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Anti-Discrimination Act 1998

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Anti-Discrimination Act 1998

An Act to prohibit discrimination and other specified conduct and to provide for the investigation and conciliation of, and inquiry into, complaints in relation to such discrimination and conduct

[Royal Assent 18 December 1998]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 - Preliminary

1. Short title

This Act may be cited as the Anti-Discrimination Act 1998 .

2. Commencement

This Act commences on a day to be proclaimed.

3. Interpretation

In this Act –

accommodation includes residential and business accommodation;

adult means a person who has attained the age of 18 years;

authorised person means a person authorised by the Commissioner;

award means an award made under the Industrial Relations Act 1984 ;

child means a person who has not attained the age of 18 years and includes a natural child, adopted child, stepchild, foster child or ex-nuptial child;

club means an incorporated or unincorporated association of at least 30 persons associated together for a lawful purpose that provides and maintains its facilities, wholly or partly, from the funds of the association;

commission means a body authorised by any Act to conduct inquiries;

Commissioner means the Anti-Discrimination Commissioner appointed under section 5 ;

competitive sporting activity means any sporting activity that has a competitive element excluding –

- (a) coaching and umpiring; or
- (b) administration of any sporting activity;

complaint means a complaint made in relation to discrimination or prohibited conduct;

conduct of a sexual nature includes –

- (a) making an oral or written statement of a sexual nature to a person or in the presence of a person; and
- (b) displaying matter of a sexual nature that relates to a prescribed attribute;

detriment includes humiliation or denigration;

disability means any of the following that presently exists, previously existed but no longer exists, may exist in the future, whether or not arising from an illness, disease or injury or from a condition subsisting at birth:

- (a) a total or partial loss of the person's bodily or mental functions;
- (b) total or partial loss of a part of the body;
- (c) the presence in the body of organisms causing or capable of causing disease or illness;
- (d) the malfunction, malformation or disfigurement of a part of a person's body;
- (e) disorder, malformation, malfunction or disfigurement that results in the person learning differently from a person without the disorder, malformation, malfunction or disfigurement;
- (f) a disorder, illness or disease that affects a person's thought processes, perceptions of reality, emotions or judgment or that results in disturbed behaviour;

(g) reliance on a guide-dog, wheelchair or other remedial or therapeutic device;

discrimination means conduct referred to in sections 14 and 15 ;

educational institution means a school, college or university;

employment includes –

- (a) employment or occupation in any capacity, with or without remuneration; and
- (b) membership of partnerships; and
- (c) registration or recognition by, or membership of, professional and trade organisations; and
- (d) registration or recognition by qualifying bodies; and
- (e) engagement of commission agents; and
- (f) registration or placement by employment agencies; and
- (g) engagement under a contract for services; and
- (h) employment by any person; and
- (i) registration or enrolment by vocational training bodies;

enterprise agreement means an enterprise agreement made under the Industrial Relations Act 1984 ;

Enterprise Commissioner means the person appointed as such under the Industrial Relations Act 1984 ;

family responsibilities means responsibilities to care for or support –

- (a) a child who is wholly or substantially dependent; or
- (b) any other immediate family member who is in need of that care or support;
- (c)

gender expression means any personal physical expression, appearance (whether by way of medical intervention or not), speech, mannerisms, behavioural patterns, names and personal references that manifest or express gender or gender identity;

gender identity means the gender-related identity, appearance or mannerisms or other gender-related characteristics of an individual including gender expression (whether by way of medical intervention or not), with or without regard to the individual's designated sex at birth, and may include being transgender or transsexual;

immediate family member, in relation to a person, includes –

- (a) a spouse or partner of the person; and
- (b) an adult offspring, a child, parent, grandparent, grandchild or sibling of the person or of a spouse or partner of the person;

industrial activity means –

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

industrial agreement means an industrial agreement made under the Industrial Relations Act 1984 ;

Industrial Commission means the Tasmanian Industrial Commission constituted under the Industrial Relations Act 1984 ;

industrial organisation means –

- (a) an organisation of employees; or

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

inquiry means an inquiry held under Division 4 of Part 6 ;

irrelevant criminal record, in relation to a person, means a record relating to arrest, interrogation or criminal proceedings where –

- (a) further action was not taken in relation to the arrest, interrogation or charge of the person; or
- (b) a charge has not been laid; or
- (c) the charge was dismissed; or
- (d) the prosecution was withdrawn; or
- (e) the person was discharged, whether or not on conviction; or
- (f) the person was found not guilty; or
- (g) the person's conviction was quashed or set aside; or
- (h) the person was granted a pardon; or
- (i) the circumstances relating to the offence for which the person was convicted are not directly relevant to the situation in which the discrimination arises; or
- (j) the person's charge or conviction was expunged under the Expungement of Historical Offences Act 2017 ;

judge includes a judge of a court in any jurisdiction;

marital status means the status of being –

- (a) single; or
- (b) married; or
- (c) married but living separately and apart from one's spouse; or
- (d) married to a particular person; or
- (e) divorced; or
- (f) widowed;

organisation includes a council, a Government department within the meaning of the State Service Act 2000 or a State authority;

parent includes a step-parent, surrogate parent, adoptive parent, guardian, within the meaning of the Children, Young Persons and Their Families Act 1997 and foster parent;

parental status means the status of being a parent or childless;

partner means a partner within the meaning of the Relationships Act 2003 ;

person includes an organisation;

political activity means engaging in, not engaging in, or refusing to engage in, political activity;

political belief or affiliation means holding or not holding a political belief or view;

pregnancy includes child-bearing capacity;

prescribed attribute means an attribute specified in section 16 ;

priest includes –

- (a) a minister of any religion; and
- (b) a member of a religious order; and
- (c) any person whose office it is to perform religious rites;

prohibited conduct means any conduct referred to in Division 2 of Part 4 ;

public act includes –

- (a) any form of communication to the public; or
- (b) any conduct observable by the public; or
- (c) the distribution or dissemination of any matter to the public;

publish includes to authorise publication;

race includes –

- (a) colour; and
- (b) nationality; and
- (c) descent; and
- (d) ethnic, ethno-religious or national origin; and
- (e) status of being, or having been, an immigrant;

relationship status means the status of being or having been in a personal relationship, within the meaning of the Relationships Act 2003 ;

religious activity means engaging in, not engaging in, or refusing to engage in, religious activity;

religious belief or affiliation means holding or not holding a religious belief or view;

representative complaint means a complaint referred to in section 82 ;

residential accommodation includes accommodation in a house, flat, hotel, motel, boarding house or caravan;

respondent means a person against whom a complaint is made;

schools system means a number of educational institutions with a common governing or administrative body;

services includes services –

- (a) relating to access to, and the use of, any place that members of the public are permitted to enter; or
- (b) relating to banking, insurance, superannuation or the provision of grants, loans, credit or finance; or
- (c) relating to entertainment, refreshment or recreation; or
- (d) relating to transportation and travel; or
- (e) relating to any profession, trade or business; or
- (f) provided by a State authority or a council; or
- (g) relating to selling, buying, leasing, assigning or disposing of an interest in land;

sex characteristics means a person's physical, hormonal or genetic features relating to sex, including genitalia and other sexual and reproductive anatomy, chromosomes, genes, hormones, and secondary sex characteristics;

sexual activity includes not engaging in, or refusing to engage in, sexual activity;

sexual harassment means conduct referred to in section 17(3) ;

sexual orientation includes –

- (a) heterosexuality; and
- (b) homosexuality; and
- (c) bisexuality;

special need includes a need based on health or financial status;

spouse includes a former spouse;

State authority means any body or authority, whether incorporated or not, that is established or constituted under a written law or under the Royal prerogative, which is a body or authority which, or of which the governing authority, wholly or partly comprises a person or persons appointed by the Governor, a Minister or another State authority;

State program means a program conducted by or on behalf of the State;

surrogate child, in relation to another person, means a person –

- (a) who is a child of the other person by virtue of the operation of section 26(1) of the Surrogacy Act 2012, or a law, of another State or a Territory or a foreign country, that corresponds to that Act; and
- (b) who has not ceased to be a child of the other person under that Act or law;

surrogate parent, in relation to another person, means a person –

- (a) who is a parent of the other person by virtue of the operation of section 26(1) of the Surrogacy Act 2012, or a law, of another State or a Territory or a foreign country, that corresponds to that Act; and
- (b) who has not ceased to be a parent of the other person under that Act or law;

trade union means –

- (a) an organisation of employees that is a registered organisation; or
- (b) a trade union within the meaning of –
 - (i) the Industrial Relations Act 1984; or
 - (ii) the Workplace Relations Act 1996 of the Commonwealth; or
- (c) any other similar body;

transgender means a person who –

- (a) does not identify, to whatever degree, with the gender identity assigned them at birth; and
- (b) at times, or permanently, has a gender identity which might be perceived as atypical for his or her birth gender; and
- (c) identifies themselves as a member of another gender, and lives or seeks to live as a member of that gender;

transsexual means a person who, whether or not intersex and having been legally assigned one gender at birth –

- (a) assumes the bodily characteristics of the other gender by medical or other means; or
- (b) identifies himself or herself as a member of the other gender; or
- (c) lives or seeks to live as a member of the other gender;

Tribunal means the Tasmanian Civil and Administrative Tribunal.

