the time and place at which it intends to hear those proceedings; and
 - (b) a reasonable opportunity to—
 - (i) call or give evidence;
 - (ii) examine, cross-examine or re-examine witnesses;
 - (iii) make submissions to the Tribunal.

- (2) If a person to whom notice has been given under sub-section (1) does not attend at the time and place specified in the notice, the Tribunal may hear the proceedings in the person's absence.

148. *Tribunal may take evidence on oath or affirmation*

- (1) The Tribunal may take evidence on oath or affirmation and, for that purpose, a member of the Tribunal or the Registrar may administer an oath or affirmation.
- (2) A member may summon a person, on reasonable notice, to appear before the Tribunal to give evidence and to produce any documents that are specified in the summons.

149. *Tribunal may retain and copy documents*

The Tribunal may retain for a reasonable period and may make copies of, or take extracts from, any document produced to the Tribunal in the course of proceedings before it.

Division 9—Appeals from the Tribunal

150. *Who may appeal?*

- (1) Any party to proceedings before the Tribunal may appeal to the Supreme Court, on a question of law, from an order of the Tribunal in those proceedings.
- (2) For the purposes of the appeal—
- (a) the relevant order is to be treated as if it were a final order of the Magistrates' Court;
- (b) subject to sub-section (3), section 109 of the **Magistrates' Court Act 1989** applies as if a reference in that section to the Court were a reference to the Tribunal.
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- (3) If the Tribunal's written reasons are not given at the time of making the relevant order and a party then requests the Tribunal to state its reasons in writing, the time for instituting the appeal¹ runs from the time when the party receives the written reasons.

151. *Appellant must notify the other parties*

- (1) Before instituting an appeal, the party intending to appeal must notify in writing every other party to the proceedings and the Registrar of that party's intention to appeal.
- (2) A failure to comply with sub-section (1) does not, of itself, render the appeal a nullity.

152. *Tribunal may state special case for Supreme Court*

- (1) If a question of law arises in proceedings before the Tribunal, the Tribunal may reserve the question in the form of a special case stated for the opinion of the Supreme Court.
- (2) The Tribunal may state a special case of its own motion or on the application of a party to the proceedings.
- (3) If a special case has been stated, the Tribunal must not—
- (a) determine the matter until the opinion of the Supreme Court has been given; and
 - (b) proceed in a manner or make a determination that is inconsistent with that opinion.

Division 10—General

153. *Reconstitution of Tribunal*

- (1) If the Tribunal, constituted by a panel under section 182, has commenced or completed to hear any proceedings but, before the subject matter of

the proceedings has been determined, a member of the panel (other than the presiding member) has ceased to be a member or has ceased to be available for the purposes of the proceedings—

- (a) the hearing and determination, or the determination, of the proceedings may be completed by the Tribunal constituted by the remaining members of the panel, if the parties agree; or
 - (b) otherwise, the President may convene a new panel to re-hear the proceedings.
- (2) In a re-hearing, the Tribunal, for the purposes of those proceedings, may have regard to any record of the proceeding before the Tribunal as previously constituted, including a record of any evidence taken in the proceedings.

154. *Directions*

- (1) The Tribunal or the President may give directions as to any matter or thing not provided for by this Act or the regulations in relation to any proceedings or inquiry before the Tribunal.
- (2) Directions may be given on the motion of any party to the proceedings or on the initiative of the Tribunal or the President.
- (3) The Tribunal, by order, may dismiss a complaint if the complainant fails to comply with a direction of the Tribunal or the President under this section.

S. 154(3)
inserted by
No. 84/1997
s. 34.

155. *Time limits*

The Tribunal may extend or abridge any time fixed by the regulations for the doing of any act, if the Tribunal considers it necessary or desirable to do so in the interests of justice or fairness.

**PART 8—INVESTIGATIONS BY THE COMMISSION AND
TRIBUNAL**

156. *How may an investigation be initiated?*

- (1) If the Tribunal becomes aware of circumstances where a contravention of Part 3, 5 or 6 may have occurred (other than an alleged contravention that is the subject of proceedings before the Tribunal), the Tribunal may refer the matter to the Commission for investigation.
- (2) If, in the course of performing its functions under section 162, the Commission becomes aware of circumstances where a contravention of Part 3, 5 or 6 may have occurred, the Commission may, with the consent of the Minister, investigate the matter.
- (3) If, in the course of dealing with a complaint or investigating a matter under sub-section (1) or (2), the Commission becomes aware of circumstances where a contravention of Part 3, 5 or 6 may have occurred (other than the contravention alleged in the complaint or the contravention being investigated), the Commission may investigate those circumstances.

157. *What matters may be investigated?*

- (1) A matter may be investigated under section 156(1) or (2) only if—
 - (a) it is of such a serious nature that it warrants the investigation; and
 - (b) it concerns a possible contravention in relation to a class or group of people; and

(c) the circumstances are such that the lodging of a complaint by one person only would not be appropriate.

(2) Any matter may be investigated under section 156(3).

158. *How is an investigation conducted?*

- (1) The Commission is to conduct an investigation under this Part in the same manner, as nearly as practicable, as if it were a complaint.
- (2) If the Commission, after investigation, is satisfied that a person has contravened Part 3, 5 or 6, the Commission must make all reasonable endeavours to conciliate the matter.
- (3) If the Commission—
 - (a) does not consider it reasonably possible that the matter may be conciliated successfully; or
 - (b) has attempted unsuccessfully to conciliate the matter—the Commission must refer the matter to the Tribunal.
- (4) Evidence of anything said or done in the course of conciliation under this section is not admissible in proceedings before the Tribunal, or any other proceedings, relating to the matter.

