

WESTERN AUSTRALIA

EQUAL OPPORTUNITY AMENDMENT ACT

No. 40 of 1988

AN ACT to amend the *Equal Opportunity Act 1984*.

[Assented to 30 November 1988]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Equal Opportunity Amendment Act 1988*.

Commencement

2. (1) Subject to subsection (2), this Act shall come into operation on such day as is fixed by proclamation.

(2) Sections 14 to 26, 28 and 31 to 33 shall come into operation on the day on which this Act receives the Royal Assent.

Principal Act

3. In this Act the *Equal Opportunity Act 1984** is referred to as the principal Act.

[*Act No. 83 of 1984 as amended by Act No. 98 of 1985.]

Long title amended

4. The long title of the principal Act is amended by inserting after “conviction,” the following—

“ impairment, ”.

Section 3 amended

5. Section 3 of the principal Act is amended—

(a) in paragraph (a), by deleting “or religious or political conviction” and substituting the following—

“ , religious or political conviction or impairment ”; and

(b) in paragraph (d), by inserting after “convictions” the following—

“ or their impairment ”.

Section 4 amended

6. Section 4 of the principal Act is amended—

(a) in subsection (1)—

(i) in the definition of “committee of management” by deleting “club or organization” in both places where it occurs and substituting in each case the following—

“ club, organization or incorporated association ”;

(ii) in the definition of “education authority” by deleting “education” and substituting the following—

“ educational ”;

(iii) by inserting after the definition of “functions” the following definitions—

“ “impairment” in relation to a person, means one or more of the following conditions—

- (a) any defect or disturbance in the normal structure or functioning of a person’s body;
- (b) any defect or disturbance in the normal structure or functioning of a person’s brain; or
- (c) any illness or condition which impairs a person’s thought processes, perception of reality, emotions or judgment or which results in disturbed behaviour,

whether arising from a condition subsisting at birth or from an illness or injury and includes an impairment which presently exists or existed in the past but has now ceased to exist;

“incorporated association” means an association that is incorporated or deemed to be incorporated under the *Associations Incorporation Act 1987*; ”; and

(iv) in the definition of “institution of tertiary education” by inserting before “Tertiary” the following—

“ Commonwealth ”; and

(b) by inserting after subsection (3) the following subsection—

“ (4) In determining what constitutes “unjustifiable hardship” for the purposes of Part IVA, all relevant circumstances of the particular case shall be taken into account including the nature of the benefit or detriment likely to accrue or be suffered by all persons concerned, the nature of the impairment of the person concerned and the financial circumstances and the estimated amount of expenditure required to be made by the person claiming unjustifiable hardship. ”.

Section 5 amended

7. Section 5 of the principal Act is amended by deleting “or IV” and substituting the following—

“ , IV or IVA ”.

Part IVA inserted

8. After Part IV of the principal Act the following Part is inserted—

“
PART IVA—DISCRIMINATION ON THE
GROUND OF IMPAIRMENT

Division 1—General

Discrimination on ground of impairment

66A. (1) For the purposes of this Act, a person (in this subsection referred to as the “discriminator”) discriminates against another person (in this subsection referred to as the “aggrieved person”) on the ground of impairment if, on the ground of—

- (a) the impairment of the aggrieved person;
- (b) a characteristic that appertains generally to persons having the same impairment as the aggrieved person;
- (c) a characteristic that is generally imputed to persons having the same impairment as the aggrieved person; or
- (d) a requirement that the aggrieved person be accompanied by or in possession of any palliative device in respect of that person’s impairment,

the discriminator treats the aggrieved person less favourably than in the same circumstances, or in circumstances that are not materially different, the discriminator treats or would treat a person who does not have such an impairment.

(2) For the purposes of subsection (1), circumstances in which a person treats or would treat another person who has an impairment are not materially different by reason of the fact that different accommodations or services may be required by the person who has an impairment.

