

EQUAL OPPORTUNITY ACT 1984.

(No. 83 of 1984.)

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EQUAL OPPORTUNITY.

No. 83 of 1984.

AN ACT to promote equality of opportunity in Western Australia and to provide remedies in respect of discrimination on the grounds of sex, marital status, pregnancy, race, religious or political conviction, or involving sexual harassment.

[Assented to 7 December 1984.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY.

1. This Act may be cited as the *Equal Opportunity Act 1984*. Short title.

Commence-
ment.

2. The provisions of this Act shall come into operation on such day or days as is or are respectively fixed by proclamation.

Objects.

3. The objects of this Act are—

- (a) to eliminate, so far as is possible, discrimination against persons on the ground of sex, marital status or pregnancy, race or religious or political conviction in the areas of work, accommodation, education, the provision of goods, facilities and services and the activities of clubs;
- (b) to eliminate, so far as is possible, sexual harassment in the workplace and in educational institutions and sexual harassment related to accommodation;
- (c) to promote recognition and acceptance within the community of the equality of men and women; and
- (d) to promote recognition and acceptance within the community of the equality of persons of all races and of all persons regardless of their religious or political convictions.

Interpreta-
tion.

4. (1) In this Act, unless the contrary intention appears—

“accommodation” includes residential and business accommodation;

“club” means an association (whether incorporated or unincorporated) of not less than 30 persons associated together for social, literary, cultural, political, sporting, athletic or other lawful purposes that—

- (a) provides and maintains its facilities, in whole or in part, from the funds of the association; and
- (b) sells or supplies liquor for consumption on its premises;

“commission agent” means a person who does work for another person as the agent of that person and who is remunerated, whether in whole or in part, by commission;

“Commissioner” means the Commissioner for Equal Opportunity appointed under section 75;

“committee of management” in relation to a club or organization, means the group or body of persons (however described) that manages the affairs of that club or organization, as the case may be;

“complainant” in relation to a complaint, means the person or each of the persons by whom that complaint is lodged;

“complaint” means—

- (a) a complaint, whether or not a representative complaint, lodged under section 83; and
- (b) a matter referred to the Tribunal for inquiry as a complaint pursuant to section 107;

“contract worker” means a person who does work for another person pursuant to a contract between the employer of the first-mentioned person and that other person;

“*de facto* spouse” in relation to a person, means a person of the opposite sex to the first-mentioned person, who lives with the first-mentioned person as a husband or wife of that person on a *bona fide* domestic basis, although not legally married to that person;

“Director” means the Director of Equal Opportunity in Public Employment appointed under section 142;

“document” includes any book, register or other record of information, however compiled, recorded or stored;

“education authority” means a body or person administering an educational institution;

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

“employment” includes—

(a) part time and temporary employment;

(b) work under a contract for services;
and

(c) work as a State employee;

“employment agency” means any person who or body that, whether for payment or not, assists persons to find employment or other work or assists employers to find employees or workers;

“functions” includes powers, authorities and duties;

“inquiry” in relation to the Tribunal, means an inquiry held under section 107;

“institution of tertiary education” means a university, college of advanced education or other institution at which tertiary education or training is provided, but does not include a technical and further education institution within the meaning assigned to that term in the Tertiary Education Commission Act 1977 of the Commonwealth;

“legal practitioner” has the meaning that is assigned to “practitioner” in the Legal Practitioners Act 1893;

“man” means a member of the male sex irrespective of age;

“marital status” means the status or condition of being—

- (a) single;
- (b) married;
- (c) married but living separately and apart from one’s spouse;
- (d) divorced;
- (e) widowed; or
- (f) the *de facto* spouse of another person;

“member” means member of the Tribunal;

“near relative” in relation to a person, means—

- (a) a parent, child, grandparent, grandchild, brother or sister of the person;
or
- (b) the spouse or *de facto* spouse of the first-mentioned person or of a person referred to in paragraph (a);

“principal” means—

- (a) in relation to a commission agent—a person for whom the commission agent does work as a commission agent; and
- (b) in relation to a contract worker—a person for whom the contract worker does work pursuant to a contract between the employer of the contract worker and that other person;

“private educational authority” means a person or body administering an educational institution, not being a school, college, university or other institution established under the Education Act 1928, the Colleges Act 1978, or an Act of incorporation of a university or institute of technology;

“race” includes colour, descent, ethnic or national origin or nationality and the fact that a race may comprise 2 or more distinct races does not prevent it being a race for the purposes of this Act;

“registrar” means the registrar of the Tribunal;

“representative complaint” means a complaint lodged under section 83 by a person on behalf of the person and other persons or by 2 or more persons on behalf of themselves and other persons, and which is treated by the Tribunal as a representative complaint;

“respondent” in relation to a complaint, means the person who is, or each of the persons who are, alleged to have done the act to which the complaint relates;

“services” includes—

- (a) services relating to banking, insurance and the provision of grants, loans, credit or finance;
- (b) services relating to entertainment, recreation or refreshment;
- (c) services relating to transport or travel;
- (d) services of the kind provided by members of any profession or trade;
and
- (e) services of the kind provided by a government, a government or public authority or a local government body;

“State employee” includes a member of the Police Force of Western Australia;

“Tribunal” means the Equal Opportunity Tribunal established by section 96;

“vehicle” includes a ship and an aircraft;

“voluntary body” means an association or other body (whether incorporated or unincorporated) the activities of which are not engaged in for the purpose of making a profit, but does not include—

- (a) a club;
- (b) a body established by a law of the Commonwealth, or of a State or Territory of the Commonwealth; or
- (c) an association that provides grants, loans, credit or finance to its members;

“Western Australian law” means—

- (a) an Act;
- (b) a regulation, rule or by-law made under or pursuant to an Act; or
- (c) an order or award made under or pursuant to—
 - (i) an Act;
 - (ii) a regulation, rule or by-law referred to in paragraph (b);

“woman” means a member of the female sex irrespective of age.

(2) For the purposes of this Act, refusing or failing to do an act shall be deemed to be the doing of an act and a reference to an act includes a reference to a refusal or failure to do an act.

(3) For the purposes of this Act, "religious or political conviction" shall be construed so as to include a lack or absence of religious or political conviction.

Act done for
2 or more
reasons.

5. A reference in Part II, III or IV to the doing of an act by reason of a particular matter includes a reference to the doing of an act by reason of 2 or more matters that include the particular matter, whether or not the particular matter is the dominant or substantial reason for the doing of the act.

Act binds
Crown.

6. This Act binds the Crown.

Inter-
govern-
mental
arrange-
ments.

7. (1) The Minister may make an arrangement with a Minister of the Commonwealth for or in relation to—

- (a) the performance on a joint basis of functions relating to the promotion of the objects of this Act; or
- (b) the performance by this State or by an authority of this State on behalf of the Commonwealth of functions, including functions of the Human Rights Commission established by the Human Rights Commission Act 1981 of the Commonwealth, relating to the promotion of the objects of this Act.

(2) An arrangement under this section may contain such incidental or supplementary provisions as the Minister and the Minister of the Commonwealth think necessary.

(3) The Minister may arrange with the Minister of the Commonwealth for the variation or revocation of the arrangement.

(4) An arrangement under this section, or the variation or revocation of such an arrangement, shall be in writing and a copy of each instrument by which an arrangement under this section has been made, varied or revoked shall be published in the *Gazette*.

PART II—DISCRIMINATION ON GROUND OF
SEX, MARITAL STATUS OR PREGNANCY.*Division 1—General.*

8. (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 the sex of the aggrieved person if, by reason of—

Sex
discrimina-
tion.

- (a) the sex of the aggrieved person;
- (b) a characteristic that appertains generally to persons of the sex of the aggrieved person; or
- (c) a characteristic that is generally imputed to persons of the sex of the aggrieved person,

the discriminator treats the aggrieved person less favourably than, in circumstances that are the same or are not materially different, the discriminator treats or would treat a person of the opposite sex.

(2) 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 the sex of the aggrieved person if the discriminator requires the aggrieved person to comply with a requirement or condition—

- (a) with which a substantially higher proportion of persons of the opposite sex to 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.

Discrimination on the ground of marital status.

9. (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 the marital status of the aggrieved person if, by reason of—

- (a) the marital status of the aggrieved person;
- (b) a characteristic that appertains generally to persons of the marital status of the aggrieved person; or
- (c) a characteristic that is generally imputed to persons of the marital status of the aggrieved person,

the discriminator treats the aggrieved person less favourably than, in circumstances that are the same or are not materially different, the discriminator treats or would treat a person of a different marital status.

(2) 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 the marital status of the aggrieved person if the discriminator requires the aggrieved person to comply with a requirement or condition—

- (a) with which a substantially higher proportion of persons not of the same marital status 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.

10. (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 the pregnancy of the aggrieved person if—

Discrimination on the ground of pregnancy.

(a) by reason of—

- (i) the pregnancy of the aggrieved person;
- (ii) a characteristic that appertains generally to persons who are pregnant; or
- (iii) a characteristic that is generally imputed to persons who are pregnant,

the discriminator treats the aggrieved person less favourably than, in circumstances that are the same or are not materially different, the discriminator treats or would treat a person who was not pregnant; and

(b) the less favourable treatment is not reasonable in the circumstances.

(2) 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 the pregnancy of the aggrieved person if the discriminator requires the aggrieved person to comply with a requirement or condition—

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

Division 2—Discrimination in work.

Discrimination against applicants and employees.

11. (1) It is unlawful for an employer to discriminate against a person on the ground of the person's sex, marital status or pregnancy—

- (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 sex, marital status or pregnancy—

- (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) (a) and (b) renders it unlawful for a person to discriminate against another person, on the ground of the other person's sex, in connection with employment to perform domestic duties on the premises on which the first-mentioned person resides.

Discrimination against commission agents.

12. (1) It is unlawful for a principal to discriminate against a person on the ground of the person's sex, marital status or pregnancy—

- (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 sex, marital status or pregnancy—

- (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.