159. *Inquiries and orders by the Tribunal*

- (1) If a matter has been referred to the Tribunal under section 158(3), the Tribunal must inquire into the matter and, if satisfied that a person has contravened Part 3, 5 or 6, may make either or both of the following orders—
 - (a) an order that the person refrain from acting in contravention of this Act;
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- (b) an order that the person do anything specified in the order with a view to eliminating future contravention of this Act or redressing circumstances that have arisen from the contravention.
- (2) The provisions of Divisions 8, 9 and 10 of Part 7 apply to an inquiry under this section as if it were a proceeding under that Part.
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PART 9—ADMINISTRATION

Division 1—The Commission

160. *Continuation of Commission*

- (1) There continues to be an Equal Opportunity Commission.
- (2) The Commission—
 - (a) is a body corporate with perpetual succession;
 - (b) has a common seal;
 - (c) may sue and be sued in its corporate name;
 - (d) may acquire, hold and dispose of real and personal property;
 - (e) may do and suffer all acts and things that a body corporate may, by law, do and suffer.
- (3) The common seal must be kept as directed by the Commission and must not be used except as authorised by the Commission.
- (4) All courts must take judicial notice of the seal of the Commission on a document and, until the contrary is proved, must presume that the seal was properly affixed.
- (5) The Commission is the same body as that established by section 6 of the **Equal Opportunity Act 1984**.

161. *Functions and powers of Commission*

- (1) The Commission has the following functions—
 - (a) to establish policies and issue guidelines and directions on the manner in which conciliation procedures under this Act should be conducted;
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- (b) to receive and investigate complaints on the manner in which conciliation procedures under this Act have been or are being conducted;
 - (c) to establish and undertake information and education programs;
 - (d) any other functions conferred on it by or under this Act or any other Act.
- (2) The Commission has all the powers necessary to enable it to perform its functions.

S. 161(1)(b)
amended by
No. 84/1997
s. 35.

162. *Commission's educative and research functions*

- (1) The Commission must undertake programs for the dissemination of information for the education of the public with respect to—
 - (a) the elimination of discrimination and sexual harassment;
 - (b) the promotion of equality of opportunity;
 - (c) any other matters relevant to the provisions of this Act.
- (2) The Commission may undertake research into any matter arising from, or incidental to, the operation of this Act.
- (3) If the Commission becomes aware of any provision of an Act that discriminates or has the effect of discriminating against any person, the Commission must notify the Minister responsible for administering that provision or Act as soon as practicable.
- (4) The Commission may, at any time, submit a report to the Minister on any matter arising from the performance of the Commission's functions under this section.

163. Membership of Commission

The Commission consists of 5 members, of whom—

- (a) one is the Chief Conciliator;
- (b) the other 4 are persons appointed by the Governor in Council on the nomination of the Minister.

164. Terms of office

- (1) An appointed member of the Commission holds office for the period, not exceeding 5 years, specified in his or her instrument of appointment.
- (2) An appointed member of the Commission is eligible for reappointment.
- (3) The **Public Sector Management Act 1992** (except Part 9 or in accordance with Part 8) does not apply to an appointed member of the Commission in respect of the appointment.

165. Resignation and removal

- (1) An appointed member of the Commission ceases to be a member if he or she is absent, without leave having been granted by the Commission, from 3 consecutive meetings of which reasonable notice has been given to the member, either personally or by post.
- (2) An appointed member of the Commission may resign the office of member by writing signed by him or her and addressed to the Governor in Council.
- (3) The Governor in Council may at any time remove an appointed member of the Commission from office.

166. Filling casual vacancies

Equal Opportunity Act 1995

Act No. 42/1995

- (1) If an appointed member of the Commission ceases to hold office before his or her term of appointment expires, the Governor in Council, in accordance with this Act on the recommendation of the Minister, may fill the vacant office.
- (2) A member appointed under this section holds office for the rest of the term of appointment of the member whose place he or she fills.

167. Chairperson

- (1) The Governor in Council may appoint an appointed member of the Commission to be the chairperson of the Commission.
- (2) A person appointed as chairperson holds that office for the term specified in the instrument of appointment and is eligible for reappointment.
- (3) A person appointed as chairperson may resign that office by writing signed by the person and addressed to the Governor in Council.
- (4) The Governor in Council may at any time remove a person from the office of chairperson.
- (5) A person appointed as chairperson ceases to hold that office on ceasing to be a member of the Commission.

168. Acting members

- (1) If an appointed member of the Commission is unable to perform the duties or functions of the office, the Governor in Council may appoint a person to act as the member during the period of inability.
 - (2) The Governor in Council—
 - (a) subject to this Act, may determine the terms of appointment of an acting member;
 - (b) may at any time terminate the appointment.
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- (3) While the appointment of an acting member remains in force, the acting member has and may exercise all the powers and perform all the duties and functions of the member.

169. *Payment of members*

- (1) An appointed member of the Commission or acting member, other than a member who is an officer or employee of the public service, is entitled to receive the fees that are fixed from time to time by the Governor in Council for that member.
- (2) Each appointed member of the Commission or acting member is entitled to receive the allowances that are fixed from time to time by the Governor in Council.
- (3) The Governor in Council may fix fees and allowances by reference to regulations or guidelines under the **Public Sector Management Act 1992**.

170. *Procedure of Commission*

- (1) The chairperson must preside at a meeting of the Commission at which he or she is present.
- (2) If the chairperson is not present, the members present may elect a member to preside.
- (3) The person presiding has a deliberative vote and a second or casting vote.
- (4) A majority of the members of the Commission currently holding office constitutes a quorum.
- (5) Subject to this Act, the Commission may regulate its own proceedings.