4. Act to bind Crown

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

PART 2 - Anti-Discrimination Commissioner

5. Appointment of Commissioner

- (1) The Minister may appoint a person to be the Anti-Discrimination Commissioner for a period not exceeding 5 years and on any terms and conditions the Minister determines.
- (2) A person appointed as the Commissioner may hold that office in conjunction with State Service employment.
- (3) A person appointed as the Commissioner may vacate, or be removed from, the office of Anti-Discrimination Commissioner in accordance with Schedule 1 .
- (4) The Minister may appoint a person to act as Commissioner for a period not exceeding 12 months if there is no Commissioner or the Commissioner is unable to perform the duties of the office of Commissioner because of illness or absence.

6. Functions of Commissioner

The Commissioner has the following functions:

- (a) to advise and make recommendations to the Minister on matters relating to discrimination and prohibited conduct;
- (b) to promote the recognition and approval of acceptable attitudes, acts and practices relating to discrimination and prohibited conduct;
- (c) to consult and inquire into discrimination and prohibited conduct and the effects of discrimination and prohibited conduct;
- (d) to disseminate information about discrimination and prohibited conduct and the effects of discrimination and prohibited conduct;
- (e) to undertake research and educational programs to promote attitudes, acts and practices against discrimination and prohibited conduct;
- (f) to prepare and publish guidelines for the avoidance of attitudes, acts and practices relating to discrimination and prohibited conduct;
- (g) to examine any legislation and report to the Minister as to whether it is discriminatory or not;
- (h) to investigate and seek to resolve complaints;
- (i) to collect and analyse data relating to complaints;
- (j) any other prescribed functions.

7. Powers of Commissioner

The Commissioner has the following powers:

- (a) to determine the procedures to be followed in any investigation or complaint resolution;
- (b) to intervene, with the leave of a court or tribunal, in proceedings before the court or tribunal that involve issues relating to acts of discrimination or prohibited conduct;
- (c) to grant an exemption from the application of this Act in respect of any acts of discrimination or prohibited conduct;
- (d) to do anything necessary or convenient to perform the functions of the Commissioner.

8. Delegation

The Commissioner, in writing, may delegate any of the functions or powers of the Commissioner other than this power of delegation.

9. Arrangements with Commonwealth

- (1) The Minister may make an arrangement with a Minister of the Commonwealth for –
 - (a) the performance or exercise on a joint basis of any function or power of the Commissioner; or
 - (b) the performance or exercise by the Commonwealth or by an instrumentality of the Commonwealth of any function or power of the Commissioner.
- (2) An arrangement may contain any incidental or supplementary provision that the Minister and the Minister of the Commonwealth with whom the arrangement is made may think necessary.
- (3) An act done under the arrangement has the same effect as if it were an act of the Commissioner.
- (4) The Minister may arrange with the Minister of the Commonwealth with whom an arrangement is in force under this section to vary or revoke the arrangement.
- (5) The Minister is to publish a notice of any arrangement, variation or revocation under this section in the *Gazette*.

10. Annual report

- (1) The Commissioner is to submit a report to the Minister by 30 September in each year on the operation of this Act for the 12 months to 30 June immediately preceding.
- (2) The Minister, in writing, may direct the Commissioner to report on specified matters in the annual report.
- (3) Any direction given by the Minister is to be included in the annual report.
- (4) The Minister is to arrange for the annual report to be tabled in each House of Parliament within 14 sitting days of its receipt.

11. Special report

- (1) The Minister, in writing, may at any time direct the Commissioner to provide a report on any aspect of the operation of this Act.
- (2) If the Minister so determines, the report is to be included in the next annual report.

PART 3 - Tribunal

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13. Functions of Tribunal

The functions of the Tribunal under this Act are –

- (a) to conduct an inquiry into a complaint; or
- (b) to review a decision of the Commissioner relating to exemptions, withdrawals, rejections and dismissals of complaints.

PART 4 - Discrimination and prohibited conduct

Division 1 - Discrimination

14. Direct discrimination

- (1) Discrimination to which this Act applies is direct or indirect discrimination on the grounds of any prescribed attribute.
- (2) Direct discrimination takes place if a person treats another person on the basis of any prescribed attribute, imputed prescribed attribute or a characteristic imputed to that attribute less favourably than a person without that attribute or characteristic.
- (3) For direct discrimination to take place, it is not necessary –
 - (a) that the prescribed attribute be the sole or dominant ground for the unfavourable treatment; or
 - (b) that the person who discriminates regards the treatment as unfavourable; or
 - (c) that the person who discriminates has any particular motive in discriminating.

15. Indirect discrimination

- (1) Indirect discrimination takes place if a person imposes a condition, requirement or practice which is unreasonable in the circumstances and has the effect of disadvantaging a member of a group of people who –
 - (a) share, or are believed to share, a prescribed attribute; or
 - (b) share, or are believed to share, any of the characteristics imputed to that attribute –more than a person who is not a member of that group.
- (2) For indirect discrimination to take place, it is not necessary that the person who discriminates is aware that the condition, requirement or practice disadvantages the group of people.

16. Discrimination on ground of attribute

A person must not discriminate against another person on the ground of any of the following attributes:

- (a) race;
- (b) age;
- (c) sexual orientation;
- (d) lawful sexual activity;
- (e) gender;
- (ea) gender identity;
- (eb) intersex variations of sex characteristics;
- (f) marital status;
- (fa) relationship status;
- (g) pregnancy;
- (h) breastfeeding;
- (i) parental status;
- (j) family responsibilities;
- (k) disability;
- (l) industrial activity;

- (m) political belief or affiliation;
- (n) political activity;
- (o) religious belief or affiliation;
- (p) religious activity;
- (q) irrelevant criminal record;
- (r) irrelevant medical record;
- (s) association with a person who has, or is believed to have, any of these attributes.

Division 2 - Prohibited conduct

17. Prohibition of certain conduct and sexual harassment

(1) A person must not engage in any conduct which offends, humiliates, intimidates, insults or ridicules another person on the basis of an attribute referred to in section 16(e), (a), (b), (c), (d), (ea), (eb) and (k), (f), (fa), (g), (h), (i) or (j) in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated, intimidated, insulted or ridiculed.

(2) A person must not sexually harass another person.

(3) Sexual harassment takes place if a person –

- (a) subjects another person to an unsolicited act of physical contact of a sexual nature; or
- (b) makes an unwelcome sexual advance or an unwelcome request for sexual favours to another person;
or
- (c) makes an unwelcome remark or statement with sexual connotations to another person or about another person in that person's presence; or
- (d) makes any unwelcome gesture, action or comment of a sexual nature; or
- (e) engages in conduct of a sexual nature in relation to another person that is offensive to that 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, intimidated, insulted or ridiculed.

18. Prohibition of victimisation

(1) A person must not victimise another person because that other person –

- (a) made, or intends to make, a complaint under this Act; or
- (b) gave, or intends to give, evidence or information in connection with any proceedings under this Act;
or
- (c) alleged, or intends to allege, that any person has committed an act which would amount to a contravention of this Act; or
- (d) refused or intends to refuse to do anything that would amount to a contravention of this Act; or
- (e) has done anything in relation to any person under or by reference to this Act.

(2) Victimisation takes place if a person subjects, or threatens to subject, another person or an associate of that other person to any detriment.