13. (1) It is unlawful for a principal to discriminate against a contract worker on the ground of the contract worker's sex, marital status or pregnancy—

Discrimination against contract workers.

- (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 sex, in connection with work to perform domestic duties on the premises on which the first-mentioned person resides.

Partnerships.

14. (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 sex, marital status or pregnancy—

- (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 sex, marital status or pregnancy—

- (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 sex, marital status or pregnancy—

- (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.

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

Professional
or trade
organiza-
tions, etc.

(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 sex, marital status or pregnancy—

- (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 sex, marital status or pregnancy—

- (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.

16. 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 engag-

Qualifying
bodies.

ing in of an occupation to discriminate against a person on the ground of the person's sex, marital status or pregnancy—

- (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.**

17. It is unlawful for an employment agency to discriminate against a person on the ground of the person's sex, marital status or pregnancy—

- (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.

18. (1) It is unlawful for an educational authority to discriminate against a person on the ground of the person's sex, marital status or pregnancy—

- (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 sex, marital status or pregnancy—

- (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 of the opposite sex to the sex of the applicant.

19. 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 sex, marital status or pregnancy—

Access to
places and
vehicles.

- (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.

Goods,
services and
facilities.

20. 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 sex, marital status or pregnancy—

- (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.

Accommoda-
tion.

21. (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 sex, marital status or pregnancy—

- (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 sex, marital status or pregnancy—

- (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; or
 - (c) by subjecting the other person to any other detriment in relation to accommodation occupied by the other person.
- (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 religious body; or
 - (c) accommodation provided by a charitable or other voluntary body solely for persons of one sex or solely for persons of a particular marital status or particular marital statuses.

22. (1) It is unlawful for a club, the committee of management of a club or a member of the committee of management of a club to discriminate against a person who is not a member of the club on the ground of the person's sex, marital status or pregnancy— Clubs.

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

- (b) in the terms or conditions on which the club is prepared to admit the person to membership.

(2) It is unlawful for a club, the committee of management of a club or a member of the committee of management of a club to discriminate against a person who is a member of the club on the ground of the member's sex, marital status or pregnancy—

- (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;
- (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) renders it unlawful to discriminate against a person on the ground of the person's sex if membership of the club is available to persons of the opposite sex only.

(4) Nothing in subsection (1), other than paragraph (a), or subsection (2) renders it unlawful to discriminate against a person on the ground of the person's sex if the discrimination occurs in relation to the use or enjoyment of any benefit provided by the club where—

- (a) it is not practicable for the benefit to be used or enjoyed—
 - (i) simultaneously; or
 - (ii) to the same extent,
- by both men and women; and

(b) either—

(i) the same, or an equivalent, benefit is provided for the use of men and women separately from each other;

or

(ii) men and women are each entitled to a fair and reasonable proportion of the use and enjoyment of the benefit.

(5) In determining any matter relating to the application of subsection (4), regard shall be had to—

(a) the purposes for which the club is established;

(b) the membership of the club, including any class or type of membership;

(c) the nature of the benefits provided by the club;

(d) the opportunities for the use and enjoyment of those benefits by men and women; and

(e) any other relevant circumstances.

23. (1) 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 sex, marital status or pregnancy, 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 of the opposite sex or of a different marital status, or persons who are not pregnant, as the case requires, would not, in circumstances that are the same or not materially different, be requested or required to provide.

Application
forms, etc.

(2) Nothing in subsection (1) renders it unlawful for a person to request or require—

- (a) a person of a particular sex to provide information concerning such part of the last-mentioned person's medical history as relates to medical conditions that affect persons of that sex only; or
- (b) a person who is pregnant to provide medical information concerning the pregnancy.

Division 4—Discrimination involving sexual harassment.

Sexual
harassment
in employ-
ment.

24. (1) It is unlawful for a person to harass sexually—

- (a) an employee of that person;
- (b) an employee of a person by whom the first-mentioned person is employed; or
- (c) a person who is seeking employment by the first-mentioned person or by an employer of the first-mentioned person.

(2) It is unlawful for a person to harass sexually—

- (a) a commission agent or contract worker of that person;
- (b) a commission agent or contract worker of a person of whom the first-mentioned person is a commission agent or contract worker; or
- (c) a person who is seeking to become a commission agent or contract worker of the first-mentioned person or of a person of whom the first-mentioned person is a commission agent or contract worker.

(3) A person shall, for the purposes of this section, be taken to harass sexually another person if the first-mentioned person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person, or engages in other unwelcome conduct of a sexual nature in relation to the other person, and—

- (a) the other person has reasonable grounds for believing that a rejection of the advance, a refusal of the request or the taking of objection to the conduct would disadvantage the other person in any way in connection with the other person's employment or work or possible employment or possible work; or
- (b) as a result of the other person's rejection of the advance, refusal of the request or taking of objection to the conduct, the other person is disadvantaged in any way in connection with the other person's employment or work or possible employment or possible work.

(4) A reference in subsection (3) to conduct of a sexual nature in relation to a person includes a reference to the making, to or in the presence of, a person, of a statement of a sexual nature concerning that person, whether the statement is made orally or in writing.

25. (1) It is unlawful for a person who is a member of the staff of an educational institution to harass sexually a person who is a student at that educational institution or is seeking admission to that educational institution as a student.

Sexual
harassment
in education.

(2) A person shall, for the purposes of this section, be taken to harass sexually another person if the first-mentioned person makes an unwelcome sexual advance, or an unwelcome request for sexual

favours, to the other person, or engages in other unwelcome conduct of a sexual nature in relation to the other person, and—

- (a) the other person has reasonable grounds for believing that a rejection of the advance, a refusal of the request or the taking of objection to the conduct would disadvantage the other person in any way in connection with the other person's studies or the other person's application for admission to an educational institution as a student; or
- (b) as a result of the other person's rejection of the advance, refusal of the request or taking of objection to the conduct, the other person is disadvantaged in any way in connection with the other person's studies or the other person's application for admission to an educational institution as a student.

(3) A reference in subsection (2) to conduct of a sexual nature in relation to a person includes a reference to the making, to or in the presence of, a person, of a statement of a sexual nature concerning that person, whether the statement is made orally or in writing.

Sexual
harassment
related to
accommoda-
tion.

26. (1) It is unlawful for a person who as principal or agent exercises control or purports to exercise control over accommodation or the letting or other allocation of accommodation to harass sexually—

- (a) a person who occupies accommodation over which that person exercises or purports to exercise control; or
- (b) a person who is an applicant for accommodation.

(2) A person shall, for the purposes of this section, be taken to harass sexually another person if the first-mentioned person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person, or engages in other unwelcome conduct of a sexual nature in relation to the other person and—

- (a) the other person has reasonable grounds for believing that a rejection of the advance, a refusal of the request or the taking of objection to the conduct would disadvantage the other person in any way in connection with the other person's accommodation or application for accommodation; or
- (b) as a result of the other person's rejection of the advance, refusal of the request or taking of objection to the conduct, the other person is disadvantaged in any way in connection with the other person's accommodation or application for accommodation.

(3) A reference in subsection (2) to conduct of a sexual nature in relation to a person includes a reference to the making, to or in the presence of, a person, of a statement of a sexual nature concerning that person, whether the statement is made orally or in writing.

Division 5—Exceptions to Part II.

27. (1) Nothing in section 11 (1) (a) or (b), 12 (1) (a) or (b) or 13 (b) renders it unlawful for a person to discriminate against another person, on the ground of the other person's sex, in connection with a position as an employee, contract worker or commission agent, being a position in relation to which it is a genuine occupational qualification to be a person of the opposite sex to the sex of the other person.

Exception—
genuine
occupational
qualification.

(2) Without limiting the generality of subsection (1), it is a genuine occupational qualification, in relation to a particular position, to be a person of a particular sex (in this subsection referred to as the "relevant sex") if—

- (a) the duties of the position can be performed only by a person having particular physical attributes (other than attributes of strength or stamina) that are not possessed by persons of the opposite sex to the relevant sex;
- (b) the duties of the position involve performing in a dramatic performance or other entertainment in a role that, for reasons of authenticity, aesthetics or tradition, is required to be performed by a person of the relevant sex;
- (c) the duties of the position need to be performed by a person of the relevant sex to preserve decency or privacy because they involve the fitting of clothing for persons of that sex;
- (d) the duties of the position include the conduct of searches of the clothing or bodies of persons of the relevant sex;
- (e) the occupant of the position is required to enter a lavatory ordinarily used by persons of the relevant sex while the lavatory is in use by persons of that sex;
- (f) the occupant of the position is required to live on premises provided by the employer or principal of the occupant of the position and
 - (i) the premises are not equipped with separate sleeping accommodation and sanitary facilities for persons of each sex;

- (ii) the premises are already occupied by a person or persons of the relevant sex and are not occupied by any person of the opposite sex to the relevant sex; and
 - (iii) it is not reasonable to expect the employer or principal to provide separate sleeping accommodation and sanitary facilities for persons of each sex;
- (g) the occupant of the position is required to enter areas ordinarily used only by persons of the relevant sex while those persons are in a state of undress; or
- (h) the position is declared, by regulations made for the purposes of this paragraph, to be a position in relation to which it is a genuine occupational qualification to be a person of a particular sex.

28. Nothing in Division 2 or 3 renders it unlawful for a person to discriminate against a man on the ground of his sex by reason only of the fact that the first-mentioned person grants to a woman rights or privileges in connection with pregnancy or childbirth.

Pregnancy or
childbirth.

29. Nothing in Division 2 or 3 renders unlawful discrimination against a person on the ground of the person's marital status in relation to a job which is one of two to be held by a married couple.

Employment
of married
couple.

30. Nothing in Division 2 or 3 applies to or in relation to the provision of services the nature of which is such that they can only be provided to members of one sex.

Services for
members of
one sex.

Measures
intended to
achieve
equality.

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

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

Accommoda-
tion
provided for
employees or
students.