(3) For the purposes of this Act, a person (in this subsection referred to as the “discriminator”) discriminates against another person (in this subsection referred to as the “aggrieved person”) on the ground of impairment if the discriminator requires the aggrieved person to comply with a requirement or condition—

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

(4) For the purposes of this Act, a person (in this subsection referred to as the “discriminator”) discriminates against another person who is blind, deaf, partially blind or partially deaf (in this subsection referred to as the “aggrieved person”) if the discriminator treats the aggrieved person less favourably by reason of the fact that the aggrieved person possesses, or is accompanied by, a guide dog or hearing dog, or by reason of any matter related to that fact, whether or not it is the discriminator’s practice to treat less favourably any person who possesses, or is accompanied by, a dog, but nothing in this Act affects the liability of the aggrieved person for any injury, loss or damage caused by the guide dog or hearing dog.

Division 2—Discrimination in work

**Discrimination against applicants
and employees**

66B. (1) It is unlawful for an employer to discriminate against a person on the ground of the person’s impairment—

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

(2) It is unlawful for an employer to discriminate against an employee on the ground of the employee's impairment—

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

(3) Nothing in subsection (1) renders it unlawful for a person to discriminate against another person, on the ground of the other person's impairment, in connection with employment to perform domestic duties on the premises on which the first-mentioned person resides.

Discrimination against commission agents

66C. (1) It is unlawful for a principal to discriminate against a person on the ground of the person's impairment—

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

(2) It is unlawful for a principal to discriminate against a commission agent on the ground of the commission agent's impairment—

- (a) in the terms or conditions that the principal affords the commission agent as a commission agent;

- (b) by denying the commission agent access, or limiting the commission agent's access, to opportunities for promotion, transfer or training, or to any other benefits associated with the position as a commission agent;
- (c) by terminating the engagement; or
- (d) by subjecting the commission agent to any other detriment.

Discrimination against contract workers

66D. (1) It is unlawful for a principal to discriminate against a contract worker on the ground of the contract worker's impairment—

- (a) in the terms or conditions 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 the contract worker access, or limiting the contract worker's access, to any benefit associated with the work in respect of which the contract with the employer is made; or
- (d) by subjecting the contract worker to any other detriment.

(2) Nothing in subsection (1) renders it unlawful for a person to discriminate against another person, on the ground of the other person's impairment, in connection with work to perform domestic duties on the premises on which the first-mentioned person resides.

Partnerships

66E. (1) It is unlawful for 6 or more persons being persons who are proposing to form themselves into a partnership to discriminate against a person on the ground of the person's impairment—

- (a) in determining who should be invited to become a partner in the partnership; or
- (b) in the terms or conditions on which the person is invited to become a partner in the partnership.

(2) It is unlawful for any one or more of the partners in a partnership consisting of 6 or more partners to discriminate against a person on the ground of the person's impairment—

- (a) in determining who should be invited to become a partner in the partnership; or
- (b) in the terms or conditions on which the person is invited to become a partner in the partnership.

(3) It is unlawful for any one or more of the partners in a partnership consisting of 6 or more partners to discriminate against a partner in the partnership on the ground of the partner's impairment—

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

Professional or trade organizations, etc.

66F. (1) This section applies to an organization of employees and to an organization of employers.

(2) It is unlawful for an organization to which this section applies or for the committee of management of such an organization or for a member of such a committee of management to discriminate against a person who is not a member of the organization on the ground of the person's impairment—

- (a) by refusing or failing to accept the person's application for membership; or
- (b) in the terms or conditions on which the organization is prepared to admit the person to membership.

(3) It is unlawful for an organization to which this section applies or for the committee of management of such an organization or for a member of such a committee of management to discriminate against a person who is a member of the organization on the ground of the person's impairment—

- (a) by denying the person access, or limiting the person's access, to any benefit provided by the organization;

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

or

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

Qualifying bodies

66G. It is unlawful for an authority or body that is empowered to confer, renew, extend, revoke or withdraw an authorization or qualification that is needed for or facilitates the practice of a profession, the carrying on of a trade or business or the engaging in of an occupation to discriminate against a person on the ground of the person's impairment—

- (a) by refusing or failing to confer, renew or extend the authorization or qualification;
- (b) in the terms or conditions on which it is prepared to confer the authorization or qualification or to renew or extend the authorization or qualification; or
- (c) by revoking or withdrawing the authorization or qualification or varying the terms or conditions upon which it is held.