19. Inciting hatred

A person, by a public act, must not incite hatred towards, serious contempt for, or severe ridicule of, a person or a group of persons on the ground of –

- (a) the race of the person or any member of the group; or
- (b) any disability of the person or any member of the group; or

- (c) the sexual orientation or lawful sexual activity of the person or any member of the group; or
- (d) the religious belief or affiliation or religious activity of the person or any member of the group; or
- (e) the gender identity or intersex variations of sex characteristics of the person or any member of the group.

20. Promoting discrimination and prohibited conduct

- (1) A person must not publish or display, or cause or permit to be published or displayed, any sign, notice or advertising matter that promotes, expresses or depicts discrimination or prohibited conduct.
- (2) Subsection (1) does not apply to anything that is used for the purpose of discouraging discrimination or prohibited conduct.

21. Prohibition of aiding contravention of this Act

- (1) A person must not knowingly –
 - (a) cause another person to contravene this Act; or
 - (b) induce another person to contravene this Act; or
 - (c) aid another person to contravene this Act.
- (2) All persons referred to in subsection (1) are jointly and severally liable for any contravention under this Act.

Division 3 - Application of Act to certain areas of activity

22. Areas of activity

- (1) Subject to the exceptions and exemptions specified in Part 5, this Act applies to discrimination and prohibited conduct, other than inciting hatred, by or against a person engaged in, or undertaking any, activity in connection with any of the following:
 - (a) employment;
 - (b) education and training;
 - (c) provision of facilities, goods and services;
 - (d) accommodation;
 - (e) membership and activities of clubs;
 - (f) administration of any law of the State or any State program;
 - (g) awards, enterprise agreements or industrial agreements.
- (2) This Act applies to inciting hatred –
 - (a) in connection with anything referred to in subsection (1); and
 - (b) in any other area or in connection with any other activity.

PART 5 - Exceptions and exemptions

Division 1 - General exceptions

23. Charities

A person may –

- (a) include a discriminatory provision in a document or instrument that provides exclusively for charitable benefits wholly or partly for persons with a prescribed attribute; and
- (b) do any act that is required to give effect to that provision.

24. Actions required by law

A person may discriminate against another person if it is reasonably necessary to comply with –

- (a) any law of this State or the Commonwealth; or
- (b) any order of a commission, court or tribunal.

25. Disadvantaged groups and special needs

A person may discriminate against another person in any area if it is for the purpose of carrying out a scheme for the benefit of a group which is disadvantaged or has a special need because of a prescribed attribute.

26. Equal opportunities

A person may discriminate against another person in any program, plan or arrangement designed to promote equal opportunity for a group of people who are disadvantaged or have a special need because of a prescribed attribute.

Division 2 - Exceptions relating to certain attributes

27. Gender

(1) A person may discriminate against another person on the ground of gender –

- (a) in a religious institution, if it is required by the doctrines of the religion of the institution; or
- (b) in education, if it is for the purpose of enrolment in one-gender schools or hostels; or
- (c) in employment, if it is for the purpose of the residential care of persons under the age of 18 years; or
- (d) in employment, if it is based on a genuine occupational qualification or requirement in relation to a particular position; or
- (e) in accommodation, if it is shared accommodation for less than 5 adult persons; or
- (f) in the provision or use of facilities, if those facilities are reasonably required for use by persons of one gender only.

(2) A person may discriminate against another person on the ground of gender in respect of the use of any benefit provided by a club if –

- (a) it is not practicable for the benefit to be used simultaneously or to the same extent by both men and women; and
- (b) the benefit is provided –
 - (i) for the use of men and women separately from each other; or
 - (ii) to men and women in a fair and reasonable proportion.

(3) A person may discriminate against another person on the ground of gender in respect of membership of a club if the membership of the club is available only to persons of one gender.

28. Family responsibilities and other attributes

A person may discriminate against another person on the ground of family responsibilities, parental status, pregnancy, breastfeeding, marital status or relationship status if that other person requires special services and facilities the supply of which would impose unjustifiable hardship.

29. Sport

A person may discriminate against another person in a competitive sporting activity by restricting participation to persons of one gender of 12 years of age or more.

30. Insurance and superannuation

(1) A person may discriminate against another person on the ground of gender, marital status or relationship status in the provision of services relating to insurance or superannuation if –

(a) the discrimination arises because of the application of prescribed standards under the Superannuation Industry Supervision Act 1993 of the Commonwealth; or

(b) the discrimination –

(i) is based on actuarial, statistical or other data from a reliable source; and

(ii) is reasonable having regard to such data and any other relevant factors.

(2) Subsection (1) only applies if a person discloses to the Tribunal, when required to do so –

(a) the sources on which the data are based; or

(b) the relevant factors on which the discrimination is based.

Division 3 - Exceptions relating to age

31. Sporting activity of particular age group

A person may discriminate against another person on the ground of age in relation to any competitive sporting activity by restricting participation to persons of a particular age group.

32. Clubs for particular age groups

A person may discriminate against another person on the ground of age in respect of membership of a club if the membership of the club is available only to persons of a particular age group.

33. Superannuation for persons of particular age group

(1) A person may discriminate against another person on the ground of age in the provision of services relating to superannuation if –

(a) the discrimination arises because of the application of prescribed standards under the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth; or

(b) the discrimination –

(i) is based on actuarial, statistical or other data from a reliable source; and

(ii) is reasonable having regard to any other relevant factors.

(2) Subsection (1)(b) only applies if a person discloses to the Tribunal, when required to do so –

(a) the sources on which the data are based; and

(b) the relevant factors on which the discrimination is based.

34. Insurance and financial services for particular age group

(1) A person may discriminate against another person on the ground of age in the provision of services relating to any annuity, insurance, loans, credit or finance if the discrimination –

(a) is based on actuarial, statistical or other data from a reliable source; and

(b) is reasonable having regard to that data and any other relevant factors.

(2) Subsection (1) only applies if a person discloses to the Tribunal, when required to do so –

(a) the sources on which the data are based; and

(b) the relevant factors on which the discrimination is based.

35. Retirement on basis of age

A person may discriminate against another person on the ground of age in relation to –

(a) voluntary or compulsory retirement; or

(b) voluntary severance.

36. Employment based on age

A person may discriminate against another person on the ground of age in relation to employment if the discrimination is based –

(a) on a genuine occupational qualification or requirement in relation to a particular position; or

(b) on wage rates that are based on age.

37. Education for persons of particular age group

A person may discriminate against another person on the ground of age in relation to the provision of educational programs for persons of a particular age group.

38. Benefits and concessions

A person may discriminate against another person on the ground of age in relation to the provision of benefits and concessions provided to persons of a particular age group.

39. Accompanied by adult

A person may discriminate against a child on the ground of age if the discrimination requires the child to be accompanied by an adult in circumstances where there is a reasonable risk that the child may –

(a) cause a disruption if not accompanied by an adult; or

(b) endanger himself or herself or any other person if not accompanied by an adult.

Division 4 - Exceptions relating to race

40. Clubs for persons of certain races

A person may discriminate against another person on the ground of race in relation to the use of any benefit provided by a club –

(a) to preserve a minority culture; or

(b) to prevent or reduce any disadvantage that may be suffered by a member of that race.

41. Employment based on race

A person may discriminate against another person on the ground of race in relation to employment if the discrimination is based on a genuine occupational qualification or requirement in relation to a particular position.

42. Cultural and religious places

A person may discriminate against another person on the ground of race in relation to places of cultural or religious significance if the discrimination –

(a) is in accordance with –

- (i) the customs of the culture; or
 - (ii) the doctrines of the religion; and
- (b) is necessary to avoid offending the cultural or religious sensitivities of any person of the culture or religion.

Division 5 - Exceptions relating to disability

43. Sporting activity for persons with disabilities

A person may discriminate against another person on the ground of disability in relation to any competitive sporting activity by –

- (a) restricting participation to that person; or
- (b) excluding that person from participating if the person is not reasonably capable of performing any action reasonably required in relation to that activity.

44. Insurance and superannuation for persons with disabilities

(1) A person may discriminate against another person on the ground of disability in the provision of services relating to any annuity or insurance or superannuation if the discrimination –

- (a) is based on actuarial, statistical or other data from a reliable source; and
- (b) is reasonable having regard to that data and any other relevant factors.

(2) Subsection (1) only applies if a person discloses to the Tribunal, when required to do so –

- (a) the sources on which the data are based; or
- (b) the relevant factors on which the discrimination is based.