32. (1) Nothing in Division 2 or 3 renders it unlawful for an employer who provides accommodation to employees of the employer to provide accommodation of different standards to different employees where—

- (a) the standard of the accommodation provided to each employee is determined having regard to the number of persons in the household of the employee; and
- (b) it is not reasonable to expect the employer to provide accommodation of the same standard for all employees.

(2) Nothing in Division 2 or 3 applies to or in relation to the provision of accommodation, where the accommodation is provided solely for persons of one sex who are students at an educational institution.

Residential
care of
children.

33. (1) Nothing in section 11 (1) (a) or (b) or 13 (b) renders it unlawful for a person to discriminate against another person on the ground of the other person's sex in connection with a position as an employee or contract worker where the duties of the position involve the care of a child or children in the place where the child or children resides or reside.

(2) Nothing in section 11 (1) (a) or (b), 11 (2) (c) or 13 (b) renders it unlawful for a person to discriminate against another person on the ground of the other person's marital status in connection with a position as an employee or contract worker of a particular employer or principal, where—

- (a) the duties of the position involve the care of a child or children in the place where the child or children resides or reside; and
- (b) it is intended that the spouse of the occupant of the position would also occupy a position as an employee or contract worker of that employer or principal.

34. (1) Nothing in Division 2 or 3 renders it unlawful for a person to discriminate against another person, on the ground of the other person's sex or marital status, in the terms or conditions appertaining to a superannuation or provident fund or scheme. Super-annuation and insurance.

(2) Subsection (1) may be repealed by a regulation, and such a regulation shall come into operation—

- (a) on a date specified in the regulation, being a date not earlier than 12 months after the making of the regulation; or
- (b) at the expiration of the period of 2 years immediately after the commencement of this Part,

whichever is later.

(3) Where a regulation made under subsection (2) comes into operation, subsection (1) shall thereupon be deemed for all purposes to have been repealed by an Act other than this Act.

(4) Nothing in Division 2 or 3 renders it unlawful for a person to discriminate against another person, on the ground of the other person's sex, 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 other person, where the discrimination is—

- (a) based upon actuarial or statistical data from a source on which it is reasonable for the first-mentioned person to rely; and
- (b) reasonable having regard to the matter of the data and any other relevant factors.

Sport.

35. (1) Nothing in Division 2 or 3 renders it unlawful to exclude persons of one sex from participation in any competitive sporting activity in which the strength, stamina or physique of competitors is relevant.

(2) Subsection (1) does not apply in relation to the exclusion of persons from participation in—

- (a) the coaching of persons engaged in any sporting activity;
- (b) the umpiring or refereeing of any sporting activity;
- (c) the administration of any sporting activity;
- (d) any prescribed sporting activity; or
- (e) sporting activities by children who have not attained the age of 12 years.

PART III—DISCRIMINATION ON THE GROUND
OF RACE.*Division 1—General.*

36. (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 race if, on the ground of—

Racial
discrimina-
tion.

- (a) the race of the aggrieved person;
- (b) a characteristic that appertains generally to persons of the race of the aggrieved person; or
- (c) a characteristic that is generally imputed to persons of the race of the aggrieved person,

the discriminator—

- (d) 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 of a different race; or
- (e) segregates the aggrieved person from persons of a different race.

(2) 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 race if the discriminator requires the aggrieved person to comply with a requirement or condition—

- (a) with which a substantially higher proportion of persons not of the same race 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.

Division 2—Discrimination in work.

Discrimination against applicants and employees.

37. (1) It is unlawful for an employer to discriminate against a person on the ground of the race of that person—

- (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 race of the employee—

- (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.

Discrimination against commission agents.

38. (1) It is unlawful for a principal to discriminate against a person on the ground of the race of that person—

- (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 race—

- (a) in the terms or conditions which 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.

39. It is unlawful for a principal to discriminate against a contract worker on the ground of the contract worker's race—

Discrimination against contract workers.

- (a) in the terms or conditions on which the principal allows the contract worker to work;
- (b) by not allowing 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;
- (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.

Partner-
ships.

40. (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 race—

- (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 race—

- (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 race—

- (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.

41. (1) This section applies to an organization of employees and to an organization of employers. Professional or trade organizations etc.

(2) It is unlawful for an organization to which this section applies or for a 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 race—

- (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 race—

- (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.

42. 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 the engaging in of an occupation to discriminate against a person on the ground of the person's race— Qualifying bodies.

- (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.

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

- (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.

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

- (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 race—

- (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 an educational authority prescribed by regulations in relation to such circumstances, if any, as may be prescribed by regulations.

45. 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 race—

Access to
places and
vehicles.

(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.

Goods,
services and
facilities.

46. 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 race—

- (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.

Accommoda-
tion.

47. (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 race—

- (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 race—

- (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; or
 - (c) by subjecting the other person to any other detriment in relation to accommodation occupied by the other person.
- (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 a near relative of such a person; or
- (b) accommodation provided by a charitable or other voluntary body solely for persons of one race.

48. (1) It is unlawful for a club, the committee of Clubs.
management of a club, or a member of the committee
of management of a club to discriminate against a
person who is not a member of the club on the ground
of the person's race—

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

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

- (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;
- (d) by depriving the member of membership or varying the terms of the member's 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 that has as its principal object the provision of benefits for persons of a specified race if those persons are described otherwise than—

- (a) by reference to colour; or
- (b) in a manner which has the effect of excluding persons of that race who are of a different colour from those persons, or the majority of those persons, who come within that description.

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

- (a) the essential character of the club;

- (b) the extent to which the affairs of the club are so conducted that the persons primarily enjoying the benefits of membership are of the race specified in the principal object; and
- (c) any other relevant circumstance.

49. 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 race, 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 of a different race would not, in circumstances that are the same or not materially different, be requested or required to provide.

Applica-
tion forms,
etc.

Division 4—Exceptions to Part III.

50. 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—

Exception—
genuine
occupational
qualification.

- (a) participation in a dramatic performance or other entertainment in a capacity for which a person of a particular race 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 of a particular race is required for reasons of authenticity;
- (c) working in a place where food or drink is, for payment or not, provided to and consumed by persons in circumstances in which a person of a particular race is required for reasons of authenticity; or

- (d) providing persons of a particular race with services for the purpose of promoting their welfare where those services can most effectively be provided by a person of the same race.

Special
needs.

51. Nothing in this Part applies to or in respect of anything done in affording persons of a particular race access to facilities or services to meet the special needs of persons of that race in relation to their education, training or welfare, or any ancillary benefits.

Exception—
citizenship.

52. This Part does not apply to or in respect of any act of an authority to which Part IX applies being an act performed pursuant to a Western Australian law that discriminates between Australian citizens and persons who are not Australian citizens.

PART IV—DISCRIMINATION ON THE GROUND OF RELIGIOUS OR POLITICAL CONVICTION.

Division 1—General.

Discrimina-
tion on
ground of
religious or
political
conviction.

53. (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 religious or political conviction if, on the ground of—

- (a) the religious or political conviction of the aggrieved person;
- (b) a characteristic that appertains generally to persons of the religious or political conviction of the aggrieved person; or

- (c) a characteristic that is generally imputed to persons of the religious or political conviction of the aggrieved person,

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 of a different religious or political conviction.

(2) 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 religious or political conviction if the discriminator requires the aggrieved person to comply with a requirement or condition—

- (a) with which a substantially higher proportion of persons who are of a different religious or political conviction 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.

Division 2—Discrimination in work.

54. (1) It is unlawful for an employer to discriminate against a person on the ground of the person’s religious or political conviction—

Discrimination against applicants and employees.

- (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 religious or political conviction—

- (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) It is unlawful for an employer to discriminate against an employee on the ground of the employee's religious conviction by refusing the employee permission to carry out a religious practice during working hours being a practice—

- (a) of a kind recognized as necessary or desirable by persons of the same religious conviction as that of the employee;
- (b) the performance of which during working hours is reasonable having regard to the circumstances of the employment; and
- (c) that does not subject the employer to any detriment.

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

- (a) to perform domestic duties on the premises on which the employer resides; or
- (b) where the number of persons employed by the employer, disregarding any persons employed to perform domestic duties, does not exceed 5.

55. (1) It is unlawful for a principal to discriminate against a person on the ground of the person's religious or political conviction—

Discrimination against commission agents.

- (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 religious or political conviction—

- (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.

56. It is unlawful for a principal to discriminate against a contract worker on the ground of the contract worker's religious or political conviction—

Discrimination against contract workers.

- (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.

Partnerships.

57. (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 religious or political conviction—

- (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 religious or political conviction—

- (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 religious or political conviction—

- (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.

58. (1) This section applies to an organization of employees and to an organization of employers. Professional or trade organizations etc.

(2) It is unlawful for an organization to which this section applies or for a 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 religious or political conviction—

- (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 religious or political conviction—

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

Qualifying
bodies.

59. 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 the engaging in of an occupation to discriminate against a person on the ground of the person's religious or political conviction—

- (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.

60. It is unlawful for an employment agency to discriminate against a person on the ground of the person's religious or political conviction—

- (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.

61. (1) It is unlawful for an educational authority to discriminate against a person on the ground of the person's religious or political conviction—

- (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 religious or political conviction—

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

(3) Nothing in this section applies to or in respect of an educational authority prescribed by regulations in relation to such circumstances, if any, as may be prescribed by regulations.

62. 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 religious or political conviction—

Goods,
services and
facilities.

- (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.

Accommoda-
tion.

63. (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 religious or political conviction—

- (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 religious or political conviction—

- (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; or
- (c) by subjecting the other person to any other detriment in relation to accommodation occupied by the other person.

(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 a near relative of such a person;

- (b) accommodation provided by a religious body.

64. (1) It is unlawful for a club, the committee of management of a club, or a member of the committee of management of a club to discriminate against a person who is not a member of the club on the ground of the person's religious or political conviction— Clubs.

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

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

- (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;
- (d) by depriving the member of membership or varying the terms of the member's membership; or
- (e) by subjecting the member to any other detriment.

Application
forms, etc.