Employment agencies

66H. It is unlawful for an employment agency to discriminate against a person on the ground of the person's impairment—

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

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

66I. (1) It is unlawful for an educational authority to discriminate against a person on the ground of the person's impairment—

- (a) by refusing or failing to accept the person's application for admission as a student; or
- (b) in the terms or conditions on which it is prepared to admit the person as a student.

(2) It is unlawful for an educational authority to discriminate against a student on the ground of the student's impairment—

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

(3) Nothing in this section applies to or in respect of a refusal or failure to accept a person's application for admission as a student at an educational institution that is conducted solely for students who have an impairment which the applicant does not have.

(4) Nothing in this section applies to or in respect of a refusal or failure to accept a person's application for admission as a student at an educational institution where the person, if admitted as a student by the educational authority, would require services or facilities that are not required by students who do not have an impairment and the provision of which would impose unjustifiable hardship on the educational authority.

Access to places and vehicles

66J. (1) It is unlawful for a person (in this section referred to as the "discriminator") to discriminate against another person (in this section referred to as the "aggrieved person") on the ground of the aggrieved person's impairment—

- (a) by refusing to allow the aggrieved person access to or the use of any place or vehicle that the public or a section of the public is entitled or allowed to enter or use, for payment or not;

- (b) in the terms on which the discriminator is prepared to allow the aggrieved person access to or the use of any such place or vehicle;
 - (c) by refusing to allow the aggrieved person the use of any facilities in any such place or vehicle that the public or a section of the public is entitled or allowed to use, for payment or not;
 - (d) in the terms on which the discriminator is prepared to allow the aggrieved person the use of any such facilities;
- or
- (e) by requiring the aggrieved person to leave or cease to use any such place or vehicle or any such facilities.

(2) Nothing in this section applies to or in respect of discrimination arising out of the fact that—

- (a) premises, or a part of premises, or a vehicle are so constructed as to be inaccessible to the aggrieved person;
- or
- (b) the owner or occupier of premises or a vehicle fails to ensure that every part, or a particular part, of the premises or vehicle is accessible to the aggrieved person,

but this subsection does not apply to a building to which the *Uniform Building Amendment By-laws (No.2) 1985* applies.

Goods, services and facilities

66K. (1) It is unlawful for a person who, whether for payment or not, provides goods or services, or makes facilities available, to discriminate against another person on the ground of the other person's impairment—

- (a) by refusing to provide the other person with those goods or services or to make those facilities available to the other person;
- (b) in the terms or conditions on which the first-mentioned person provides the other person with those goods or services or makes those facilities available to the other person; or
- (c) in the manner in which the first-mentioned person provides the other person with those goods or services or makes those facilities available to the other person.

(2) This section does not apply to discrimination against a person on the ground of impairment in relation to the provision of a service or facility where, in consequence of the person's impairment, the person requires the service to be performed or the facility to be made available in a special manner that without unjustifiable hardship—

- (a) cannot be provided by the person providing the service or making the facility available; or
- (b) cannot be provided by the person providing the service or making the facility available except on more onerous terms.

Accommodation

66L. (1) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of the other person's impairment—

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

(2) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of the other person's impairment—

- (a) by denying the other person access, or limiting the other person's access, to any benefit associated with accommodation occupied by the other person;
- (b) by evicting the other person from accommodation occupied by the other person;
- (c) by subjecting the other person to any other detriment in relation to accommodation occupied by the other person;

or

- (d) by refusing to permit the other person to make reasonable alterations to accommodation occupied by that person where—
- (i) that person has undertaken to restore the accommodation to its condition before alteration on leaving the accommodation;
 - (ii) in all the circumstances of the case it is likely that that person will perform the undertaking;
 - (iii) in all the circumstances of the case, the action required to restore the accommodation to its condition before alteration is reasonably practical;
 - (iv) the alteration does not necessitate alteration of the premises of any other occupier; and
 - (v) the alteration is at that other person's own expense.