171. *Effect of vacancy or defect*

An act or decision by the Commission is not invalid only because—

- (a) of a vacancy in its membership; or
- (b) of a defect or irregularity in the appointment of any member; or
- (c) in the case of a person appointed to act as a member, the occasion for his or her acting had not arisen or had ceased.

172. *Delegation by Commission*

The Commission may, in writing, delegate to a member of the Commission any of its powers or functions under this Act other than this power of delegation.

Division 2—Chief Conciliator

173. *Appointment of Chief Conciliator*

There is to be a Chief Conciliator of the Commission appointed by the Governor in Council.

174. *Term of office*

- (1) The Chief Conciliator holds office for the period, not exceeding 5 years, specified in his or her instrument of appointment.
- (2) The Chief Conciliator is eligible for reappointment.
- (3) The **Public Sector Management Act 1992** (except Part 9 or in accordance with Part 8) does not apply to the Chief Conciliator in respect of the appointment.

175. *Resignation and removal*

- (1) The Chief Conciliator may resign that office by writing signed by him or her and addressed to the Governor in Council.
- (2) The Governor in Council may at any time remove the Chief Conciliator from office.

176. *Acting Chief Conciliator*

- (1) If the Chief Conciliator is unable to perform his or her duties or functions, the Governor in Council may appoint a person to act as Chief Conciliator during the period of inability.
- (2) The Governor in Council—
 - (a) subject to this Act, may determine the terms of appointment of an acting Chief Conciliator;
 - (b) may at any time terminate the appointment.
- (3) While his or her appointment remains in force, the acting Chief Conciliator has and may exercise all the powers and perform all the duties and functions of the Chief Conciliator.

177. *Payment of Chief Conciliator*

- (1) The Chief Conciliator is entitled to receive the remuneration and allowances that are fixed from time to time by the Governor in Council.
- (2) The Governor in Council may fix the remuneration and allowances by reference to regulations or guidelines under the **Public Sector Management Act 1992**.

178. *Functions, powers and duties of Chief Conciliator*

- (1) The Chief Conciliator is the chief executive officer of the Commission and has the functions, powers and duties conferred on him or her by this Act.
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- (2) In addition to all other functions, powers and duties, the Chief Conciliator is to administer the affairs of the Commission in accordance with the policies and directions of the Commission.

179. *Delegation by Chief Conciliator*

The Chief Conciliator may, in writing, delegate to an officer of the Commission any of his or her powers or functions under this Act other than this power of delegation.

Division 3—Anti-Discrimination Tribunal

180. *Establishment of Tribunal*

- (1) The Anti-Discrimination Tribunal is established.
- (2) The Tribunal consists of—
- (a) a President;
 - (b) the Deputy Presidents (if any);
 - (c) not less than 2 other members—
- appointed by the Governor in Council.

181. *Functions, powers and duties of Tribunal*

The Tribunal has the functions, powers and duties conferred on it by this Act.

182. *Constitution of Tribunal*

- (1) The Tribunal is to be constituted for the purposes set out in sub-section (2) by—
- (a) a single member of the Tribunal, who is a lawyer, nominated by the President; or
 - (b) a panel consisting of 2 or 3 members of the Tribunal nominated by the President, of whom at least one is a lawyer.

S. 182
substituted by
No. 84/1997
s. 36.

- (2) The purposes referred to in sub-section (1) are—
 - (a) granting, reviewing or revoking exemptions under section 83;
 - (b) hearing and determining proceedings under Part 7 (except section 132);
 - (c) referring matters to the Commission under section 156(1);
 - (d) holding inquiries and making orders under section 159.
- (3) If the Tribunal is constituted by a panel—
 - (a) the President must preside over its affairs, if he or she is a member of the panel;
 - (b) if the President is not a member but a Deputy President is, the Deputy President (or, if more than one Deputy President is a member, the Deputy President nominated by the President to preside) must preside over the affairs of the panel;
 - (c) neither the President nor a Deputy President is a member of the panel, the President must nominate a member of the panel to preside over its affairs.

183. *Arrangement of Tribunal business*

The President is responsible for the arrangement of the business of the Tribunal and, subject to this Act and the regulations, may give directions as to the arrangement of that business and the constitution of the Tribunal for the purpose of proceedings and any other business before it.

184. *Appointment of President and Deputy Presidents*

- (1) The Governor in Council must appoint one member of the Tribunal to be the President of the Tribunal.
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- (2) The Governor in Council may appoint as many Deputy Presidents of the Tribunal as is necessary or desirable for the effective operation of the Tribunal.
 - (3) The President and Deputy Presidents must be lawyers of not less than 7 years' standing.
 - (4) A person appointed as President or a Deputy President holds that office for the term specified in the instrument of appointment and is eligible for reappointment.
 - (5) A person appointed as President or a Deputy President may resign that office by writing signed by the person and addressed to the Governor in Council.
 - (6) A person appointed as President or a Deputy President ceases to hold that office on ceasing to be a member of the Tribunal.

185. *Terms of office*

- (1) A member of the Tribunal holds office for the period, not exceeding 3 years, specified in his or her instrument of appointment.
- (2) A member is eligible for reappointment.
- (3) The **Public Sector Management Act 1992** (except Part 9 or in accordance with Part 8) does not apply to a member in respect of that office.

186. *Acting members*

- (1) If the President or a Deputy President is unable to perform the duties of office, or if there is a vacancy in the office, the Governor in Council may appoint a duly qualified person to act as President or Deputy President during the period of inability or until the vacancy is filled.
 - (2) If a member, other than the President or a Deputy President, is unable to perform the duties of
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office, the Governor in Council may appoint a person to act as member during the period of inability.