65. 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 religious or political conviction, 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 of a different religious or political conviction would not, in circumstances that are the same or not materially different, be requested or required to provide.

Division 4—Exceptions to Part IV.

Exceptions
to sections
54 to 56.

66. (1) Nothing in section 54, 55 or 56 renders unlawful discrimination by an employer, principal or person—

- (a) where the employer or principal is a private educational authority; or
- (b) in the case of employment or work in a hospital or other place where a medical or other health related service is provided, where the employer or principal is a religious body,

if the duties of the employment or work are for the purposes of, or in connection with, or otherwise involve or relate to the participation of the employee in any religious observance or practice.

(2) Nothing in section 54, 55 or 56 renders unlawful discrimination by an employer, principal or person on the ground of the holding or not holding of any political conviction or the engaging in or refusal or failure to engage in any lawful political activities with respect to the offering of employment or work to a person as a ministerial adviser or officer, employee or worker for a political party, member of the electoral staff of another person, or in other similar employment or work.

PART V—OTHER UNLAWFUL ACTS.

67. (1) It is unlawful for a person (in this section referred to as the “victimizer”) to subject, or threaten to subject, another person (in this subsection referred to as the “person victimized”) to any detriment on the ground that the person victimized—

Victimiza-
tion.

- (a) has made, or proposes to make, a complaint under this Act;
- (b) has brought, or proposes to bring, proceedings against the victimizer or any other person under this Act;
- (c) has furnished, or proposes to furnish, any information, or has produced or proposes to produce, any documents to a person exercising or performing any function under this Act;
- (d) has appeared, or proposes to appear, as a witness before the Tribunal in a proceeding under this Act;

- (e) has reasonably asserted, or proposes to assert, any rights of the person victimized or the rights of any other person under this Act; or
- (f) has made an allegation that a person has done an act that is unlawful by reason of a provision of Part II, III or IV,

or on the ground that the victimizer believes that the person victimized has done, or proposes to do, an act or thing referred to in any of paragraphs (a) to (f).

(2) Subsection (1) (f) does not apply if it is proved that the allegation was false and was not made in good faith.

(3) Subject to subsection (2), the application or continued application of subsection (1) in a particular case shall not be affected by—

- (a) the failure of the person victimized to do any proposed act or thing referred to in any of the paragraphs of subsection (1); or
- (b) the withdrawal, failure to pursue, or determination of any complaint, proceeding or allegation under this Act.

Advertisements.

68. (1) It is unlawful for a person to publish or display, or cause or permit to be published or displayed, an advertisement or notice that indicates, or could reasonably be understood as indicating, an intention to do an act that is unlawful by reason of a provision of this Act.

(2) For the purposes of subsection (1), “advertisement” includes every form of advertisement or notice, whether to the public or not, and whether in a newspaper or other publication, by television or radio, by display of notices, signs, labels, showcards or goods, by distribution of samples, circulars,

catalogues, price lists or other material, by exhibition of pictures, models or films, or in any other way, and the reference to publish or display, in relation to an advertisement, shall be construed accordingly.

PART VI—GENERAL EXCEPTIONS TO THIS ACT.

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

Acts done
under
statutory
authority,
etc.

- (a) any other Act which is in force when this section comes into operation;
- (b) an instrument made or approved under an Act referred to in paragraph (a) not being—
 - (i) the rules of a society registered under the Co-operative and Provident Societies Act 1903;
 - (ii) the rules of a credit union within the meaning of the Credit Unions Act 1979;
 - (iii) the rules of a society registered under the Friendly Societies Act 1894; or
 - (iv) the rules of a building society registered under the Building Societies Act 1976;
- (c) an order of the Tribunal;
- (d) an order of a court; or
- (e) an order or award of a court or tribunal having power to fix minimum wages and other terms and conditions of employment (including the payment by an employer of a salary, wage or other remuneration in

excess of the amount fixed by such a court or tribunal and whether or not the payment of such salary, wage or other remuneration, but for this provision would constitute unlawful discrimination).

(2) Paragraphs (a), (b) and (e) of subsection (1) shall, except to the extent that regulations made for the purposes of this subsection provide otherwise, cease to be in force at the expiration of 2 years after the coming into operation of this section.

(3) Regulations made for the purposes of subsection (2) may provide generally in relation to the application of paragraphs (a), (b) and (e) of that subsection or may make provision in relation to specified Acts, instruments, orders or awards.

Charities.

70. (1) Nothing in this Act affects—

- (a) a provision of a deed, will or other document, whether made before or after the date of assent to this Act, that confers charitable benefits or enables charitable benefits to be conferred on persons of a class identified by reference to any one or more of the grounds of discrimination referred to in this Act; or
- (b) an act that is done in order to give effect to such a provision.

(2) In this section, “charitable benefits” means benefits for purposes that are exclusively charitable according to the law in force in Western Australia.

Voluntary
bodies.

71. Nothing in this Act renders it unlawful for a voluntary body to discriminate against a person, on any one or more of the grounds of discrimination referred to in this Act, in connection with—

- (a) the admission of persons as members of the body; or
- (b) the provision of benefits, facilities or services to members of the body.

72. Nothing in this Act affects—

Religious
bodies.

- (a) the ordination or appointment of priests, ministers of religion or members of any religious order;
- (b) the training or education of persons seeking ordination or appointment as priests, ministers of religion or members of a religious order;
- (c) the selection or appointment of persons to perform duties or functions for the purposes of or in connection with, or otherwise to participate in any religious observance or practice; or
- (d) any other act or practice of a body established for religious purposes, being an act or practice that conforms to the doctrines, tenets or beliefs of that religion or is necessary to avoid injury to the religious susceptibilities of adherents of that religion.

73. (1) Nothing in this Act renders it unlawful for a person to discriminate against another person on any one or more of the grounds of discrimination referred to in this Act in connection with employment as a member of the staff of an educational institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed, if the first-mentioned person so discriminates in good faith in order to avoid injury to the religious susceptibilities of adherents of that religion or creed.

Educational
institutions
established
for religious
purposes.

(2) Nothing in this Act renders it unlawful for a person to discriminate against another person on any one or more of the grounds of discrimination referred to in this Act in connection with a position

as a contract worker that involves the doing of work in an educational institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed, if the first-mentioned person so discriminates in good faith in order to avoid injury to the religious susceptibilities of adherents of that religion or creed.

(3) Nothing in this Act renders it unlawful for a person to discriminate against another person on any one or more of the grounds of discrimination referred to in this Act, other than the ground of race, in connection with the provision of education or training by an educational institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed, if the first-mentioned person so discriminates in good faith in favour of adherents of that religion or creed generally, but not in a manner that discriminates against a particular class or group of persons who are not adherents of that religion or creed.

Establishments providing housing accommodation, etc., for aged persons.

74. (1) In this section, "institution" means an establishment which provides housing accommodation and ancillary services for aged persons, whether under Statute or otherwise.

(2) Nothing in this Act affects—

- (a) any rule or practice of an institution which restricts admission thereto to applicants of any class, type, sex, race, age or religious or political conviction; or
- (b) the provision of benefits, facilities or services to such persons as are admitted to such an institution.

PART VII—THE COMMISSIONER FOR EQUAL OPPORTUNITY.

Division 1—Office of Commissioner.

Commissioner for Equal Opportunity.

75. (1) There shall be a Commissioner for Equal Opportunity who shall be appointed by the Governor.

(2) Subject to this Part, the Commissioner holds office for such period, not exceeding 7 years, as is specified in that person's instrument of appointment, and is eligible for re-appointment.

(3) A person who has attained the age of 65 years shall not be appointed or re-appointed as the Commissioner and a person shall not be appointed or re-appointed as the Commissioner for a period that extends beyond the day on which the person will attain the age of 65 years.

(4) A person who is a member of the Legislative Council or the Legislative Assembly or a member of a House of Parliament of another State or of a Territory or of the Commonwealth shall not be appointed as the Commissioner.

(5) The Commissioner is entitled to such terms and conditions of service, including remuneration and travelling and other allowances, as the Minister determines from time to time on the recommendation of the Public Service Board.

76. (1) The Governor may terminate the appointment of the Commissioner if the Commissioner becomes permanently incapable of performing the duties of the office of Commissioner. Vacation of office.

(2) The Governor shall terminate the appointment of the Commissioner if the Commissioner—

- (a) engages in paid employment outside the duties of the office of Commissioner, otherwise than with the consent of the Minister;
- (b) is nominated for election as a member of the Legislative Council or the Legislative Assembly or a member of a House of Parliament of another State or of a Territory or of the Commonwealth; or

- (c) 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 remuneration for their benefit.

(3) The Commissioner may resign from the office of Commissioner by writing delivered to the Governor.

Existing
rights, etc.

77. Appointment as Commissioner does not render the Public Service Act 1978, or any other Act applying to persons as officers of the Public Service of the State, applicable to that person, or affect or prejudice the application to that person of those provisions if they applied to that person at the time of appointment.

Acting
Commis-
sioner.

78. (1) The Minister may appoint a person to act as Commissioner—

- (a) during a vacancy in the office of Commissioner, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Commissioner is absent from duty or from Western Australia, or is, for any other reason, unable to perform the functions of the office of Commissioner,

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(2) An appointment of a person under subsection (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

(3) The Minister may—

(a) on the recommendation of the Public Service Board, determine the terms and conditions of appointment, including remuneration and allowances, of a person acting as Commissioner; and

(b) terminate such an appointment at any time.

(4) Where a person is acting as Commissioner in circumstances referred to in subsection (1) (b) and the office of Commissioner becomes vacant while that person is so acting, then, subject to subsection (2), that person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

(5) The appointment of a person to act as Commissioner ceases to have effect if the person resigns the appointment by writing delivered to the Minister.

(6) The validity of anything done by a person purporting to act pursuant to an appointment made under subsection (1) shall not be called in question on the ground that the occasion for the person's appointment had not arisen or had ceased, that there is a defect or irregularity in or in connection with the appointment, or that the appointment had ceased to have effect.