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

- (a) the provision of accommodation in premises if—
- (i) the person who provides or proposes to provide the accommodation or a near relative of that person resides, and intends to continue to reside, on those premises; and
 - (ii) the accommodation provided in those premises is for no more than 3 persons other than a person referred to in subparagraph (i) or near relatives of such a person;
- (b) accommodation provided by a charitable or other voluntary body solely for persons who have a particular impairment; or
- (c) the provision of accommodation in premises if special services or facilities would be required by the person with an impairment and the provision of such special services or facilities would impose unjustifiable hardship on the person providing or proposing to provide the accommodation whether as principal or agent.

Clubs and incorporated associations

66M. (1) It is unlawful for a club or incorporated association, the committee of management of a club or incorporated association or a member of the committee of management of a club or incorporated association to discriminate against a person who is not a member of the club or incorporated association on the ground of the person's impairment—

- (a) by refusing or failing to accept the person's application for membership; or
- (b) in the terms or conditions on which the club or incorporated association is prepared to admit the person to membership.

(2) It is unlawful for a club or incorporated association, the committee of management of a club or incorporated association or a member of the committee of management of a club or incorporated association to discriminate against a person who is a member of the club or incorporated association on the ground of the member's impairment—

- (a) in the terms or conditions of membership that are afforded to the member;
- (b) by refusing or failing to accept the member's application for a particular class or type of membership;
- (c) by denying the member access, or limiting the member's access, to any benefit provided by the club or incorporated association;
- (d) by depriving the member of membership or varying the terms of membership; or
- (e) by subjecting the member to any other detriment.

(3) Nothing in subsection (1) or (2) applies to or in respect of a club or incorporated association that has as its principal object the provision of benefits for persons who have a particular impairment.

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

- (a) the essential character of the club or incorporated association;

- (b) the extent to which the affairs of the club or incorporated association are so conducted that the persons primarily enjoying the benefits of membership do have the particular impairment; and
- (c) any other relevant circumstance.

(5) This section does not apply to discrimination of the kind referred to in subsection (2) (c) where in consequence of the person's impairment the person requires the benefit to be provided in a special manner and the benefit cannot without unjustifiable hardship be so provided by the club or incorporated association.

Discrimination in sport on ground of impairment

66N. (1) It is unlawful for a person to discriminate against another person on the ground of the other person's impairment by excluding that person from a sporting activity.

(2) In subsection (1), reference to a sporting activity includes a reference to an administrative or coaching activity in relation to any sport.

(3) Subsection (1) does not apply to discrimination against a person—

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

Application forms, etc.

66O. Where, by virtue of a provision of Division 2 or this Division, it would be unlawful, in particular circumstances, for a person to discriminate against another person, on the ground of the other person's impairment, in doing a particular act, it is unlawful for the first-mentioned person to request or require the other person to provide, in connection with or for the purposes of

the doing of the act, information (whether by way of completing a form or otherwise) that persons who do not have an impairment would not, in circumstances that are the same or not materially different, be requested or required to provide.

Superannuation schemes and provident funds

66P. It is unlawful for a person who provides a superannuation scheme or provident fund to discriminate against a person on the ground of the person's impairment—

- (a) by providing a scheme or fund that discriminates, or requires or authorizes discrimination, against that other person or that would, if the person were to become a member of the scheme or fund, discriminate, or require or authorize discrimination, against that person;

or

- (b) in the manner in which the first-mentioned person administers the scheme or fund,

except to the extent that—

(aa) the discrimination—

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

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

or

- (bb) where no such actuarial or statistical data is available, the discrimination is reasonable having regard to any other relevant factors.