- (3) The Governor in Council—
 - (a) subject to this Act, may determine the terms of appointment of an acting member;
 - (b) may at any time terminate the appointment.
- (4) While the appointment of an acting member remains in force, the acting member has and may exercise all the powers and perform all the duties and functions of the member.
- (5) If a person has been appointed as an acting member during a period of inability and the member ceases to hold office without having resumed the performance of the duties of office, the person acting may continue to act until—
 - (a) his or her appointment is terminated by the Governor in Council; or
 - (b) the expiration of a period of 12 months after the member ceased to hold office—

whichever is sooner.

187. *Payment of members*

- (1) A member of the Tribunal is entitled to receive the remuneration and allowances that are fixed from time to time by the Governor in Council.
- (2) The Governor in Council may fix the remuneration and allowances by reference to regulations or guidelines under the **Public Sector Management Act 1992**.

188. *Resignation and removal*

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- (1) A member may resign his or her office by writing signed by the member and addressed to the Governor in Council.
 - (2) The Governor in Council may suspend a member from office and, subject to this section, may remove a member from office.
 - (3) The Minister must cause to be laid before each House of the Parliament a full statement of the grounds of any suspension of a member of the Tribunal within 7 sitting days of the House after the suspension.
 - (4) The suspended member must be removed from office by the Governor in Council if each House of the Parliament, within 7 sitting days after the day on which the statement was laid before it, declares by resolution that the member ought to be removed from office.
 - (5) Unless each House of the Parliament makes a declaration under sub-section (4) within the period specified in that sub-section, the Governor in Council must remove the suspension and restore the member to office.

189. *Effect of vacancy or defect*

An act, decision or order of the Tribunal is not invalid only because—

- (a) of a vacancy in its membership; or
- (b) of a defect or irregularity in the appointment of any member; or
- (c) in the case of a person appointed to act as a member, the occasion for his or her acting had not arisen or had ceased.

190. *Meetings of the Tribunal*

Equal Opportunity Act 1995

Act No. 42/1995

- (1) The President must preside at a meeting of the Tribunal at which he or she is present.
- (2) If the President is not present, a Deputy President or, if there are no Deputy Presidents, another member of the Tribunal chosen by the members present must preside.
- (3) The person presiding has a deliberative vote only and if voting is equal the motion is lost.
- (4) A majority of the members of the Tribunal currently holding office constitutes a quorum.
- (5) Subject to this Act, the Tribunal may regulate its own meeting procedure.

Division 4—General provisions for the Commission and Tribunal

S. 191
amended by
No. 84/1997
s. 37(1)(2)
(ILA s. 39B(1)).

191. Registrar and staff

- (1) There are to be appointed under the **Public Sector Management Act 1992** a registrar of the Tribunal and any other staff, including deputy registrars, that are necessary for the purposes of administering this Act.
- (2) A deputy registrar may exercise any of the powers or perform any of the functions of the Registrar.

S. 191(2)
inserted by
No. 84/1997
s. 37(2).

192. Secrecy

- (1) This section applies to every person who is or has been—
 - (a) a member or acting member of the Tribunal;
 - (b) an appointed member or acting member of the Commission;
 - (c) the Chief Conciliator;
-

-
- (d) the Registrar;
 - (e) a member of staff of the Commission or the Tribunal;
 - (f) any other person acting under the authority of the Commission or the Tribunal;
 - (g) a person to whom section 15 of the old Act applied immediately before its repeal.
- (2) This section applies to information concerning the affairs of any person that is or has been obtained by a person to whom this section applies—
- (a) in the course of performing functions or duties or exercising powers under this Act or the old Act; or
 - (b) as a result of another person performing functions or duties or exercising powers under this Act or the old Act.
- (3) A person to whom this section applies must not, either directly or indirectly, make a record of, disclose or communicate to any person any information to which this section applies unless it is necessary to do so for the purposes of, or in connection with, the performance of a function or duty or the exercise of a power under this Act or the old Act.
- Penalty: 10 penalty units.
- (4) A person to whom this section applies must not be required—
- (a) to produce in a court any document containing information to which this section applies; or
 - (b) to disclose or communicate to any court any information to which this section applies—
-

unless it is necessary to do so for the purposes of, or for a prosecution under or arising out of, this Act or the old Act.

(5) In this section—

"court" includes a tribunal, authority or person having power to require the production of documents or the answering of questions;

"old Act" means the **Equal Opportunity Act 1984** as in force immediately before its repeal;

"produce" includes permit access to.

193. *Protection from liability*

(1) This section applies to every person who is or has been—

- (a) a member or acting member of the Tribunal;
- (b) an appointed member or acting member of the Commission;
- (c) the Chief Conciliator;
- (d) the Registrar;
- (e) a member of staff of the Commission or the Tribunal;
- (f) any other person acting under the authority of the Commission or the Tribunal.

(2) A person to whom this section applies is not personally liable for anything done or omitted to be done in good faith—

- (a) in the performance of a function or duty, or the exercise of a power under this Act; or
 - (b) in the reasonable belief that the thing done or omitted to be done was in the performance of a function or duty, or the exercise of a power, under this Act; or
-

-
- (c) in the provision of information or advice in relation to this or any other Act or any Commonwealth Act or any Act of another State or of a Territory.

194. Annual reports

- (1) In its report of operations for a financial year under Part 7 of the **Financial Management Act 1994** the Commission—
- (a) must include information on education programs, research and the review of Acts undertaken under section 162 during that financial year;
 - (b) may contain any recommendations the Commission considers appropriate for the elimination or modification of discriminatory provisions of Acts.
- (2) Within 3 months after the end of each financial year the Tribunal must submit a report to the Minister on the performance of its functions under this Act during that financial year.
- (3) The Minister must cause each report under subsection (2) to be laid before each House of the Parliament within 7 sitting days of that House after it is received by the Minister.
-

PART 10—OFFENCES

Division 1—Discriminatory advertising

195. *Offence of discriminatory advertising*

A person must not—

- (a) publish or display; or
- (b) authorise the publication or display of—

an advertisement or other notice that indicates, or could be reasonably understood as indicating, that any person intends to engage in any conduct that would contravene a provision of Part 3, 5 or 6.