79. There may be appointed from time to time ^{Staff.} under and subject to the Public Service Act 1978 such officers as may be required for the purposes of assisting the Commissioner in the effective performance of the Commissioner's functions under this Act.

Division 2—Functions of the Commissioner.

General
functions
of Commis-
sioner.

80. For the purposes of eliminating discrimination on the ground of sex, marital status, pregnancy, race, or religious or political conviction, eliminating, as far as possible, sexual harassment at work, in educational institutions or related to accommodation, and promoting recognition and acceptance within the community of the principle of equality of men and women and of persons of all races and of all persons regardless of their religious or political conviction, the Commissioner may—

- (a) carry out investigations, research and inquiries relating to discrimination or sexual harassment of the kinds rendered unlawful under this Act;
- (b) acquire and disseminate knowledge on all matters relating to the—
 - (i) elimination of discrimination on the ground of sex, marital status or pregnancy, race or religious or political conviction;
 - (ii) elimination of sexual harassment at work, in educational institutions or related to accommodation;and
 - (iii) achievement of the principle of equality of men and women and of persons of all races and all persons regardless of their religious or political conviction;
- (c) arrange and co-ordinate consultations, inquiries, discussions, seminars and conferences;
- (d) review, from time to time, the laws of the State;
- (e) consult with governmental, business, industrial and community groups in order to ascertain means of improving services and conditions affecting a person or persons

who are subject to discrimination on the ground of sex, marital status or pregnancy, race or religious or political conviction or who are subject to sexual harassment;

- (f) develop programmes and policies promoting the achievement of the principle of equality between men and women, persons of all races and all persons regardless of religious or political conviction;
- (g) perform—
 - (i) any function conferred on the Commissioner by any other written law;
 - (ii) any function conferred on the Commissioner under any arrangement in force under section 7;
 - (iii) any function conferred on the Commissioner under any Act of the Commonwealth, being a function that is declared by the Minister, by notice published in the *Gazette*, to be complementary to other functions of the Commissioner; and
- (h) do anything conducive or incidental to the performance of the functions conferred or imposed on the Commissioner under this section.

81. (1) The Minister may refer to the Commissioner for report any matter relating to—

Reference by
the Minister
to the
Commis-
sioner.

- (a) a law or a proposed law; or
- (b) a practice, an alleged practice or a proposed practice of any person or class of persons,

which conflicts with or may give rise to conflict with this Act.

(2) The Commissioner shall conduct an examination into any matter referred by the Minister under subsection (1) and shall report to the Minister the findings and conclusions of such examination.

Review of
legislation,
etc.

82. The Commissioner shall, as soon as possible after the day of the coming into operation of this section, undertake a review of—

- (a) the written law of the State;
- (b) governmental policies and practices; and
- (c) the policies and practices of all superannuation funds and pension schemes whether governmental or otherwise,

with a view to identifying circumstances where discrimination on a ground referred to in this Act occurs, in substance or effect, against any person or class of persons and shall furnish a report of the findings of the review to the Minister.

Making of
complaints
to Commis-
sioner.

83. (1) A complaint alleging that a person has committed 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 by—

- (a) a person on the person's own behalf or on the person's own behalf and the behalf of other persons;
- (b) 2 or more persons on their own behalf or on behalf of themselves and other persons; or
- (c) a trade union of which a person or persons aggrieved by the alleged contravention is a member or are members on behalf of that person or those persons.

(2) A person may lodge a complaint in writing with the Commissioner or the registrar in respect of any refusal, neglect or failure to obey or comply with an order or interim order of the Tribunal.

(3) A complaint under subsection (1) may be lodged either as a complaint other than a representative complaint or as a representative complaint.

(4) A complaint made under subsection (1) shall be lodged within 12 months after the date on which the contravention of this Act which is the subject of that complaint is alleged to have been committed.

(5) Notwithstanding subsection (4), the Commissioner, on good cause being shown, may accept a complaint which is lodged more than 12 months after the date referred to in that subsection.

(6) In this section, "trade union" means an organization of employees or an organization of employers.

84. The Commissioner shall investigate each complaint lodged with the Commissioner under section 83.

Investigation of complaints by Commissioner.

85. The Commissioner, at any time after a complaint is lodged with the Commissioner under section 83 and before the Commissioner dismisses the complaint, resolves the complaint by conciliation or refers the complaint to the Tribunal under section 93, as the case may be, may apply to the Tribunal for the making of an interim order under section 126 or for the variation or revocation of any such order.

Application for interim order.

86. (1) Where the Commissioner has reason to believe that a person is capable of furnishing information (in this subsection referred to as "relevant information") or producing documents (in this subsection referred to as "relevant documents")

Power to obtain information and documents.

relevant to an inquiry under this Division, the Commissioner may, by notice in writing served on the person, require the person, at such place, and within such period or on such date and at such time, as are specified in the notice—

- (a) to furnish to the Commissioner, by writing signed by the person or, in the case of a body corporate, by an officer of the body corporate, such relevant information (if any) as is specified in the notice; and
- (b) to produce to the Commissioner such relevant documents (if any) as are specified in the notice.

(2) Where documents are produced to the Commissioner in accordance with a requirement under subsection (1), the Commissioner—

- (a) may take possession of, and may make copies of, or take extracts from, the documents;
- (b) may retain possession of the documents for such period as is necessary for the purposes of the inquiry to which the documents relate; and
- (c) during that period shall permit a person who would be entitled to inspect any one or more of the documents if they were not in the possession of the Commissioner to inspect at all reasonable times such of the documents as that person would be so entitled to inspect.

Directions to
attend
compulsory
conference.

87. (1) For the purpose of inquiring into an act, and endeavouring to settle the matter to which the act relates in accordance with section 91, the Commissioner may, by notice in writing, direct the persons referred to in subsection (2) to attend, at a time and place specified in the notice, a conference presided over by the Commissioner or a person appointed by the Commissioner.

(2) Directions under subsection (1) to attend a conference in relation to an act shall be given—

- (a) where a complaint was made to the Commissioner in relation to that act—to the complainant, or all the complainants, as the case requires;
- (b) to the person who is alleged to have done the act; and
- (c) to any other person who, in the opinion of the Commissioner, is likely to be able to provide information relevant to the inquiry or whose presence at the conference is, in the opinion of the Commissioner, likely to be conducive to the settlement of the matter to which the act relates.

(3) A person who has been given a direction under subsection (1) to attend a conference is entitled to be paid by the State a reasonable sum for the person's attendance at the conference.

(4) The Commissioner may, in a notice given to a person under subsection (1), require the person to produce such documents at the conference as are specified in the notice.

88. (1) The person presiding at a compulsory conference held under this Division may require a person attending the conference to produce a document.

Compulsory
conference.

(2) A conference under this Division shall be held in private and, subject to this Act, shall be conducted in such manner as the person presiding at the conference thinks fit.

(3) Subject to subsection (4), a body of persons, whether corporate or unincorporate, that is directed under section 87 to attend a conference shall be deemed to attend if an officer or employee of that body attends on behalf of that body.

(4) Except with the consent of the person presiding at a conference under this Division—

- (a) a natural person is not entitled to be represented at the conference by another person; and
- (b) a body of persons, whether corporate or unincorporate, is not entitled to be represented at the conference by a person other than an officer or employee of that body.

Commissioner may dismiss certain complaints.

89. (1) Where, at any stage of an inquiry, the Commissioner is satisfied that a complaint is frivolous, vexatious, misconceived, lacking in substance or relates to an act that is not unlawful by reason of a provision of this Act, the Commissioner may, by notice in writing addressed to the complainant, dismiss the complaint.

(2) The Commissioner shall, in a notice under subsection (1), advise the complainant of—

- (a) the reason for dismissing the complaint;
and
- (b) the rights of the complainant under section 90.

Reference of complaint to Tribunal at requirement of complainant.

90. (1) Where the Commissioner has given a complainant a notice under section 89, the complainant may, within 21 days after the receipt of that notice, by notice in writing served on the Commissioner, require the Commissioner to refer the complaint to the Tribunal.

(2) On receipt of a notice under subsection (1), the Commissioner shall refer the complaint to the Tribunal together with a report relating to any inquiries made by the Commissioner into the complaint.

91. (1) Where the Commissioner is of the opinion that a complaint other than a complaint that the Commissioner has dismissed under section 89, may be resolved by conciliation, the Commissioner shall endeavour to resolve the complaint by conciliation.

Resolution
complaint 1
conciliation

(2) The Commissioner may, by notice in writing, require the complainant and the respondent, or either of them, to appear before the Commissioner, either separately or together, for the purpose of endeavouring to resolve the complaint by conciliation.

92. (1) A complainant or respondent in conciliation proceedings before the Commissioner—

Representa-
tion in
conciliation
proceedings

- (a) is entitled to appear personally or, subject to section 91 (2), by an agent other than a solicitor or counsel; or
- (b) may, by leave of the Commissioner, be represented by a solicitor or counsel.

(2) No person other than a solicitor or counsel is entitled to demand or receive any fee or reward for representing a party in conciliation proceedings before the Commissioner.

93. (1) Without prejudice to the Commissioner's powers under section 89, where the Commissioner—

Reference of
complaints
to the
Tribunal.

- (a) is of the opinion that a complaint cannot be resolved by conciliation;
- (b) has endeavoured to resolve a complaint by conciliation but has not been successful in such endeavours; or
- (c) is of the opinion that the nature of a complaint is such that it should be referred to the Tribunal,

the Commissioner shall refer the complaint to the Tribunal together with a report relating to any inquiries made by the Commissioner into the complaint.

(2) Where a complaint is referred to the Tribunal under subsection (1), the Commissioner shall, if the complainant requests the Commissioner to do so, either personally or by counsel or representative, assist the complainant in the presentation of the case of the complainant to the Tribunal.

(3) Evidence of anything said or done in the course of conciliation proceedings under section 91 shall not be admissible in subsequent proceedings before the Tribunal.

Delegation
by Commis-
sioner.