Division 4—Exceptions to Part IVA

Exceptions to certain work related provisions in Division 2

66Q. (1) Nothing in section 66B (1) (b) or (2) (c), 66C (1) (b) or (2) (c) or 66E (1) (a) or (2) (a) renders unlawful discrimination by an employer, principal or person against a person on the ground of the impairment of that person if it is reasonable for the employer, principal or person to conclude, on such grounds as having regard to the circumstances of the case and having taken all reasonable steps to obtain relevant and necessary information concerning the impairment it is reasonable for the employer, principal or person to rely on, that the person with the impairment because of that impairment—

- (a) would be unable to carry out the work required to be performed in the course of the employment or engagement concerned; or
- (b) would, in order to carry out that work, require services or facilities that are not required by persons who do not have an impairment and the provision of which would impose an unjustifiable hardship on the employer, principal or person.

(2) Nothing in section 66B (1) (c), (2) (a) or (b), section 66C (1) (c), (2) (a) or (b), section 66D(1) (a) or (c) or section 66E (1) (b), (2) (b) or (3) (a) renders unlawful discrimination by an employer, principal or person against a person on the ground of the impairment of that person in respect of any determination by the employer, principal or person of any terms or conditions relating to the person with the impairment that are reasonable having regard to either or both of the following—

- (a) any limitation or restriction that the impairment would or does impose on the person's ability to carry out the work required to be performed in the course of the employment or engagement concerned;
- (b) any services or facilities that would be or are required by the person with the impairment in order to carry out the work referred to in paragraph (a) and that would not be or are not required by persons who do not have an impairment.

(3) Nothing in section 66G renders unlawful discrimination by an authority or body to which that section refers against a person on the ground of the impairment of that person if, with respect to

the work required to be performed in the course of the practice of the profession, the carrying on of the trade or business or the engaging in of the occupation concerned, it is reasonable for the authority or body to conclude on such grounds as having regard to the circumstances of the case and having taken all reasonable steps to obtain relevant and necessary information concerning the impairment it is reasonable for the authority or body to rely on, that the person with the impairment would be unable to carry out that work.

Measures intended to achieve equality

66R. Nothing in Division 2 or 3 renders it unlawful to do an act a purpose of which is—

- (a) to ensure that persons who have an impairment have equal opportunities with other persons in circumstances in relation to which provision is made by this Act; or
- (b) to afford persons who have an impairment access to facilities, services or opportunities to meet their special needs in relation to employment, education, training or welfare.

Exception—genuine occupational qualification

66S. Nothing in this Part applies to or in respect of any work or employment where that work or employment involves any one or more of the following—

- (a) participation in a dramatic performance or other entertainment in a capacity for which a person with a particular impairment is required for reasons of authenticity;
- (b) 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 impairment is required for reasons of authenticity;
- (c) providing persons with a particular impairment with services for the purpose of promoting their welfare where those services can most effectively be provided by a person with the same impairment.

Insurance

66T. Nothing in this Part renders it unlawful for a person to discriminate against a person with an impairment on the ground of that person's impairment with respect to the terms on which an annuity, a life assurance policy, a policy of insurance against accident or any other policy of insurance is offered to or may be obtained by the person with the impairment where the discrimination—

- (a) is based upon actuarial or statistical data from a source on which it is reasonable to rely or, where there is no such data, on such other data as may be available; and
- (b) is reasonable having regard to the data, if any, and other relevant factors.

Regulations

66U. (1) The Governor may make regulations providing that a provision of this Part shall not have effect in relation to a person who has an impairment by reason of suffering from an infectious disease.

(2) Regulations under subsection (1)—

- (a) may prescribe terms and conditions subject to which a provision of this Act shall not have effect; and
- (b) may be expressed so as to provide that the provision shall not have effect in relation to such a person generally or in such circumstances as are prescribed or to such an extent as is prescribed or in relation to such activities as are prescribed.

(3) In this section "infectious disease" has the same meaning as in the Health Act 1911. "

Section 71 amended

9. Section 71 of the principal Act is amended—

- (a) by inserting the subsection designation (1) after "71.";

(b) by inserting after subsection (1) the following subsection—

“ (2) Subsection (1) does not apply to discrimination on the ground of impairment by a voluntary body that is an incorporated association. ”.

Section 73 amended

10. Section 73 of the principal Act is amended in subsection (3) by deleting “ground of race” and substituting the following—

“ grounds of race or impairment ”.