45. Employment based on disability

A person may discriminate against another person on the ground of disability in relation to employment if –

- (a) the other person –
 - (i) is unable to carry out the inherent requirements of the employment; or
 - (ii) in order to carry out those inherent requirements would require services or facilities not reasonably required by a person without a disability, the provision of which would impose unjustifiable hardship on the person so discriminating; or
- (b) the employment involves –
 - (i) participation in a dramatic performance or other entertainment in a capacity for which a person with a particular disability is required for reasons of authenticity; or
 - (ii) participation as an artist's or photographic model in the production of a work of art, visual image or sequence of visual images for which a person with a particular disability is required for reasons of authenticity; or
 - (iii) providing persons with a particular disability with services for the purpose of promoting their welfare if those services are most effectively provided by a person with the same disability.

46. Education for persons with disabilities

A person may discriminate against another person on the ground of disability in relation to the provision of special educational facilities for the use of persons with disabilities.

47. Infectious disease

A person may discriminate against another person on the ground of disability if –

- (a) the disability of the person is an infectious disease; and

(b) it is reasonably necessary to do so in order to protect public health.

48. Access and provision of services

A person may discriminate against another person on the ground of disability –

- (a) in access to public places, if the provision of access would cause unjustifiable hardship; or
- (b) in the provision of goods and services, if that would cause unjustifiable hardship.

Division 6 - Exceptions relating to industrial activity

49. Employment based on industrial activity

A person may discriminate against another person on the ground of industrial activity in relation to employment if it is based on a genuine occupational qualification in relation to a particular position.

Division 7 - Exceptions relating to irrelevant criminal record

50. Dealing with children

A person may discriminate against another person on the ground of irrelevant criminal record in relation to the education, training or care of children if it is reasonably necessary to do so in order to protect the physical, psychological or emotional wellbeing of children having regard to the relevant circumstances.

Division 8 - Exceptions relating to religious belief, affiliation or activity

51. Employment based on religion

(1) A person may discriminate against another person on the ground of religious belief or affiliation or religious activity in relation to employment if the participation of the person in the teaching, observance or practice of a particular religion is a genuine occupational qualification or requirement in relation to the employment.

(2) A person may discriminate against another person on the ground of religious belief or affiliation or religious activity in relation to employment in an educational institution that is or is to be conducted in accordance with the tenets, beliefs, teachings, principles or practices of a particular religion if the discrimination is in order to enable, or better enable, the educational institution to be conducted in accordance with those tenets, beliefs, teachings, principles or practices.

51A. Admission of person as student based on religion

(1) A person may discriminate against another person on the ground of religious belief or affiliation or religious activity in relation to admission of that other person as a student to an educational institution that is or is to be conducted in accordance with the tenets, beliefs, teachings, principles or practices of a particular religion.

(2) Subsection (1) does not apply to a person who is enrolled as a student at the educational institution referred to in that subsection.

(3) Subsection (1) does not permit discrimination on any grounds referred to in section 16 other than those specified in that subsection.

(4) A person may, on a ground specified in subsection (1), discriminate against another person in relation to the admission of the other person as a student to an educational institution, if the educational institution's policy for the admission of students demonstrates that the criteria for admission relates to the religious belief or affiliation, or religious activity, of the other person, the other person's parents or the other person's grandparents.

52. Participation in religious observance

A person may discriminate against another person on the ground of religious belief or affiliation or religious activity in relation to –

- (a) the ordination or appointment of a priest; or
- (b) the training and education of any person seeking ordination or appointment as a priest; or

- (c) the selection or appointment of a person to participate in any religious observance or practice; or
- (d) any other act that –
 - (i) is carried out in accordance with the doctrine of a particular religion; and
 - (ii) is necessary to avoid offending the religious sensitivities of any person of that religion.

Division 9 - Exceptions relating to political belief, affiliation or activity

53. Employment

A person may discriminate against another person on the ground of political belief or affiliation or political activity in the employment of a person –

- (a) as an adviser to a Minister; or
- (b) as a member of staff of a political party; or
- (c) as a member of the electorate staff of any person; or
- (d) in any other similar position.

Division 10 - Exceptions relating to other issues

54. Legal incapacity

A person may discriminate against another person on the ground of age or disability in relation to legal incapacity if the incapacity is relevant to the area of activity in respect of which the discrimination is made.

55. Public purpose

The provisions of section 17(1) and section 19 do not apply if the person's conduct is –

- (a) a fair report of a public act; or
- (b) a communication or dissemination of a matter that is subject to a defence of absolute privilege in proceedings for defamation; or
- (c) a public act done in good faith for –
 - (i) academic, artistic, scientific or research purposes; or
 - (ii) any purpose in the public interest.

Division 11 - Exemptions

55A.

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55B.

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56. Application for exemption

(1) A person may apply to the Commissioner to exempt from the provisions of this Act any conduct or activity which would otherwise contravene this Act.

(2) In considering an application, the Commissioner may have regard to –

- (a) the desirability of certain actions being permitted to redress the effect of past discrimination or prohibited conduct; and
- (b) any other factor that the Commissioner considers relevant.

(3) On application from any person applying for an exemption, the Commissioner may permit that person to carry out any specified action or engage in any specified conduct pending consideration of the application for the exemption.

57. Grant and renewal of exemption

- (1) After considering an application for exemption, the Commissioner may –
 - (a) grant an exemption for a specified conduct from the provisions of this Act; or
 - (b) refuse to grant such an exemption.
- (2) The Commissioner may –
 - (a) grant an exemption unconditionally or on conditions for a period not exceeding 3 years; and
 - (b) revoke an exemption if a condition of the exemption is contravened; and
 - (c) vary a condition or impose a condition during the period of the exemption.
- (3) The Commissioner may –
 - (a) renew an exemption for a further period not exceeding 3 years; or
 - (b) refuse to renew an exemption.
- (4) If the Commissioner refuses to grant or renew an exemption, the Commissioner is to –
 - (a) provide the person applying for the exemption with a written statement of the reasons for the refusal; and
 - (b) inform the person that he or she may apply to the Tribunal for a review.
- (5) If the Commissioner varies or imposes a condition during the period of an exemption, the Commissioner is to –
 - (a) provide the person who applied for the exemption with a written statement of the reasons; and
 - (b) inform the person that he or she may apply to the Tribunal for a review.

58. Notification relating to exemption

- (1) The Commissioner is to publish notice of any grant, renewal or revocation of an exemption in the *Gazette*.
- (2) A notice of the grant or renewal of an exemption is to state –
 - (a) the period for which it has been granted or renewed; and
 - (b) the conditions to which the exemption is subject.

59. Review of exemptions

- (1) A person may apply to the Tribunal for a review of a decision of the Commissioner under section 57 to –
 - (a) grant an exemption; or
 - (b) renew an exemption; or
 - (c) refuse to grant an exemption; or
 - (d) refuse to renew an exemption; or
 - (e) impose or vary a condition.
- (2) An application under subsection (1)(a) or (b) is to be –
 - (a) in writing; and
 - (b) made within 28 days after publication of the notice under section 58(1).
- (3) An application under subsection (1)(c) or (d) is to be –

- (a) in writing; and
 - (b) made within 28 days after receipt of the statement referred to in section 57(4) .
- (4) An application under subsection (1)(e) is to be –
 - (a) in writing; and
 - (b) made within 28 days after the condition is imposed or varied.
- (5) On receipt of an application, the Tribunal may review the decision of the Commissioner and –
 - (a) confirm that decision; or
 - (b) quash the decision and direct the Commissioner to take such action as the Tribunal considers appropriate.

PART 6 - Dispute resolution

Division 1 - Interpretation

59A. Interpretation

In this Part –

complaint includes a part of a complaint and, if the complaint relates to more than one respondent, any part of the complaint that relates to a specific respondent.