94. (1) The Commissioner may, by instrument in writing, delegate to an officer of the Public Service of the State the exercise of such one or more of his functions under sections 83 (4), 84, 87, 88 and 91 as may be specified in the instrument of delegation.

(2) During a vacancy in the office of Commissioner, the Minister may, by instrument in writing, revoke wholly or in part a delegation under this section.

(3) Any act or thing done or suffered by a person pursuant to a delegation under this section has the same force and effect as if done or suffered by the Commissioner.

Annual
report.

95. (1) The Commissioner shall, on or before 30 September in each year, prepare and present to the Minister a report relating to the period of 12 months ending on the preceding 30 June on—

- (a) the Commissioner's work and activities for that period;
- (b) the administration of the functions of the Commissioner under this Act during that period; and

- (c) the research undertaken by the Commissioner during that period and any recommendations that the Commissioner considers appropriate for the elimination or modification of legislative provisions that discriminate, on a ground referred to in this Act, against any person or class of persons.

(2) The Minister shall cause the report to be laid before both Houses of Parliament as soon as practicable after its receipt by the Minister.

PART VIII—THE EQUAL OPPORTUNITY TRIBUNAL.

Division 1—Establishment of Tribunal.

96. (1) There is hereby established a Tribunal The Tribunal. to be known as the Equal Opportunity Tribunal.

(2) The Tribunal shall consist of—

- (a) a President, appointed by the Governor, who shall be a legal practitioner of not less than 7 years' standing and practice; and
- (b) 2 other members appointed by the Governor.

97. Subject to this Part, a member holds office for such term not exceeding 3 years as is specified in the member's instrument of appointment and is eligible for re-appointment. Term of office of members.

98. A member is entitled to such remuneration, including travelling and subsistence allowances, as is determined from time to time by the Minister on the recommendation of the Public Service Board. Remuneration.

99. The office of a member of the Tribunal shall become vacant if— Vacation of office.

- (a) the member dies;

- (b) the member's term of office expires;
- (c) the member resigns that office by notice in writing delivered to the Governor;
- (d) the member is nominated for election as a member of the Legislative Council or the Legislative Assembly or a member of a House of Parliament of another State or of a Territory or of the Commonwealth; or
- (e) the member is removed from office pursuant to section 100.

Removal
from office.

100. The Governor may remove a member of the Tribunal from office—

- (a) if the member is permanently incapable of performing the member's duties;
- (b) for neglect of duty; or
- (c) for dishonourable conduct.

Acting
President.

101. (1) The Minister may at any time appoint a person qualified for appointment as President under section 96 to act as President during the absence or illness of the President.

(2) A person appointed under subsection (1) shall have and may exercise, while acting as President, the functions of the President.

Deputy
members.

102. (1) The Minister may at any time appoint not more than 6 persons as deputy members of the Tribunal to provide a pool of persons to act as members, upon the request of the President, during the absence or illness of members other than the President.

(2) If a member of the Tribunal, other than the President, is absent or ill, the President may request a deputy member to act as a member in place of the member who is ill or absent and a deputy member shall have and may exercise, while acting as a member, the powers, duties, and functions of a member.

103. The Public Service Act 1978 does not apply to or in respect of the appointment of a member, and a member, as such a member, is not subject to the provisions of that Act during the member's term of office.

Member not
subject to
Public
Service Act
1978.

104. An act or proceeding of the Tribunal shall not be invalid by reason of a defect in the appointment of a member or a vacancy in its membership.

Validity of
Acts of
Tribunal.

105. (1) The President shall preside at any meeting of the Tribunal.

Decisions
of the
Tribunal.

(2) Subject to subsection (3), a decision in which any 2 members of the Tribunal concur shall be a decision of the Tribunal.

(3) The President shall determine any question relating to the admissibility of evidence, and any other question of law or procedure.

106. (1) There shall be a registrar of the Tribunal.

Registrar
of Tribunal.

(2) The registrar shall be appointed under, and shall hold office subject to, the Public Service Act 1978.

(3) The office of the registrar may be held in conjunction with any other office in the Public Service of the State.

Division 2—Functions of the Tribunal.

Jurisdiction
of Tribunal.

107. (1) The Minister may refer any matter to the Tribunal for inquiry as a complaint under this Act.

(2) The Tribunal shall carry out the functions conferred and imposed on the Tribunal in Part IX in accordance with the provisions of that Part.

(3) The Tribunal shall hold an inquiry into each complaint or matter referred to it under section 90 (2), 93 (1) or subsection (1).

(4) The Tribunal may perform—

(a) any function conferred on the Tribunal under any arrangement in force under section 7; and

(b) any function conferred on the Tribunal under any Act of the Commonwealth, being a function that is declared by the Minister, by notice published in the *Gazette*, to be complementary to other functions of the Tribunal.

Single
inquiry into
several
complaints.

108. Where the Tribunal is of the opinion that 2 or more complaints arise out of the same or substantially the same circumstances or subject-matter, it may hold a single inquiry in relation to those complaints.

Joinder of
parties by
Tribunal.

109. Where, before the holding of an inquiry, or at any stage during the holding of an inquiry, the Tribunal is of the opinion that a person ought to be joined as a party to the inquiry, the Tribunal may, by notice in writing given to that person, join that person as a party to the inquiry.

110. (1) The Tribunal—

Notice of
inquiry and
rights of
parties at
inquiry.

- (a) shall give a party to an inquiry, other than a person to whom the Tribunal grants leave to appear as a party to the inquiry, such notice in such manner as the Tribunal determines of the time and place at which it intends to hold the inquiry; and
- (b) shall give each party to an inquiry reasonable opportunity to call or give evidence, examine or cross-examine witnesses and make submissions to the Tribunal.

(2) If a party to an inquiry to whom notice has been given under subsection (1) (a) fails to attend at the time and place specified for the inquiry, the Tribunal may hold the inquiry in the absence of that party.

111. The parties to an inquiry shall be the complainant, the respondent, any person joined by the Tribunal as a party to the inquiry and any person to whom the Tribunal grants leave to appear as a party to the inquiry.

Parties to
inquiry.

112. (1) A party to an inquiry—

Appearance
and
representa-
tion before
Tribunal.

- (a) is entitled to appear personally or where the party is a body corporate, by a director, the secretary or an agent of the body corporate; and
- (b) may, by the leave of the Tribunal, be represented by the party's solicitor or counsel or an agent.

(2) No person, other than a legal practitioner, is entitled to demand or receive any fee or reward for representing a party to an inquiry.

Officer
assisting the
Tribunal.

113. (1) The Tribunal may make arrangements with the Commissioner for an officer of the Commissioner to appear at an inquiry to assist the Tribunal.

(2) An officer of the Commissioner assisting the Tribunal at an inquiry in accordance with arrangements made under subsection (1) shall, in relation to that inquiry, be subject to the control and direction of the Tribunal.

Determina-
tion of
represent-
ative
complaints.

114. At any inquiry held in respect of a representative complaint, the Tribunal shall determine, as a preliminary matter, whether that complaint shall be dealt with as a representative complaint.

Matter to be
considered in
determina-
tion of
represent-
ative
complaints.

115. (1) The Tribunal shall not permit a complaint to be dealt with as a representative complaint unless it is satisfied that the complaint is made *bona fide* and in good faith as a representative complaint.

(2) In considering whether a complaint is made *bona fide* and in good faith as a representative complaint, the Tribunal shall satisfy itself—

(a) that—

- (i) the complainant is a member of a class of persons, the members of which class have been affected, or may reasonably be likely to be affected, by the conduct of the respondent;
- (ii) the complainant has in fact been affected by the conduct of the respondent;
- (iii) the class is so numerous that joinder of all its members is impracticable;
- (iv) there are questions of law or fact common to all members of the class;

- (v) the claims of the complainant are typical of the claims of the class;
 - (vi) multiple complaints would be likely to produce varying determinations which could have incompatible or inconsistent results for the individual members of the class; and
 - (vii) the respondent has acted on grounds apparently applying to the class as a whole; or
- (b) that notwithstanding that the requirements of paragraph (a) have not been satisfied, the justice of the case demands that the matter be dealt with and a remedy provided by means of a representative complaint.

116. Where the Tribunal is satisfied—

Amendment
of
complaint
by Tribunal.

- (a) that the complaint could be dealt with as a representative complaint if the class of persons on whose behalf that complaint is lodged is increased, reduced or otherwise altered, the Tribunal may amend the complaint so that the complaint can be dealt with as a representative complaint; or
- (b) that the complaint has been wrongly made as a representative complaint, the Tribunal may amend the complaint by removing the names of the persons or the class of persons on whose behalf that complaint was lodged so that the complaint can be dealt with as a complaint other than a representative complaint.

117. Nothing in this Act shall prevent a person from lodging a complaint, other than a representative complaint, under section 83, notwithstanding that the conduct in respect of which the complaint is lodged has also been the conduct in respect of which a representative complaint has been lodged.

Ordinary
complaint
not
precluded by
represent-
ative
complaint.

Resolution of
complaint by
conciliation.

118. The Tribunal—

- (a) may endeavour, by all such means as to it seem reasonable, to resolve by conciliation a complaint that is the subject of an inquiry; and
- (b) shall take all such steps as to it seem reasonable to effect an amicable settlement of a complaint that is the subject of an inquiry and for this purpose may adjourn an inquiry at any stage to enable the parties to negotiate with a view to settlement of the complaint by amicable arrangements.

Evidence and
findings in
other
proceedings.

119. In the course of an inquiry, the Tribunal may—

- (a) receive in evidence the transcript of evidence in any proceedings before a court or tribunal and draw any conclusions of fact therefrom that it considers proper;
- (b) adopt any findings, decision or judgment of a court or tribunal that may be relevant to the inquiry; and
- (c) receive in evidence any report of the Commissioner that may be relevant to the inquiry if a copy of that report has been made available to every party to the inquiry.

Evidence.