Section 74 amended

11. Section 74 of the principal Act is amended by inserting after subsection (2) the following subsection—

“ (3) Persons with an impairment or a particular class or type of impairment shall not be regarded as constituting a class or type of applicant for the purposes of subsection (2). ”.

Section 80 amended

12. Section 80 of the principal Act is amended—

(a) by deleting “or religious or political conviction” where it first occurs and substituting the following—

“ religious or political conviction or impairment ”;

(b) in paragraph (b)—

(i) in subparagraph (i), by deleting “or religious or political conviction” and substituting the following—

“ , religious or political conviction or impairment ”;

and

(ii) in subparagraph (iii), by inserting after “conviction” the following—

“ or their impairment ”;

- (c) in paragraph (e), by deleting “or religious or political conviction” and substituting the following—

“ , religious or political conviction or impairment ”; and

- (d) in paragraph (f), by inserting after “conviction” the following—

“ or impairment ”.

Section 83 amended

13. Section 83 of the principal Act is amended—

- (a) by inserting after subsection (1) the following subsection—

“ (1a) A complaint alleging that a person has committed, in relation to a person having an impairment, a contravention of this Act, other than a contravention in respect of which a specific penalty is imposed, may be lodged in writing with the Commissioner in accordance with subsection (1) or—

(a) where the person having the impairment is unable to write or sign his or her name, by a person authorized to lodge the complaint by the person having the impairment; or

(b) where the person having the impairment is unable to authorize a person to lodge the complaint, by any person who satisfies the Commissioner of the proper interest of that person in the care and protection of the person having the impairment. ”;

- (b) in subsection (3) by inserting after “subsection (1)” the following—

“ or (1a) ”; and

- (c) in subsection (4) by inserting after “subsection (1)” the following—

“ or (1a) ”.

Section 86 amended

14. Section 86 of the principal Act is amended by deleting “inquiry” in both places where it occurs and substituting in each case the following—

“ investigation ”.

Section 87 amended

15. Section 87 of the principal Act is amended—

- (a) in subsection (1) by deleting “inquiring into an act, and endeavouring to settle the matter to which the act relates” and substituting the following—

“ investigating a complaint, and endeavouring to resolve the complaint ”;

and

- (b) in subsection (2)—

- (i) by deleting “an act” and substituting the following—

“ a complaint ”;

- (ii) by deleting in paragraph (a) “where a complaint was made to the Commissioner in relation to that act—”;

- (iii) by deleting in paragraph (b) “done the act” and substituting the following—

“ contravened the Act ”; and

- (iv) by deleting paragraph (c) and substituting the following paragraph—

“ (c) to any other person who, in the opinion of the Commissioner, is likely to be able to provide information relevant to the investigation or whose presence at the conference is, in the opinion of the Commissioner, likely to be conducive to resolving the complaint in accordance with section 91. ”.

Section 89 amended

16. Section 89 of the principal Act is amended in subsection (1) by deleting “inquiry” and substituting the following—

“ investigation ”.

Section 90 amended

17. Section 90 of the principal Act is amended in subsection (2) by deleting “any inquiries” and substituting the following—

“ the investigation ”.

Section 93 amended

18. Section 93 of the principal Act is amended in subsection (1) by deleting “any inquiries” and substituting the following—

“ the investigation ”.

Section 94 amended

19. Section 94 of the principal Act is amended in subsection (1) by deleting “(4), 84, 87, 88” and substituting the following—

“ (5), 84, 87 ”.

Section 95 amended

20. Section 95 of the principal Act is amended in subsection (1) by deleting “his annual report” and substituting the following—

“ the Commissioner’s annual report ”.

Section 96 amended

21. Section 96 of the principal Act is amended in subsection (2) by deleting “The Tribunal” and substituting the following—

“ Subject to section 104A, the Tribunal ”.

Section 100A inserted

22. After section 100 of the principal Act, the following section is inserted—

Deputy presidents

“ 100A. (1) The Minister may appoint not more than 2 persons who are qualified for appointment as President under section 96 to be deputy presidents of the Tribunal.