Division 1A - Complaints

60. Who may complain

- (1) Any of the following may complain to the Commissioner about discrimination or prohibited conduct:
 - (a) a person against whom the alleged discrimination or prohibited conduct was directed;
 - (b) a person –
 - (i) against whom the alleged discrimination or prohibited conduct was directed; and
 - (ii) who is a member of a class of persons against whom alleged similar discrimination or prohibited conduct was directed, on behalf of that class, if the Commissioner is satisfied that a majority of those members are likely to consent;
 - (c) a trade union that represents –
 - (i) a member of that union against whom the alleged discrimination or prohibited conduct was directed; or
 - (ii) a class of members of that union against whom the alleged discrimination or prohibited conduct was directed, if the Commissioner is satisfied that a majority of those members are likely to consent;
 - (d) an organisation against which the alleged discrimination or prohibited conduct was directed, if the Commissioner is satisfied that a majority of members of that organisation are likely to consent;
 - (e) an agent of a person referred to in this section;
 - (f) a person on behalf of the person against whom the alleged discrimination or prohibited conduct was directed.
- (2) The Commissioner may investigate any discrimination or prohibited conduct without the lodgment of a complaint if satisfied that there are reasonable grounds for doing so.
- (3) The Commissioner may accept a complaint from a child if the Commissioner is satisfied that the child has sufficient maturity to make the complaint.
- (4) A person may not make a complaint on behalf of another person without the approval of the Commissioner.
- (5) If the Commissioner investigates any discrimination or prohibited conduct under subsection (2) –
 - (a) the discrimination or prohibited conduct is taken to be the subject of a complaint made by a person; and
 - (b) the provisions of this Act have effect as if the complaint had been made by a person; and
 - (c) the Commissioner may pursue the complaint as if the Commissioner were the complainant.
- (6) If the Commissioner investigates any discrimination or prohibited conduct in the circumstances described in section 68(5) –

- (a) the discrimination or prohibited conduct is taken to be the subject of a complaint made by the person; and
- (b) the provisions of this Act have effect as if the complaint had not been withdrawn by the person; and
- (c) the Commissioner may pursue the complaint as if the Commissioner were the complainant.

(7) If the Commissioner investigates any discrimination or prohibited conduct pursuant to a complaint made on behalf of another person in the circumstances described in subsection (4) –

- (a) the discrimination or prohibited conduct is taken to be the subject of a complaint made by the person on whose behalf it is made; and
- (b) the provisions of this Act have effect as if the complaint had been made by the person.

60A. Appointment of litigation guardian

- (1) If a child or other person is unable to make a complaint due to disability, age or other incapacity, the Commissioner may appoint a litigation guardian for the child or other person.
- (2) A litigation guardian may make a complaint on behalf of a child or other person referred to in subsection (1) .
- (3) If a litigation guardian has been appointed on behalf of a child or other person referred to in subsection (1) , the provisions of this Act apply to the litigation guardian as if that guardian were the complainant.

61. Acting on behalf of complainant

- (1) The Commissioner may authorise a person –
 - (a) nominated by a complainant to act on behalf of the complainant; or
 - (b) nominated by a respondent to act on behalf of the respondent.
- (2) The Commissioner may withdraw an authorisation if the Commissioner considers it appropriate to do so.

62. Form of complaint

- (1) A complaint is to –
 - (a) be made in writing and signed by the complainant; and
 - (b) identify the person, class of persons or organisation against whom the alleged discrimination or prohibited conduct was directed and against whom the complaint is made; and
 - (c) set out details of the alleged discrimination or prohibited conduct; and
 - (d) be lodged with the Commissioner –
 - (i) in person; or
 - (ii) by post; or
 - (iii) by any other means the Commissioner allows.
- (2) The Commissioner may provide procedural advice and assistance to any person who requires assistance to make a complaint.

62A. Combining complaints

- (1) If –
 - (a) the Commissioner has received a complaint, (the *original complaint*); and
 - (b) at any time before an investigation into the original complaint has been completed the Commissioner receives another complaint (the *second complaint*) whether by the person who lodged the original complaint or by another person in relation to the matter to which the original complaint refers or a matter related to the original complaint; and

(c) the Commissioner considers it administratively or otherwise convenient to do so –

the Commissioner may determine that the original complaint and the second complaint be treated as one complaint.

(2) The Commissioner is not to determine under subsection (1) that two or more complaints be treated as one complaint unless satisfied that any attempt at resolution, including by conciliation, is not likely to be prejudiced by the making of the determination.

(3) On determining under subsection (1) that two or more complaints be treated as one complaint, the Commissioner is to notify, in writing, all parties to all the complaints of the combining of the complaints.

63. Time limit on complaints

(1) A complaint is to be made within 12 months after the alleged discrimination or prohibited conduct took place.

(2) The Commissioner may accept a complaint made after the 12-month time limitation has expired if satisfied that it is reasonable to do so.

64. Rejection of complaints

(1) The Commissioner may reject any complaint if –

(a) in the opinion of the Commissioner, it is trivial, vexatious, misconceived or lacking in substance; or

(b) the complaint does not relate to discrimination or prohibited conduct; or

(c) the complainant has commenced proceedings in a commission, court or tribunal in relation to the same events, and that commission, court or tribunal may order remedies similar to those available under this Act; or

(d) a person other than the complainant has commenced proceedings in a commission, court or tribunal in relation to the same subject matter of the complaint and the Commissioner is satisfied that the subject matter may be adequately dealt with by that commission, court or tribunal; or

(e) in the opinion of the Commissioner, there is a more appropriate remedy that is reasonably available; or

(f) the subject matter of the complaint has already been adequately dealt with by the Commissioner, a State authority or a Commonwealth statutory authority; or

(g) in the opinion of the Commissioner, the subject matter of the complaint may be more effectively or conveniently dealt with by a State authority or a Commonwealth statutory authority; or

(h) in the opinion of the Commissioner, the complaint relates to conduct that is within the scope of an exemption granted under Division 11 of Part 5 .

(2) The Commissioner is to decide whether to accept or reject a complaint within 42 days after its receipt.

(3) The Commissioner is to notify the complainant of the decision to accept or reject the complaint as soon as practicable.

65. Review of rejected complaints

(1) The Commissioner is to –

(a) provide a written statement of the reasons for the rejection of any complaint to the complainant; and

(b) inform the complainant that the rejection may be reviewed by the Tribunal.

(2) A person whose complaint was rejected by the Commissioner may apply to the Tribunal for the rejection to be reviewed.

(3) An application is to be –

(a) in writing; and

(b) made within 28 days after receipt of notification of the statement.

(4) If a person does not make an application in relation to a rejected complaint within the period specified in subsection (3), the complaint lapses at the end of that period.

65A. Amendment of complaints

(1) At any time before an investigation into a complaint has been completed –

(a) the person who lodged the complaint with the Commissioner may, in writing given to the Commissioner, amend the complaint by removing a matter from it; and

(b) the Commissioner may, in writing, amend the complaint by adding or removing a matter from it or by naming a respondent who has not been identified in the complaint or change the name of a respondent.

(2) Within 14 days of amending a complaint under subsection (1)(b) or receiving notice of an amendment under subsection (1)(a), the Commissioner is to –

(a) notify, in writing, each party to the complaint of the amendment; and

(b) give each party to the complaint a copy of the amendment or the complaint as amended.

66. Agreements not to complain

(1) The Commissioner may accept a complaint from a person who had previously agreed with another person not to complain if the Commissioner reasonably believes that it is fair to do so.

(2) In assessing whether it is fair to accept a complaint, the Commissioner is to consider the following:

(a) the knowledge of the parties to the agreement;

(b) any benefit gained by the person making the complaint in return for the agreement;

(c) whether the terms of the agreement were reasonable in the circumstances;

(d) the degree of good faith shown by the parties in implementing the agreement;

(e) any other relevant circumstances.

67. Notification of acceptance of complaints

If the Commissioner accepts a complaint, the Commissioner, within 10 days of accepting it, is to –

(a) notify the respondent of that acceptance; and

(b) provide the respondent with reasons for accepting the complaint; and

(c) give the respondent a copy of the complaint and a summary of the complaint.

68. Application to Commissioner to withdraw complaint

(1) A complainant may apply to the Commissioner to withdraw a complaint.

(2) An application to withdraw a complaint is to include a statement of the reasons for the withdrawal.

(3) The Commissioner, on receipt of an application to withdraw a complaint, may investigate the circumstances relating to the application.

(4) If the Commissioner is satisfied that an application to withdraw a complaint is made voluntarily, the Commissioner is to –

(a) grant the withdrawal; and

(b) record the term of any agreement reached between the complainant and the respondent; and

(c) refer any application for costs to the Tribunal for an order under Division 10 of Part 8 of the Tasmanian Civil and Administrative Tribunal Act 2020 .