120. For the purposes of any inquiry, the Tribunal—

- (a) shall not be bound by the rules of evidence and may inform itself on any matter it thinks fit;
- (b) shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms; and

- (c) may give directions relating to procedure that, in its opinion, will enable costs or delay to be reduced and will help to achieve a prompt hearing of the matters at issue between the parties.

121. (1) Subject to subsection (2), an inquiry shall be held in public.

Inquiries may be held in private.

(2) The Tribunal may, of its own motion or on the application of a party to the inquiry, if it is satisfied that it is appropriate to do so, direct that an inquiry, or a part of an inquiry, be held in private.

122. (1) The Tribunal may direct that—

Tribunal may prohibit publication of evidence.

- (a) any evidence given before it;
- (b) the contents of any document produced to the Tribunal; or
- (c) any information that might enable a person who has appeared before the Tribunal to be identified,

shall not be published, or shall not be published except in such manner, and to such persons, as the Tribunal specifies.

(2) Nothing in this section shall be taken to derogate from the Tribunal's powers under section 121.

123. Where by any provision of this Act, conduct is excepted from conduct that is unlawful under this Act or that is a contravention of this Act, the onus of proving the exception in any inquiry lies upon the respondent.

Proof of exceptions.

Application
of Royal
Commissions Act
1968.

124. Subject to this Part, the President of the Tribunal, the Tribunal and the members of the Tribunal shall, for the purposes of an inquiry held by the Tribunal, have the powers, authorities, protections and immunities conferred by the Royal Commissions Act 1968, on the chairman of a commission, a commission and a commissioner respectively appointed under that Act, and that Act shall apply to any witness summoned by or appearing before the Tribunal in the same way as it applies to any witness summoned by or appearing before a commission.

Tribunal
may dismiss
certain
complaints.

125. (1) Where, at any stage of an inquiry, the Tribunal is satisfied that a complaint is frivolous, vexatious, misconceived or lacking in substance, or that for any other reason the complaint should not be entertained, it may dismiss the complaint.

(2) Where the Tribunal dismisses a complaint under subsection (1), it may order the complainant to pay the costs of the inquiry.

Interim
orders.

126. The Tribunal or, where the President of the Tribunal is of the opinion that it is expedient that the President alone should exercise the functions of the Tribunal under this section, the President, may, on the application of the Commissioner under section 85, or on the application of a party to an inquiry at any time after the lodging of the complaint into which that inquiry is held, make an interim order to preserve—

(a) the *status quo* between the parties to the complaint; or

(b) the rights of the parties to the complaint, pending determination of the matter that is the subject of the complaint.

127. After holding an inquiry, the Tribunal ^{Decisions of Tribunal.} may—

- (a) dismiss the complaint that is the subject of the inquiry; or
- (b) find the complaint substantiated and do any one or more of the following—
 - (i) except in respect of a representative complaint or a matter referred to the Tribunal for inquiry as a complaint pursuant to section 107 (1), order the respondent to pay to the complainant damages not exceeding \$40 000 by way of compensation for any loss or damage suffered by reason of the respondent's conduct;
 - (ii) make an order enjoining the respondent from continuing or repeating any conduct rendered unlawful by this Act;
 - (iii) except in respect of a representative complaint or a matter referred to the Tribunal for inquiry as a complaint pursuant to section 107 (1), order the respondent to perform any reasonable act or course of conduct to redress any loss or damage suffered by the complainant;
 - (iv) make an order declaring void in whole or in part and either *ab initio* or from such other time as is specified in the order any contract or agreement made in contravention of this Act; or
 - (v) decline to take any further action in the matter.

128. (1) Except as provided by section 125 (2) ^{Costs.} and subsection (2), each party to an inquiry shall pay the party's own costs.

(2) Where the Tribunal is of the opinion in a particular case that there are circumstances that justify it doing so, the Tribunal may make such order as to costs and security for costs, whether by way of interim order or otherwise, as it thinks fit.

Recovery of
amounts
payable
under
order of
Tribunal.

129. Any amount ordered to be paid by the Tribunal under this Part may be registered as a judgment debt in a court of competent jurisdiction.

Compliance
with order
of Tribunal.

130. A person shall not refuse or for any reason fail to obey or comply with an order referred to in section 127 (b) (ii) or (iii), or an interim order, of the Tribunal.

Penalty:

(a) in the case of a natural person—\$1 000; or

(b) in the case of a body corporate—\$5 000.

Reasons for
decision of
Tribunal.

131. (1) Where the Tribunal does not state its reasons for any decision or order made in relation to an inquiry, a party to the inquiry may, by notice in writing served on the Tribunal within 7 days after the date of that decision or order, require the Tribunal to state its reasons.

(2) The Tribunal shall, within 14 days after the service of a notice under subsection (1), state its reasons for the decision or order referred to in the notice.

Authentica-
tion of
documents.

132. Every document requiring authentication by the Tribunal may be sufficiently authenticated if it is signed by the President of the Tribunal.

Judicial
notice of
certain
signatures.

133. Judicial notice shall be taken of the signature of the President of the Tribunal or the registrar when appearing on a document issued by the Tribunal.

134. (1) A party aggrieved by a decision or an order of the Tribunal may appeal to the Supreme Court on a question of law— Appeals.

- (a) except as provided in paragraph (b), within 21 days after the date of that decision or order; or
- (b) where a notice has been served on the Tribunal under section 131 (1), within 21 days after the date on which the Tribunal states its reasons for that decision or order under section 131 (2).

(2) An appeal shall be made in accordance with the rules of court.

(3) The Supreme Court may, in a particular case, extend the time within which an appeal may be commenced under subsection (1).

(4) The Supreme Court shall hear and determine the question of law arising on the appeal and shall—

- (a) remit the decision of the Court on that question to the Tribunal; or
- (b) make such other order in relation to the appeal as to the Court seems fit.

(5) The Tribunal and any member of the Tribunal shall not be liable to any costs in respect of the decision or order of the Tribunal or the appeal.

Division 3—Power of Tribunal to grant exemptions.

135. (1) The Tribunal may, on application by a person, by order, grant to the person an exemption from the operation of a specified provision of Part II, III or IV. Tribunal may grant exemptions.

(2) The Tribunal may, on application by a person to whom an exemption from a provision of Part II, III or IV has been granted under subsection (1), by order, grant to the person a further exemption from the operation of that provision.

(3) The Tribunal shall cause notice of an application for an exemption, a further exemption or the variation of an exemption or further exemption to be given by newspaper advertisement or otherwise, in such form and manner as the Tribunal may direct.

(4) A person who, in the opinion of the Tribunal, has a sufficient interest in an application under this section may be granted leave by the Tribunal to appear as a party to the application and the Tribunal shall give each party to the application reasonable opportunity to call or give evidence, examine or cross-examine witnesses and make submissions to the Tribunal.

(5) Sections 112, 113, 120, 121, 122, 128 and 129 shall, subject to necessary modifications, apply to an application under this section in the same way as those sections apply to an inquiry.

(6) An exemption or further exemption—

- (a) may be granted subject to such terms and conditions as are specified in the order;
- (b) may be varied either on the application of the person to whom the exemption is granted or at the instance of the Tribunal;
- (c) may be expressed to apply only in such circumstances, or in relation to such activities, as are specified in the order; and
- (d) shall be granted for a period specified in the order not exceeding 5 years.

136. (1) The Tribunal shall, not later than one month after it makes a decision under section 135, cause to be published in the *Gazette* a notice of the making of the decision—

Notice of
decisions
to be
published.

- (a) setting out its findings on material questions of fact;
- (b) referring to the evidence on which those findings were based; and
- (c) giving the reasons for the making of the decision.

(2) The Tribunal shall, not later than one month after it makes a decision under section 135, cause notice in writing of the Tribunal's decision to be served on every person granted leave to appear as a party under subsection (4) of that section.

(3) Any failure to comply with the requirements of subsection (1) or (2) in relation to a decision does not affect the validity of the decision.

137. Nothing in Parts II, III and IV renders it unlawful for a person who has been granted an exemption from a provision of one of those Parts, or a person in the employment or under the direction or control of a person who has been granted such an exemption, to do an act in accordance with the provisions of the order by which the exemption was granted.

Effect of
exemption
orders.

PART IX—EQUAL OPPORTUNITY IN PUBLIC EMPLOYMENT.

Division 1—General.

138. In this Part—

Interpreta-
tion.

“authority” means a person, group of persons, authority or body specified in section 139 (1) (a) to (d) or declared by regulations to be an authority for the purposes of this Part;

“management plan” means an equal opportunity management plan referred to in section 145.

Application
of Part IX.

139. (1) This Part applies to and in respect of the following authorities—

- (a) the Public Service of the State;
- (b) The Western Australian Government Railways Commission;
- (c) The State Energy Commission of Western Australia;
- (d) every public authority within the meaning of subsection (3); and
- (e) such authorities, bodies, persons, or groups of persons as the Governor may by regulation declare to be authorities for the purposes of this Part.

(2) Notwithstanding subsection (1), the Governor may by regulation declare that a person, group of persons, authority or body which would otherwise be an authority for the purposes of this Part shall not be an authority for the purposes of this Part.

(3) In subsection (1) (d), “public authority” means State trading concern, State instrumentality, State agency, or any public statutory body, corporate or unincorporate established by or under a law of the State.

Objects of
Part IX.

140. The objects of this Part are—

- (a) to eliminate and ensure the absence of discrimination in employment on the ground of sex, marital status, pregnancy, race, or religious or political conviction;
and
- (b) to promote equal employment opportunity for all persons,

in the authorities to which this Part applies.

141. The functions conferred or imposed on an authority under this Part shall be exercised—

Exercise of
functions of
authorities.

- (a) in the case of the Public Service, by the Permanent Head in respect of the Department of which that person is the Permanent Head;
- (b) in the case of an authority other than the Public Service, by the authority or by such person, if any, as may be prescribed by regulations.

*Division 2—The Director of Equal Opportunity
in Public Employment.*

142. (1) There shall be a Director of Equal Opportunity in Public Employment who shall be appointed by the Governor.