(2) Sections 97, 98, 99 and 100 apply to deputy presidents, subject to necessary modifications, in the same manner as they apply to members of the Tribunal. ”.

Section 101 amended

23. Section 101 of the principal Act is amended by repealing subsection (1) and substituting the following subsection—

“ (1) The Minister may at any time appoint a deputy president to act as President during the absence or illness of the President or when the President is otherwise unavailable to perform the functions of President. ”.

Section 102 amended

24. Section 102 of the principal Act is amended by repealing subsection (1) and substituting the following subsections—

“ (1) The Minister may at any time appoint as deputy members of the Tribunal such number of persons as the Minister considers necessary to form an adequate pool of persons to perform the functions of deputy members under this Part.

(1a) Sections 97, 98 and 99 apply to deputy members, subject to necessary modifications, in the same manner as they apply to members of the Tribunal.

(1b) The Minister may remove a deputy member of the Tribunal from office—

(a) if the deputy member is permanently incapable of performing the deputy member's duties;

(b) for neglect of duty; or

(c) for dishonourable conduct. ”.

Section 104A inserted

25. After section 104 of the principal Act the following section is inserted—

Constitution of Tribunal

“ 104A. (1) Subject to subsection (2), the Tribunal may be constituted—

- (a) in the manner referred to in section 96 (2); or
- (b) where the President so directs, by a deputy president and 2 deputy members.

(2) Where the President is of the opinion that the Tribunal as referred to in section 96 (2) is unable to deal expeditiously with all its business, the President may direct that the Tribunal be constituted for the purposes of a particular proceeding or proceedings by a deputy president and 2 deputy members.

(3) The President may give directions as to the arrangement of the business of the Tribunal and as to the deputy president and the deputy members who are to constitute the Tribunal for the purposes of particular proceedings.

(4) Where the President gives a direction as to the persons who are to constitute the Tribunal for the purposes of a particular proceeding the President may at any time after the giving of the direction and before the commencement of the hearing of the proceeding revoke the direction and give a further direction under subsection (3).

(5) Where the President gives a direction that the Tribunal be constituted for the purposes of particular proceedings by a deputy president and 2 deputy members—

- (a) the deputy president shall have and may exercise in respect of those proceedings the powers, duties, and functions of the President; and
- (b) the deputy members shall have and may exercise in respect of those proceedings the powers, duties, and functions of members.

(6) The Tribunal as constituted under subsection (2) may sit simultaneously with the Tribunal as constituted under section 96(2). ”.

Section 126 amended

26. Section 126 of the principal Act is amended by deleting “inquiry” in both places where it occurs and substituting in each case the following—

“ investigation ”.

Section 140 amended

27. Section 140 of the principal Act is amended in paragraph (a) by deleting “or religious or political conviction” and substituting the following—

“ , religious or political conviction or impairment ”.

Section 144 amended

28. Section 144 of the principal Act is amended in subsection (1) by deleting “his annual report” and substituting the following—

“ the Director’s annual report ”.

Section 146 amended

29. Section 146 of the principal Act is amended in subsection (2) (a) (i) by deleting “or religious or political conviction” and substituting the following—

“ , religious or political conviction or impairment ”.

Section 156 amended

30. Section 156 of the principal Act is amended by inserting after “34(4)” the following—

“ , 66P or 66T ”.

Section 162 amended

31. Section 162 of the principal Act is amended in subsection (2) by deleting “section 86” and substituting the following—

“ Division 2 of Part VII ”.

Section 165 amended

32. Section 165 of the principal Act is amended in subsection (1) by deleting “until—” and paragraphs (a) and (b) and substituting the following—

“ until the Commissioner has commenced to investigate the complaint. ”.

Transitional

33. Notwithstanding the repeal and substitution of section 102 (1) of the principal Act by section 24 of this Act, the persons holding office as deputy members of the Tribunal immediately prior to the commencement of section 24 shall continue to hold office as deputy members in accordance with their respective instruments of appointment.