Penalty: 20 penalty units.

196. *Defence*

It is a defence to a charge under section 195 if the defendant proves that the defendant took reasonable precautions and exercised due diligence to prevent the publication or display.

197. *Proceedings for the offence of discriminatory advertising*

- (1) Proceedings for an offence under section 195 may be brought by the Commission.
- (2) For the purpose of those proceedings, the Commission may, by written notice, require any person to produce any documents specified in the notice to the Commission.
- (3) A person must not refuse, without reasonable excuse, to produce a document referred to in subsection (2) to the Commission.

Penalty: 20 penalty units.

Division 2—Other offences

198. *Compliance with orders of Tribunal and conciliation agreements*

S. 198
amended by
No. 84/1997
s. 38(b).

A person must comply with—

- (a) an order of the Tribunal under section 131, 132, 136, 137, 143 or 159;
- (b) a record of agreement registered by the President under section 115.

S. 198(b)
amended by
No. 84/1997
s. 38(a).

Penalty: 20 penalty units and 5 penalty units for each day the non-compliance continues after the making of the order or the registration of the record of agreement.

199. *Failing to appear before Tribunal*

A person who is properly served with a summons to appear as a witness before the Tribunal must not, without reasonable excuse—

- (a) fail to attend as required by the summons;
- (b) fail to appear and report from day to day unless excused or released from attendance by the Tribunal.

Penalty: 20 penalty units.

200. *Failing to give evidence or produce documents*

A person appearing as a witness before the Tribunal must not, without reasonable excuse—

- (a) refuse to be sworn in or make an affirmation;
- (b) refuse to answer a question that the person is required by the person presiding to answer;

- (c) refuse to produce a document that the person was required by the summons to produce.

Penalty: 20 penalty units.

201. *Compliance with notice of Chief Conciliator to attend or produce documents*

A person must comply with a notice of the Chief Conciliator under section 114(2).

Penalty: 20 penalty units.

202. *Contempt of Tribunal or Commission*

A person must not—

- (a) hinder or obstruct a member of the Tribunal or the Commission, a member of staff of the Tribunal or the Commission, or the Chief Conciliator in the exercise of the powers or the performance of the functions of that person under this Act;
- (b) interrupt any proceedings of the Tribunal;
- (c) use insulting language towards a member of the Tribunal or the Commission, a member of staff of the Tribunal or the Commission, or the Chief Conciliator, when that person is exercising powers or performing functions under this Act;
- (d) create a disturbance or take part in creating or continuing a disturbance in or near a place where the Tribunal is sitting;
- (e) do any other thing that would, if the Tribunal were a court of record, constitute a contempt of that court.

Penalty: 20 penalty units.

203. *False or misleading information*

A person must not give any information or make any statement to any person exercising powers or performing functions under this Act if the person knows that the information or statement is false or misleading in any material particular.

Penalty: 20 penalty units.

204. *Protection against self-incrimination*

A person may refuse to give information, answer a question or produce a document under this Act if the giving of the information, the answering of the question or the production of the document would tend to incriminate the person.

205. *Offences are to be dealt with summarily*

An offence against this Act is to be prosecuted summarily.

206. *Who may bring proceedings for offences?*

Proceedings for an offence under this Division or the regulations may be brought by the Commission.

PART 11—GENERAL

207. *Review of Victorian legislation*

The Minister must cause a review of all Acts and enactments (other than municipal council by-laws or local laws) to be undertaken for the purpose of identifying provisions which discriminate, or may lead to discrimination, against any person.

208. *Proceedings against unincorporated associations*

- (1) A complaint or other proceeding under this Act against an unincorporated association may be instituted and carried on against the association in the name of its president, secretary or other similar officer.
- (2) The death, resignation or removal of the person against whom the proceeding was instituted does not affect the continuity of the proceeding and it may be continued against the association in the name of that person's replacement.

209. *Contravention does not create civil or criminal liability*

A contravention of this Act does not create any civil or criminal liability except to the extent expressly provided by this Act.

210. *Protection of people giving evidence and information*

If—

- (a) a complaint has been lodged; or
- (b) a document or any information or evidence has been produced or given to the Commission, the Chief Conciliator or the Tribunal under this Act—

a person is not personally liable for any loss, damage or injury suffered by another person by

reason only of the lodging of the complaint or the production or giving of the document, information or evidence.

211. *Supreme Court—limitation of jurisdiction*

It is the intention of this section to alter or vary section 85 of the **Constitution Act 1975** to the extent necessary to prevent the bringing before the Supreme Court of—

- (a) any action in respect of a person's liability in relation to a matter, if section 47(4), 58(2), 193(2) or 210 provides that the person is not liable in relation to that matter; or
- (b) any action in relation to a complaint dismissed by the Commission under section 108, 110, 113, 117 or 123; or
- (c) any action relating to a complaint where a person has chosen another avenue of review under section 103 of the **Public Sector Management Act 1992** in relation to the same subject matter.

212. *Regulations*

The Governor in Council may make regulations for or with respect to—

- (a) prescribing matters in connection with the procedure of the Tribunal or the exercise of powers by the Commission or the Chief Conciliator;
- (b) prescribing forms for the purposes of this Act;
- (c) prescribing penalties, not exceeding 2 penalty units, for breaches of the regulations;

Equal Opportunity Act 1995
Act No. 42/1995

- (d) generally prescribing any matters or things required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
-

PART 12—REPEALS, AMENDMENTS AND TRANSITIONAL PROVISIONS

213. Definitions

In this Part—

"Board" means the Equal Opportunity Board established by section 8 of the old Act;

"old Act" means the **Equal Opportunity Act 1984** as in force immediately before its repeal.