(5) The withdrawal of a complaint does not prevent –

(a) the Commissioner or an authorised person from investigating the complaint under section 69 if satisfied that –

- (i) the complaint was not withdrawn voluntarily; or
- (ii) it is in the public interest to do so; or

(b) the Minister from referring the complaint to the Tribunal.

(6) A complainant who withdraws a complaint under this section is not entitled to make another complaint in relation to the same matter without the permission of the Commissioner.

(7) The Commissioner may allow a person who has withdrawn a complaint involuntarily to reinstitute the complaint if the Commissioner considers it is in the public interest to do so.

Division 2 - Investigation

69. Investigation of complaints

(1) The Commissioner or an authorised person may investigate a complaint in a manner that is appropriate to the circumstances.

(2) In investigating a complaint, the Commissioner or an authorised person is to have regard to the desirability of maintaining the confidentiality of all persons involved in the investigation.

70. Referral by Minister

(1) The Minister may refer any matter as a complaint for investigation by the Commissioner or an authorised person.

(2) The Minister may withdraw any referred matter from an investigation.

(3) After investigating a referred matter, the Commissioner or authorised person is to submit a report to the Minister on the matter together with any recommendations.

71. Completion of investigation

(1) The Commissioner or an authorised person, on the completion of an investigation of a complaint, is to determine that the complaint –

- (a) is dismissed, on any ground referred to in section 64(1)(a), (b), (c), (d), (f) or (h); or
- (b) is to proceed to conciliation; or
- (c) is to proceed to an inquiry.

(2) The Commissioner or authorised person, as soon as practicable –

- (a) is to notify the determination to –
 - (i) the complainant; and
 - (ii) the respondent; and
- (b) provide a written statement of the reasons for the dismissal of a complaint.

(3) A complainant whose complaint is dismissed may apply to the Tribunal for the dismissal to be reviewed.

(4) An application is to be made within 28 days after receipt of the statement.

(5) If a complainant does not make an application within the period specified in subsection (4), the complaint lapses.

72. Review of rejection or dismissal

(1) If, on reviewing the rejection or dismissal of a complaint, the Tribunal is satisfied that the Commissioner made a correct decision in rejecting or dismissing the complaint, the complaint lapses.

(2) If, on reviewing the rejection of a complaint, the Tribunal is not satisfied that the Commissioner made a correct decision in rejecting the complaint, the Tribunal is to refer the complaint back to the Commissioner for investigation.

(3) If, on reviewing the dismissal of a complaint, the Tribunal is not satisfied that the Commissioner made a correct decision in dismissing the complaint, the Tribunal is to deal with the complaint as if it were an inquiry under Division 4 .

73. Lapsed complaints

A complainant whose complaint or part of whose complaint lapses under section 65(4) , section 71(5) or section 72(1) is not entitled to make another complaint in relation to the same matter.

Division 3 - Resolution of complaints

74. Resolution of complaints

(1) The Commissioner or an authorised person is to attempt to resolve by conciliation or in any other way any complaint that the Commissioner or authorised person believes may be resolved in that way.

(2) An attempt to resolve a complaint under subsection (1) may be undertaken either before, during or after the investigation of a complaint.

75. Conciliation conference

(1) The Commissioner or an authorised person, by written notice, may direct a person to take part in a conciliation conference at a specified time and place whether before, during or after the investigation of the complaint.

(2) A person, without reasonable excuse, must not fail to comply with any direction given under subsection (1) .

Penalty: Fine not exceeding 10 penalty units.

(3) A person may be represented or accompanied by another person at a conciliation conference only with the permission of the Commissioner or authorised person.

(4) If the Commissioner gives permission to one person to be accompanied or represented by another person at a conciliation conference –

(a) the Commissioner must notify any other person taking part in the conference of that permission at least 5 days before the conference; and

(b) that person may also be accompanied or represented by another person.

(5) A conciliation conference is to be held in private.

(6) A person may use an interpreter at a conciliation conference.

75A. Further investigation by Commissioner if no agreement reached by conciliation

If a complaint is not resolved before the Commissioner makes a determination under section 71(1) , the Commissioner or authorised person may further investigate the complaint and may direct a person to take part in a further conciliation conference at a specified time and place.

76. Resolved complaint

(1) The Commissioner or an authorised person is to record the terms of any agreement reached to resolve a complaint.

(2) The record made by the Commissioner or authorised person is to be signed by each party.

(3) The Commissioner or authorised person is to –

(a) provide a copy of the record to each party; and

(b) hold the original record on file.

(4) An agreement is enforceable as if it were an order made by the Tribunal under section 89(1) .

77. Conciliation proceedings not admissible

Anything said, written or done in the course of conciliation proceedings is not to be taken into account in any subsequent proceedings held in relation to a complaint.

Division 4 - Inquiry

78. Referral for inquiry

(1) The Commissioner or an authorised person is to refer to the Tribunal a complaint for inquiry if the Commissioner or authorised person –

- (a) believes the complaint cannot be resolved by conciliation; or
- (b) has attempted to resolve the complaint by conciliation but has not been successful; or
- (c) believes that the nature of the complaint is such that it should be referred for inquiry.

(2) The Commissioner or an authorised person is to refer a complaint to the Tribunal within 6 months after notification under section 67 or within any further period agreed with the complainant, regardless of whether the investigation of the complaint has been completed.

(3) The Commissioner or an authorised person is to notify the respondent of any further period agreed under subsection (2) .

(4) The Commissioner may decline to refer a complaint to the Tribunal and dismiss the complaint if the complainant has, in the opinion of the Commissioner, failed to pursue the complaint or the resolution of the complaint.

78A.

79. Referral report

(1) The Commissioner or an authorised person is to provide the Tribunal with a report relating to any complaint referred to the Tribunal.

(2) A referral report relating to a complaint is to be provided within 48 days after the complaint is referred to the Tribunal.

(3) The following matters are to be addressed in a referral report:

- (a) issues raised in the complaint that remain unresolved;
- (ab) a description of the complaint;
- (ac) any amendments that were made to the complaint;
- (b) application of exemptions and exceptions under Part 5 ;
- (c) admitted facts;
- (d) facts to be established;
- (e) witnesses to be called;
- (f) documents to be provided;
- (g) any material evidence to substantiate the complaint or to support the position of the respondent;
- (h) attempts at resolving the complaint by conciliation, excluding details of the matters discussed during the attempts.

(4) A report is not to set out or describe anything said or done in the course of conciliation or other complaints resolution proceedings under Division 3 .

(5) The Commissioner or an authorised person is to give a copy of the report to the complainant and the respondent.

79A. Representation in inquiry

(1) At any stage during the hearing of an inquiry, the Tribunal may permit a party to be represented or accompanied by another person and may withdraw that permission.

(2) A party may be represented or accompanied by another person in an inquiry only with the permission of the Tribunal.

(3) If the Tribunal gives permission for one party to be accompanied or represented by another person at the hearing of an inquiry, any other party taking part in the hearing may also be accompanied or represented by another person.

(4) Section 98 of the Tasmanian Civil and Administrative Tribunal Act 2020 does not apply in relation to a hearing of an inquiry.

80. Directions conference

(1) Before an inquiry into a complaint is held, the Tribunal is to arrange for a directions conference to be conducted in relation to the complaint.

(2) The Tribunal, by written notice, may require any person to –

(a) attend a directions conference; and

(b) provide and produce specified information and documents to a directions conference.

(3) A person, without reasonable excuse, must not fail to comply with a requirement notified under subsection (2).

Penalty: Fine not exceeding 10 penalty units.

(4) The Tribunal, if the complainant does not, without reasonable excuse, comply with a requirement to attend a directions conference in respect of that complaint, may –

(a) dismiss the complaint; and

(b) order the complainant to pay costs to the respondent.

(5) A directions conference is to be held in private.

(6) The Tribunal may give any directions it considers necessary to ensure that the inquiry is conducted fairly and expeditiously.

80A.

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81. Proceedings relating to inquiry

(1) The Tribunal may hold a single inquiry in relation to 2 or more complaints if they arise out of substantially the same events.

(2) The Tribunal on its own motion or by application of a person may join a person as a party to the inquiry by giving that person reasonable notice in writing.

82. Representative complaints

The Tribunal may deal with a complaint as a representative complaint if satisfied that –

(a) the complaint was made by a person or an agent of a person who is a member of a class of persons against whom the alleged similar discrimination or prohibited conduct was directed on behalf of that class; and

(b) the majority of members of that class of persons consent, or are likely to consent, to the complaint being dealt with as a representative complaint.