* * * * *

S. 214
repealed by
No. 84/1997
s. 40(c).

215. Commission members to continue in office

- (1) An appointed member of the Commission who is in office immediately before the commencement of section 214 continues to be a member of the Commission after that commencement for the balance of his or her term of appointment, subject to the terms and conditions of that appointment, but may resign or be removed by the Governor in Council.
- (2) The Chief Conciliator appointed under section 7J of the old Act who is in office immediately before the commencement of section 214 continues to be the Chief Conciliator of the Commission after that commencement for the balance of his or her term of appointment, subject to the terms and conditions of that appointment, but may resign or be removed by the Governor in Council.

216. Board members to become Tribunal members

- (1) The President of the Board who is in office immediately before the commencement of section

214 becomes President of the Tribunal on that commencement, for the balance of his or her term of appointment, subject to the terms and conditions of that appointment, but may resign or be suspended or removed in accordance with section 188 of this Act.

- (2) A member of the Board (other than the President) who is in office immediately before the commencement of section 214 becomes a member of the Tribunal on that commencement for the balance of his or her term of appointment, subject to the terms and conditions of that appointment, but may resign or be suspended or removed in accordance with section 188 of this Act.

217. *Dealing with complaints already lodged*

- (1) Subject to this section, any complaint that has been lodged under section 44 of the old Act but not finally disposed of must continue to be dealt with according to the old Act, as if the old Act had not been repealed.
- (2) Any proceeding in relation to a complaint that is awaiting hearing by the Board at the commencement of this section, or that is referred to the Board after the commencement of this section, is to be heard by the Tribunal, applying the provisions of the old Act, and for that purpose the Tribunal has all the powers, functions and duties of the Board under the old Act.
- (3) If—
- (a) the Board has begun hearing a proceeding in relation to a complaint but has not made a final order in that proceeding; or
 - (b) the Board has made a final order in a proceeding relating to a complaint but, on
-

appeal, the matter is referred back to the Board for a rehearing—

the proceeding or matter is to continue to be heard, or to be reheard, by the Board as if this Act had not been enacted.

- (4) For the purpose of sub-section (3) the Board continues in existence until all proceedings in relation to the complaint, including any appeals from an order of the Board, any re-hearings as a result of such appeals and any action to enforce an order of the Board, have been completed.
- (5) If any difficulty arises in any proceeding or matter because of the operation of this section, the President of the Board or Tribunal (as the case may be) may make any order he or she considers appropriate to resolve the difficulty.
- (6) The President may make such an order on the application of any party to the proceeding or matter, or on his or her own initiative.

218. *Dealing with new complaints*

- (1) A complaint may not be lodged with the Commission in respect of an alleged contravention of the old Act.
- (2) If an alleged contravention of the old Act, if proven, would also have been a contravention of this Act had this Act been in operation at the time, a person may lodge a complaint with the Commission under this Act in relation to the alleged contravention as if this Act had been in operation at the time.
- (3) Sub-section (2) does not apply—
 - (a) if the person had lodged a complaint under the old Act in relation to the same subject matter; or

(b) if the Commission had refused to extend the time for the lodging of a complaint under the old Act in relation to the same subject matter.

(4) This section applies despite anything to the contrary in section 14 of the **Interpretation of Legislation Act 1984**.

219. *Current investigations and inquiries*

(1) Any matter that is under investigation by the Commission under section 41 of the old Act must continue to be dealt with according to the old Act, as if—

(a) the old Act had not been repealed; and

(b) a reference in the old Act to the Board were a reference to the Tribunal.

(2) Any matter that has been referred to the Board under section 42 of the old Act but has not been finally determined must continue to be dealt with according to the old Act, as if—

(a) the old Act had not been repealed; and

(b) a reference in the old Act to the Board were a reference to the Tribunal.

(3) For the purpose of making an order in any inquiry of the Tribunal that had commenced before the Board, the Tribunal may take into account any evidence that had been given to the Board before the commencement of this section.

S. 220
repealed by
No. 84/1997
s. 40(c).

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221. *Temporary exemptions continue*

An exemption granted by the Board under section 40 of the old Act that is in force immediately before the commencement of section 214 continues in force in accordance with its terms until it expires, but may be sooner revoked by the Tribunal.

222. References to the Board

In—

- (a) an Act, other than this Act; or
- (b) an enactment; or
- (c) any other document—

a reference to the Board must be taken to be a reference to the Tribunal in relation to any act, matter or thing occurring on or after the commencement of this section, unless inconsistent with the context or subject matter.

222A. Transitional

- (1) Section 108(1) of the Principal Act, as amended by section 23 of the **Law and Justice Legislation (Further Amendment) Act 1997**, applies to complaints lodged on or after the commencement of that section 23.
- (2) Section 109 of the Principal Act, as amended by section 24(2) of the **Law and Justice Legislation (Further Amendment) Act 1997**, applies to applications made on or after the commencement of that section 24(2).
- (3) A conciliation agreement lodged with the Registrar before the commencement of section 27 of the **Law and Justice Legislation (Further Amendment) Act 1997** is deemed, unless the conciliation was completed before that commencement, to have been registered by the President.

S. 222A
inserted by
No. 84/1997
s. 39.

- (4) Section 115 of the Principal Act, as amended by section 27 of the **Law and Justice Legislation (Further Amendment) Act 1997**, applies to agreements entered into on or after the commencement of that section 27.
- (5) Section 182 of the Principal Act, as in force before the commencement of section 36 of the **Law and Justice Legislation (Further Amendment) Act 1997**, continues to apply, despite its substitution by that section 36—
 - (a) to a referral made, or purported to have been made, by the Tribunal under section 156 of the Principal Act before that commencement; and
 - (b) to appeals or remittals under the Principal Act in relation to such a referral.