83. Ordinary complaint not precluded

The making of a representative complaint by any person does not preclude the making of any other complaint by any other person in respect of the same discrimination or prohibited conduct.

84. Amendment of complaints

- (1) The Tribunal may amend any complaint –
 - (a) that is made on behalf of a class of persons so that it can be dealt with as a representative complaint under section 82 ; or
 - (b) if it considers it just to do so in the circumstances.
- (2) If a complaint is amended, the Tribunal may make any order for costs it considers appropriate.

85. Hearing of inquiry

- (1)
- (2)
- (3)
- (4) A person may act as an interpreter at an inquiry.

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86A. Security for costs

- (1) On the application of a party to an inquiry or review, the Tribunal may at any time order –
 - (a) that another party to the inquiry or review give security for the applicant's costs within the time specified in the order; and
 - (b) if the Tribunal thinks fit, that proceedings in the inquiry or review be stayed until the security is given.
- (2) If the security for the applicant's costs is not given within the time specified in the order, the Tribunal may make an order dismissing the complaint as against the applicant.

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89. Orders

- (1) If the Tribunal finds after an inquiry that a complaint is substantiated, it may make one or more of the following orders:
 - (a) an order that the respondent must not repeat or continue the discrimination or prohibited conduct;
 - (b) an order that the respondent must redress any loss, injury or humiliation suffered by the complainant and caused by the respondent's discrimination or prohibited conduct;
 - (c) an order that the respondent must re-employ the complainant;
 - (d) an order that the respondent must pay to the complainant, within a specified period, an amount the Tribunal thinks appropriate as compensation for any loss or injury suffered by the complainant and caused by the respondent's discrimination or prohibited conduct;
 - (e) an order that the respondent must pay a specified fine not exceeding 20 penalty units;
 - (f) an order that a contract or agreement is to be varied or declared void in whole or in part;

(g) an order that it is inappropriate for any further action to be taken in the matter;

(h) any other order it thinks appropriate.

(2) If the Tribunal finds after an inquiry that a complaint against a State Service officer or State Service employee is substantiated, it may order the Minister responsible for the Agency in which that officer or employee is employed to exercise any one or more of the powers specified in section 10 of the State Service Act 2000 .

(3) If the Tribunal makes an order under subsection (2) , the inquiry held under this Act is taken to be a determination arising from an investigation under section 10 of the State Service Act 2000 .

(4) The Tribunal, on completion of an inquiry, may order the respondent to –

(a) make reasonable efforts to identify persons entitled to benefit from an order made by the Tribunal if such persons were not personally identified at the inquiry; and

(b) pay a specified sum to an organisation or fund that is acceptable to the Tribunal if the persons referred to in paragraph (a) cannot be personally identified.

(5) The Tribunal, on completion of an inquiry, may order that a trust fund under the control of the Public Trustee be established into which a specified sum is to be paid if the persons referred to in subsection (4)(a) cannot be identified.

90. Enforcement of orders

(1) A person, or the Commissioner at the request of a person, may enforce an order made under section 89(1) or an agreement to resolve a complaint by filing the following documents, free of charge, in the Supreme Court:

(a) in the case of an order, a copy of the order certified by –

(i) the member who presided over the inquiry, if the Tribunal consisted of more than one person;
or

(ii) the member who constituted the Tribunal, if the Tribunal only consisted of one person;

(b) in the case of an agreement, a copy of the record made under section 76 and certified by the Commissioner or an authorised person;

(c) an affidavit stating the extent to which the order or agreement has not been complied with.

(2) If the documents are filed in accordance with this section, the order made by the Tribunal or agreement is enforceable as if it were an order of the Supreme Court.

91. Referral of substantiated claims to Industrial Commission

(1) If, after an inquiry, the Tribunal finds that a complaint relating to an award, enterprise agreement or industrial agreement is substantiated, it is to refer the award or agreement to the Industrial Commission or the Enterprise Commissioner, as appropriate, together with a report on its findings.

(2) The Industrial Commission or Enterprise Commissioner is to set aside or vary the terms of the award, enterprise agreement or industrial agreement that gave rise to the complaint, unless it is in the public interest not to do so.

92. Apologies and retractions

(1) In respect of a substantiated complaint, the Tribunal may require the respondent to –

(a) apologise to the complainant; and

(b) make any retractions the Tribunal considers appropriate.

(2) If the complaint related to discrimination or prohibited conduct carried out in public, the respondent is to cause to be published any apology or retraction in a manner directed by the Tribunal.

(3) If the complaint related to discrimination or prohibited conduct carried out in private, any apology or retraction is to be made as directed by the Tribunal.

- (4) A person must not fail to comply with a requirement or direction made by the Tribunal under this section.
Penalty: Fine not exceeding 10 penalty units.

93. Reasons for orders

- (1) The Tribunal, if requested by a complainant or respondent, is to give reasons in writing for an order made under section 89 .
- (2) A request is to be –
- (a) in writing; and
 - (b) made within 28 days after the date of the determination.

94. Conciliation and agreement

- (1) If the Tribunal believes that a complaint may be resolved by conciliation, it may, during an inquiry, refer the matter to a conciliation conference as if the Tribunal were the Commissioner under section 75 .
- (2) If the parties to a complaint agree to resolve the complaint whilst it is before the Tribunal for inquiry, the Tribunal is to record the terms of the agreement.
- (3) The record of agreement is to be signed by the parties.
- (4) An agreement is enforceable as if it were an order of the Tribunal under section 89(1) .

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96. Matters taken into account

In any order made under section 89 or under Division 10 of Part 8 of the Tasmanian Civil and Administrative Tribunal Act 2020 , the Tribunal, in addition to other matters, may take into account any or all of the following matters:

- (a) that the respondent made a written request to the Commissioner about the requirements of the Act in relation to a specific situation;
- (b) that the respondent provided the Commissioner with all the material facts;
- (c) that the respondent acted in accordance with written advice provided by the Commissioner in response to the request.

Division 5 - Miscellaneous

96A. Appeal of terms of settlement in relation to complaint involving children, &c.

If the complainant and the respondent agree to settle a complaint which involves children or persons who do not have the capacity to approve a settlement by reason of a disability –

- (a) after the complaint is accepted by the Commissioner or authorised person, the Commissioner is to approve the terms of the settlement only if the Commissioner considers that the terms are satisfactory; and
- (b) after the complaint has been referred for inquiry, the Tribunal is to approve the terms of the settlement only if the Tribunal considers that the terms are satisfactory.

97. Information and documents

- (1) The Tribunal, Commissioner or an authorised person may require any person to provide specified information or produce specified documents that the Tribunal, Commissioner or authorised person believes may be relevant to the complaint.
- (2) A requirement is to be –
- (a) in writing; and

(b) served on the relevant person.

(3) The Tribunal, Commissioner or authorised person may take and retain possession, or take copies, of any document produced under subsection (1) .

(4) A person, without reasonable excuse, must not fail to provide any information or produce any document required under subsection (1) .

Penalty: Fine not exceeding 10 penalty units.

(5) If a person fails to provide any information or produce any document required under subsection (1) , the Commissioner is to submit a report on the matter to the Tribunal.

(6) A person who produces any document under this section is to be given reasonable access to that document.

(7) After considering the report, the Tribunal may make an order requiring a person to provide the specified information or produce the specified documents.

(8) An order made under subsection (7) may be filed in the Supreme Court and is enforceable as if it were an order of the Supreme Court.

98. Interim orders

(1) The Tribunal at any stage of the inquiry into a complaint that has been referred to it may make an interim order pending the completion of the inquiry.

(1A) The Tribunal, on the application of the Commissioner, at any stage of the investigation, conciliation or other resolution of a complaint may make an interim order pending the completion of the investigation or conciliation.

(2) An interim order may also be made on the application of the complainant or the respondent.

(3) An interim order prohibits a person from doing an act that may prejudice –

(a) the investigation of the complaint; or

(b) the conciliation of the complaint; or

(c) any inquiry or any order the Tribunal may make on completion of an inquiry.

(4) A person must not fail to comply with an interim order.

Penalty: Fine not exceeding 10 penalty units and a further fine not exceeding 5 penalty units for each day during which the offence continues.