Ss 223–225
repealed by
No. 84/1997
s. 40(c).

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Pt 13
(Heading and
s. 226)
repealed by
No. 84/1997
s. 40(c).

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Equal Opportunity Act 1995
Act No. 42/1995

Sch. 1

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Sch. 1
repealed by
No. 84/1997
s. 40(c).

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Sch. 2
amended by
Nos 79/1995
s. 37, 22/1996
s. 12,
repealed by
No. 84/1997
s. 40(c).

NOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 4 May 1995

Legislative Council: 30 May 1995

The long title for the Bill for this Act was "A Bill to re-enact and extend the law relating to equal opportunity and discrimination, to repeal the **Equal Opportunity Act 1984**, to make consequential amendments to other Acts and for other purposes."

Constitution Act 1975:

Section 85(5) statement:

Legislative Assembly: 4 and 25 May 1995

Legislative Council: 30 May 1995

Absolute majorities:

Legislative Assembly: 25 May 1995

Legislative Council: 1 June 1995

The **Equal Opportunity Act 1995** was assented to on 14 June 1995 and came into operation as follows:

Part 1 (sections 1–5) on 14 June 1995: section 2(1); section 224, Schedule 2 item 5 on 5.10.95: Government Gazette 28.9.95 page 2731; rest of Act (*except* sections 115, 225, Schedule 2 item 14) on 1.1.96: Government Gazette 21.12.95 page 3571; section 115, Schedule 2 item 14 on 14.6.96: section 2(4); section 225 on 1.1.97: section 2(2).

Equal Opportunity Act 1995
Act No. 42/1995

Notes

2. Table of Amendments

This Version incorporates amendments made to the **Equal Opportunity Act 1995** by Acts and subordinate instruments.

Electricity Industry (Further Amendment) Act 1995, No. 79/1995

Assent Date: 28.11.95
Commencement Date: S. 37 on 14.6.95: s. 2(2)
Current State: This information relates only to the provisions amending the **Equal Opportunity Act 1995**

Miscellaneous Acts (Omnibus Amendments) Act 1996, No. 22/1996

Assent Date: 2.7.96
Commencement Date: S. 12 on 13.6.96: s. 2(3); s. 11 on 2.7.96: s. 2(1)
Current State: This information relates only to the provisions amending the **Equal Opportunity Act 1995**

Legal Practice Act 1996, No. 35/1996

Assent Date: 6.11.96
Commencement Date: S. 453(Sch. 1 item 27) on 1.1.97: s. 2(3)
Current State: This information relates only to the provisions amending the **Equal Opportunity Act 1995**

Superannuation Acts (Further Amendment) Act 1996, No. 82/1996

Assent Date: 23.12.96
Commencement Date: S. 76 on 23.12.96: s. 2(1)
Current State: This information relates only to the provisions amending the **Equal Opportunity Act 1995**

Law and Justice Legislation (Further Amendment) Act 1997, No. 84/1997

Assent Date: 2.12.97
Commencement Date: Ss 18–40 on 8.12.97: Government Gazette 4.12.97 p. 3290
Current State: This information relates only to the provision/s amending the **Equal Opportunity Act 1995**

3. Explanatory Details

¹ S. 150(3): Section 109(2)(a) of the **Magistrates' Court Act 1989**, No. 51/1989 provides that an appeal must be instituted not later than 30 days after the day on which the order complained of was made.

Equal Opportunity Act 1995
Act No. 42/1995

INDEX

<i>Subject</i>	<i>Section</i>
Accommodation	
definition	4
discrimination	49, 50, 51, 52
guide dogs	52
sexual harassment	93
Act	
commencement	2
contravention of	209
objectives	3
purposes	1
Advertisements	195, 196
Annual reports	194
Appeals	
from Tribunal	150, 151
special case stated	152
special complaint	130
Assisting or authorising discrimination	98, 99
Attributes	
definition	4
listed	6
Clubs and community service organisations	
definition	4
discrimination by	59, 60
exception for private clubs	78
sexual harassment	94
Chief Conciliator	
acting	176
appointment	173
delegation by	179
functions	178
remuneration	177
resignation/removal	175
term of office	174
Commission	
acting members of	168
annual report	194
Chairperson	167
complaints to	105

Equal Opportunity Act 1995
Act No. 42/1995

<i>Subject</i>	<i>Section</i>
conciliation	112–118, 122
decisions (validity)	171
delegation by	172
educational activities	162
establishment	160
filling casual vacancies	166
functions	161, 162
investigations	156–158
meetings	170
membership	163
payment of members of	169
proceedings for discriminatory advertising	197
terms of office	164
resignation and removal	165
Complaints	
against unincorporated associations	208
application to strike out	109
assistance with formulation of	106
conciliation	112–118, 122
dealing with	107–113
expedited complaints	119–124
how to make	105
Minister may refer to Tribunal	111
objection to member hearing complaint	133
special complaints	125–130
time limits for expedited complaints	135
who may complain	104
Compulsory retirement	
public sector	84
Conciliation	112–118, 122
Conciliation agreements	115
Contract workers	
discrimination against	15
Costs	
special complaints	127, 129
Tribunal	138
Crown	
bound by Act	5
Definitions	
accommodation	4
action in connection with an occupational qualification	90
<i>Subject</i>	<i>Section</i>

Equal Opportunity Act 1995

Act No. 42/1995

appointed member of the Commission	4
attribute	4, 6
Board	213
carer	4
charitable benefits	74
Chief Conciliator	4
child	4
club	4
Commission	4
competitive sporting activity	64
complainant	4
complaint	4
contract worker	15
conduct of a sexual nature	85
credit provider	44
de facto spouse	4
Deputy President	4
detriment	4
discrimination	6–9
educational authority	4
educational institution	4
employee	4
employer	4
employment	4
employment agent	4
enactment	4
existing superannuation fund condition	72
expedited complaint	4, 120
firm	4
guide dog	4
home	4
impairment	4
industrial activity	4
industrial organisation	4
insurance policy	43
insurer	43
lawful sexual activity	4
lawyer	4
marital status	4
member (Tribunal)	4
occupational qualification	4
old Act	213
parent	4
parental status	4
participating in a sporting activity	64
party (complaints)	4
person	4

<i>Subject</i>	<i>Section</i>
physical features	4

Equal Opportunity Act 1995

Act No. 42/1995

political belief or activity	4
President	4
principal (contract workers)	15
private club	78
proceedings	4
qualifying body	4
race	4
Registrar	4
relative	4
religious belief or activity	4
respondent	4
services	4
sexual harassment	85
special complaint	125
sport	64
sporting activity	64
State owned enterprise	4
terms	4
Tribunal	4
victimisation	97
workplace	87

Discrimination

advertisements	195
against applicants	13
against contract workers	15
against employees	14
assisting and authorising	98, 99
by acting with others or alone	11
by clubs and service organisations	59–63
by educational authorities	37–41
by industrial organisations	34
by members of municipal councils	67, 68
by qualifying bodies	35, 36
definition	7
direct discrimination	8
exemptions and exceptions	12
indirect discrimination	9
in disposal of land	47, 48
in firms	30–33
in provision of accommodation	49–58
in provision of goods and services	42–46
in sport	64–66
motive irrelevant	10
requests for information	100, 101
vicarious liability	102, 103

Subject

Section

Educational authorities

Equal Opportunity Act 1995

Act No. 42/1995

definition	4
discrimination by	37–41
sexual harassment	91
Employees	
definition	4
discrimination against	14
sexual harassment	86, 87
Employers and principals	
definition	4
discrimination by	13–28
sexual harassment	86, 87
vicarious liability	102, 103
Evidence	
how tribunal takes	148
not admissible before Tribunal	116
rules not to apply	142
Exceptions from discrimination	
accommodation	53–57
age benefits	81
application	12
charities	74
clubs and service organisations	61–63
competitive sporting activities	66
court and tribunal orders	70
disposal of land	47, 48
early retirement schemes	27A
education	38–41
employment	16–27
firms	32, 33
goods and services	43–46
legal incapacity	79
municipal councils	68
pensions	71
private clubs	78
protection of health, safety and property	80
qualifying bodies	36
religious beliefs or principles	77
religious bodies	75
religious schools	76
statutory authority	69
superannuation	72, 73
welfare measures and special needs	82

<i>Subject</i>	<i>Section</i>
Exemptions	
application	12

Equal Opportunity Act 1995

Act No. 42/1995

compulsory retirement	84
single-sex accommodation	28
Tribunal	83
Firms	
definition	4
discrimination by	30, 31
sexual harassment	88
Goods and services	
discrimination	42
services defined	4
sexual harassment	92
Industrial organisations	
definition	4
discrimination by	34
sexual harassment	89
Inquiries by Tribunal	159
Investigations by Commission	156–158
Job applicants	
discrimination against	13
sexual harassment	86
Liability	
for assisting or authorising discrimination	99
protection from	47, 58, 193, 210
vicarious liability	102
Minister	
exemptions by	84
referral to Tribunal	111
Municipal councillors	
discrimination by	67–68
sexual harassment	95
Offences	
advertising	195, 196
contempt	202
false or misleading information	203
failing to appear	199, 201
failing to give evidence	200, 201
non-compliance with orders	198
<hr/>	
<i>Subject</i>	<i>Section</i>
summary offences	205
who may bring proceedings	197, 206
Orders	

Equal Opportunity Act 1995
Act No. 42/1995

costs	127, 129, 138
enforcement	140
interim orders	131, 137
non-compliance with	198
special complaints	127, 128
Tribunal's powers to make	131, 132, 136, 137, 143, 159
Partnerships	
<i>see Firms</i>	
Qualifying bodies	
definition	4
discrimination by	35
sexual harassment	90
Regulations	
power to make	212
Tribunal may dispense with time limits	155
Requests for information	100, 101
Review of legislation	207
Secrecy	192
Self-incrimination	
protection from	204
Sexual harassment	
accommodation	93
clubs	94
common workplaces	87
definitions	85
educational institutions	89
employees	86, 87
employers	86, 87
firms	88
goods and services	92
industrial organisations	89
municipal councils	95
qualifying bodies	90
Sport	
discrimination	64–66
<hr/>	
<i>Subject</i>	<i>Section</i>
<hr/>	
Supreme Court	
appeal from	130
appeals to	150
limitation of jurisdiction	211

Equal Opportunity Act 1995
Act No. 42/1995

special case stated	152
special complaints	125–130
Transitional provisions	215–222A
Tribunal	
annual report	194
appearance before	144
arrangement of business	183
costs	138
definition	4
directions of	154
documents	149
establishment	180
evidence	142, 148
functions, powers and duties of	181
inquiries	159
jurisdiction	134
meetings	190
members	184–188
panels	182
preliminary conferences	132
procedure	141–149
orders	131,132,136, 137, 138, 143, 159
reasons	139
reconstitution of	153
registrar	191
staff	191
vacancy or defect	189
Vicarious liability	102, 103
Victimisation	
definition	97
prohibition	96

NOTE:

This index does not form part of the **Equal Opportunity Act 1995** and is printed for convenience of reference only.