98A. Application to Tribunal to withdraw complaint from inquiry or review

(1) A complainant may apply to the Tribunal to withdraw a complaint from inquiry or review.

(2) The Tribunal, after considering an application under subsection (1) , may approve the withdrawal of the complaint from inquiry or review.

(3) A complainant whose application to withdraw a complaint from inquiry or review has been approved by the Tribunal is not entitled to make another complaint or to apply for an application for review in relation to the same matter without the permission of the Tribunal.

(4) The withdrawal of a complaint does not prevent the Tribunal from conducting an inquiry in relation to the complaint or the Commissioner from investigating the complaint under section 69 if satisfied that –

(a) the complaint was not withdrawn voluntarily; or

(b) it is in the public interest to do so.

99. Dismissal of complaint

(1) The Tribunal may dismiss a complaint if it finds after an inquiry that the complaint is unsubstantiated.

(2) The Tribunal may dismiss a complaint at any time if it is satisfied that –

(a) the complaint is trivial, vexatious, misconceived or lacking in substance; or

(b) dismissing the complaint would, for some other reason, be just and appropriate.

(3) If the Tribunal dismisses a complaint on the ground that it is vexatious, it may order the complainant to pay a specified fine not exceeding 10 penalty units.

99A.

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100. Appeals

(1)

(2) A person may appeal to the Supreme Court against a decision under section 78(4) within 28 days after the decision was made.

(3)

(4) An appeal is to be instituted, heard and determined in accordance with the provisions of the Supreme Court Civil Procedure Act 1932 and the Rules of Court made under that Act.

101. Proof of exceptions

A person who relies on an exception referred to in Part 5 as a defence to a complaint is to prove that exception on the balance of probabilities.

PART 7 - Miscellaneous

102. Immunity for complainants and witnesses

A person is not liable to any action, claim or demand in respect of any loss, damage or injury suffered by another person by reason only that the person in good faith –

- (a) lodged a complaint with the Commissioner; or
- (b) provided information or evidence to the Commissioner or Tribunal.

103. Immunities

(1) The Commissioner and any other person have, in exercising any power or performing any function under this Act, the same immunity as a judge of the Supreme Court.

(2)

(3) A person acting for or at the direction of the Commissioner is not personally liable for an honest act or omission done or made in the exercise or purported exercise of a power, or in the performance or purported performance of a function, under this Act or in proceedings of the Tribunal for the purposes of this Act.

103A. Commissioner and Tribunal members not required to give evidence in certain cases

The Commissioner and members of the Tribunal are not compellable witnesses before a court or tribunal, or in any judicial or other proceedings, in respect of anything that came to their knowledge in exercising and performing their respective powers and functions under this Act or in proceedings of the Tribunal for the purposes of this Act.

104. Obligation of organisations

(1) An organisation is to ensure that –

- (a) its members, officers, employees and agents are made aware of the discrimination and prohibited conduct to which this Act relates; and
- (b) the terms of an order made under section 89 relating to that organisation are brought to the notice of those of its members, officers, employees and agents whose duties are such that they may engage in conduct of the kind to which the order relates; and
- (c) no member, officer, employee or agent of the organisation engages in, repeats or continues such conduct.

(2) An organisation is to take reasonable steps to ensure that no member, officer, employee or agent of the organisation engages in discrimination or prohibited conduct.

(3) An organisation that does not comply with this section is liable for any contravention of this Act committed by any of its members, officers, employees and agents.

105. False and misleading statements

A person, in connection with any matter referred to in this Act, must not –

- (a) make a statement knowing it to be false or misleading; or
- (b) omit any matter from a statement knowing that without that matter the statement is misleading.

Penalty: Fine not exceeding 10 penalty units.

106. Offences in respect of proceedings

A person must not –

- (a) hinder any proceedings under this Act; or

(b) use insulting language towards a person exercising any power or performing any function under this Act; or

(c) create or take part in a disturbance in or near a place where proceedings under this Act are being conducted.

Penalty: Fine not exceeding 10 penalty units.

107. Admissibility in other proceedings

Except for the purposes of this Act, anything said, written or done in relation to any proceedings under this Act is not admissible in any other proceedings.

107A. Publication of decisions

(1) The Tribunal may publish any of its decisions made under or in relation to this Act, including decisions made at a directions conference referred to in section 80 .

(2) In publishing a decision under subsection (1) other than a decision made at an inquiry held in public under section 85(1) , the Tribunal is to ensure that the identities of the parties to the complaint to which the decision relates are protected.

108. Application of Act

(1) This Act does not apply to discrimination or prohibited conduct that took place and concluded before the commencement of this Act.

(2) This Act applies to discrimination and prohibited conduct within the meaning of the Sex Discrimination Act 1994 that took place after the commencement of that Act.

109. Regulations

(1) The Governor may make regulations for the purposes of this Act.

(1A) Without limiting the generality of subsection (1) , the regulations may provide for fees payable in respect of any application under this Act other than an application under Division 4 of Part 6 .

(1B) Without limiting the generality of subsection (1) , regulations may be made in respect of –

(a) the referral of complaints from the Commissioner to the Tribunal; and

(b) the review of rejected complaints; and

(c) the hearing and determinations of an inquiry; and

(d) any matter relating to the process and procedure of any of the matters referred to in paragraphs (a) , (b) and (c) .

(2) The regulations may –

(a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and

(b) in respect of such an offence, provide for the imposition of a fine not exceeding 5 penalty units and, in the case of a continuing offence, a further fine not exceeding 1 penalty unit for each day during which the offence continues.

(3) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

(4) A provision referred to in subsection (3) may take effect on and from the day on which this Act commences or a later day.

110. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the Administrative Arrangements Act 1990 –

(a) the administration of this Act is assigned to the Minister for Justice and Industrial Relations; and

(b) the Department responsible to the Minister for Justice and Industrial Relations in relation to the administration of this Act is the Department of Justice and Industrial Relations.

111. Savings and transitional

The savings and transitional provisions specified in Schedule 2 have effect.

112. Sex Discrimination Act 1994 repealed

The Sex Discrimination Act 1994 is repealed.

SCHEDULE 1 - Vacation of, and removal from, office of Commissioner

Section 5(3)

1. Vacation of office

A person appointed as the Commissioner vacates that office if he or she –

- (a) dies; or
- (b) retires; or
- (c) is removed from office under clause 2 .

2. Removal from office

(1) The Minister may remove the Commissioner from office if the Commissioner –

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of any remuneration or estate for their benefit; or
- (b) is convicted in Tasmania of any crime or offence punishable by imprisonment for 12 months or longer or elsewhere of any crime or offence which if committed in Tasmania would be punishable by imprisonment for 12 months or longer; or
- (c) is convicted of an offence against this Act.

(2) The Minister may remove the Commissioner from office if satisfied that the Commissioner –

- (a) is unable to perform adequately or competently the duties of office; or
- (b) has neglected to perform those duties; or
- (c) is guilty of misconduct of such a nature that makes the Commissioner unsuitable to hold that office.

SCHEDULE 2 - Savings and transitional provisions

Section 111

1. Interpretation

In this Schedule –

commencement day means the day on which this Act commences;

repealed Act means the Sex Discrimination Act 1994 .

2. Complaints

(1) A complaint lodged and not lapsed, dismissed or completed under the repealed Act before the commencement day is, on that day, a complaint lodged under this Act.

(2) A complaint referred to the Tribunal for an inquiry under the repealed Act not completed before the commencement day is, on that day, a complaint referred to the Tribunal under this Act.

3. Investigation

An investigation of a complaint conducted under the repealed Act not completed before the commencement day may, on that day, continue to be conducted under this Act.

4. Conciliation

Any conciliation proceedings conducted under the repealed Act not completed before the commencement day may, on that day, continue to be conducted under this Act.

5. Orders and directions

Any order or direction in force under the repealed Act immediately before the commencement day continues, on and from that day, to be in force as if it were an order or a direction under this Act.

6. Appeals

An appeal instituted under the repealed Act and not determined before the commencement day may, on or after that day, be determined under that Act.

7. Actions of Commissioner and authorised person

Any action, decision or determination, not relating to a dismissal, of the Sex Discrimination Commissioner or an authorised person taken or made under the repealed Act before the commencement day continues, on and from that day, as if it were an action, decision or determination of the Anti-Discrimination Commissioner or authorised person under this Act.