The
Director.

(2) Subject to this Part, the Director holds office for such period, not exceeding 4 years, as is specified in the instrument of the Director's appointment and on the expiration of that term the person is eligible for re-appointment.

(3) Sections 75 (3) to 79 apply to and in respect of the appointment and office of the Director in the same way as they apply to and in respect of the appointment and office of the Commissioner.

143. (1) The functions of the Director are—

Functions of
Director.

- (a) to advise and assist authorities in relation to management plans, including the development of guidelines to assist authorities in preparing management plans;

- (b) to evaluate the effectiveness of management plans in achieving the objects of this Part;

and

- (c) to make reports and recommendations to the Minister as to—

- (i) the operation of management plans;
- and

- (ii) such matters as the Director thinks appropriate relating to the objects of this Part.

(2) The Director may exercise such other functions as are conferred or imposed on the Director by or under this Part.

(3) The Director may, in the exercise of the Director's functions, consult, as the Director thinks fit, with persons or bodies who are concerned with any or all of the objects of this Act.

(4) The Director may do all such supplemental, incidental and consequential acts as may be necessary or expedient for the exercise of the Director's functions.

Annual
report.

144. (1) The Director shall, on or before 30 September in each year, prepare and present to the Minister a report on—

- (a) the Director's work and activities for the period of 12 months ending on the preceding 30 June; and
- (b) the administration of the functions of the Director under this Act during the period of 12 months ending on the preceding 30 June.

(2) The Minister shall cause the report to be laid before both Houses of Parliament as soon as practicable after its receipt by the Minister.

*Division 3—Equal employment opportunity
management plans.*

145. (1) Each authority shall prepare and implement an equal opportunity management plan in order to achieve the objects of this Part.

Preparation
and
implemen-
tation of
management
plans.

(2) The management plan of an authority shall include provisions relating to—

- (a) the devising of policies and programmes by which the objects of this Part are to be achieved;
- (b) the communication of those policies and programmes to persons within the authority;
- (c) the collection and recording of appropriate information;
- (d) the review of personnel practices within the authority (including recruitment techniques, selection criteria, training and staff development programmes, promotion and transfer policies and patterns, and conditions of service) with a view to the identification of any discriminatory practices;
- (e) the setting of goals or targets, where these may reasonably be determined, against which the success of the management plan in achieving the objects of this Part may be assessed;
- (f) the means, other than those referred to in paragraph (e), of evaluating the policies and programmes referred to in paragraph (a);
- (g) the revision and amendment of the management plan; and

- (h) the appointment of persons within the authority to implement the provisions referred to in paragraphs (a) to (g).

(3) The management plan of an authority may include provisions, other than those referred to in subsection (2), which are not inconsistent with the objects of this Part.

(4) The preparation of a management plan shall take place and the implementation of the management plan shall commence without delay and—

- (a) in the case of an authority referred to in section 139 (1) (a), (b), (c) or (d), other than an authority which is an institution of tertiary education, on or before such day as is specified in the regulations in respect of that authority and if no day is so specified in respect of an authority on or before the day that is 3 years after the day when this Part comes into operation; and

- (b) in the case of an institution of tertiary education or an authority the subject of regulations under section 139 (1) (e), on or before such day as is specified in the regulations.

(5) An authority may, from time to time, amend its management plan.

(6) Each authority shall send a copy of its management plan, and any amendment of the plan, to the Director as soon as practicable after the management plan or the amendment, as the case may be, has been prepared.

146. (1) Each authority shall report to the Director at least once in each year after the date on which the implementation of its management plan commenced.

(2) A report under subsection (1) shall specify—

(a) the activities and programmes undertaken—

(i) to eliminate and ensure the absence of discrimination in employment on the ground of sex, marital status, pregnancy, race or religious or political conviction; and

(ii) to promote equal opportunity for all persons,

during the period to which the report relates;

(b) the results achieved by the activities and programmes referred to in paragraph (a), including redistributive effects in the workforce; and

(c) the proposed activities and specific aims set for the year following the period to which the report relates.

147. Where the Director is dissatisfied with any matter relating to the preparation or implementation of a management plan by an authority or any failure or omission of an authority with respect to the preparation or implementation of a management plan, the Director may refer the matter to the Tribunal.

References
by Director
to Tribunal.

148. (1) The Tribunal shall endeavour to determine a reference made under section 147 and may for that purpose hold an investigation into the reference.

Investiga-
tion by
Tribunal.

(2) Except as otherwise provided by this Part, an investigation shall be held in such manner as the Tribunal determines.

Representa-
tion in
investigation
proceedings.

149. The Director or an authority in respect of which a reference is made is not entitled to be represented by counsel or a solicitor during the holding of an investigation under this Part into the reference.

Powers of
Tribunal
on an
investiga-
tion.

150. (1) For the purposes of an investigation, the Tribunal may require the Director or an authority—

- (a) to answer any question;
- (b) to give it a statement of information;
- (c) to produce to it any document or other thing; or
- (d) to give it a copy of any document.

(2) A requirement under subsection (1)—

- (a) shall be in writing;
- (b) shall specify or describe the information, document or thing required; and
- (c) shall specify a time for compliance.

(3) The Director or an authority of whom a requirement under subsection (1) is made shall comply with the requirement notwithstanding—

- (a) any rule of law which, in proceedings in a court of law, might justify an objection to compliance with a like requirement on grounds of public interest;
- (b) any privilege of the Director or authority;
or
- (c) any duty of secrecy or other restriction on disclosure applying to the Director or authority.

(4) Notwithstanding subsection (3), the Tribunal shall set aside a requirement under subsection (1) if it appears to it that the Director or authority of whom the requirement is made has a ground of privilege whereby in proceedings in a court of law, the Director or authority, as the case may be, might resist a like requirement and it does not appear to the Tribunal that the Director or authority, as the case may be, consents to compliance with the requirement.

151. (1) Where, under section 150, a person is required to give a statement that tends to incriminate that person, neither the requirement nor the statement may be used in any proceedings against that person except proceedings under section 155.

Incrim-
atory
statements.

(2) Subsection (1) applies whether the person required to give a statement objects to giving it or not.

152. At the conclusion of an investigation in relation to a reference, the Tribunal may do either or both of the following—

Conclusion of
investigation.

- (a) make recommendations to the Director or to the authority in respect of which the reference is made;
- (b) furnish a report, with or without recommendations, to the Minister in relation to the reference.

153. (1) On receipt of a report from the Tribunal under section 152, the Minister may, by notice in writing, direct an authority to amend its management plan in the manner specified in the instrument.

Direction to
amend
management
plan.

(2) An authority shall comply with a direction given to it by the Minister under subsection (1).

PART X—MISCELLANEOUS.

Effect of
contraven-
tion of Act.

154. (1) A contravention of this Act shall attract no sanction or consequence, whether criminal or civil, except to the extent expressly provided by this Act.

(2) Nothing in subsection (1) prevents an action for defamation.

Obstruction.

155. A person shall not, without lawful excuse, wilfully obstruct, hinder or resist the Commissioner, an officer of the Commissioner, a member of the Tribunal, the registrar, the Director or an officer of the Director in the exercise or the performance of a function under this Act.

Penalty:

(a) in the case of a natural person—\$1 000; or

(b) in the case of a body corporate—\$5 000.

Failure to
provide
actuarial or
statistical
data.

156. Where a person has engaged in an act of discrimination that would, but for section 34 (4), be unlawful, the Commissioner may, by notice in writing served on the person, require the person within 28 days after service of the notice on the person, to disclose to the Commissioner the source of the actuarial or statistical data on which the act of discrimination was based and, where the Commissioner makes such a requirement of a person, the person shall not, without reasonable excuse, fail to comply with the requirement.

Penalty:

(a) in the case of a natural person—\$1 000; or

(b) in the case of a body corporate—\$5 000.

157. (1) A person who has been given a notice under section 91 to appear before the Commissioner for the purpose of endeavouring to resolve a complaint by conciliation shall not, without reasonable excuse, fail to appear as required by the notice.

Failure to attend conciliation proceedings or conference.

Penalty:

(a) in the case of a natural person—\$1 000; or

(b) in the case of a body corporate—\$5 000.

(2) A person who has been given a direction under section 87 to attend a conference shall not, without reasonable excuse—

(a) fail to attend as required by the direction;

or

(b) fail to attend and report from day to day unless excused, or released from further attendance, by the person presiding at the conference.

Penalty:

(a) in the case of a natural person—\$1 000; or

(b) in the case of a body corporate—\$5 000.

158. A person shall not, without reasonable excuse, refuse or fail—

Failure to furnish information etc.

(a) to furnish information; or

(b) to produce a document,

when so required pursuant to section 86.

Penalty:

(a) in the case of a natural person—\$1 000; or

(b) in the case of a body corporate—\$5 000.

False or
misleading
information.

159. A person shall not furnish information or make a statement to the Commissioner or to any other person exercising or performing functions under this Act, knowing that the information or statement is false or misleading in a material particular.

Penalty:

- (a) in the case of a natural person—\$2 500 or imprisonment for 3 months, or both; or
- (b) in the case of a body corporate—\$10 000.

Liability of
persons
involved in
unlawful
acts.

160. A person who causes, instructs, induces, aids, or permits another person to do an act that is unlawful under this Act shall for the purposes of this Act be taken also to have done the act.

Vicarious
liability.

161. (1) Subject to subsection (2), where an employee or agent of a person does, in connection with the employment of the employee or with the duties of the agent as an agent—

- (a) an act that would, if it were done by the person, be unlawful under this Act (whether or not the act done by the employee or agent is unlawful under this Act); or

- (b) an act that is unlawful under this Act,

this Act applies in relation to that person as if that person had also done the act.

(2) Subsection (1) does not apply in relation to an act of a kind referred to in paragraph (a) or (b) of that subsection done by an employee or agent of a person if it is established that the person took all reasonable steps to prevent the employee or agent from doing acts of the kind referred to in that paragraph.

162. (1) Where, for the purposes of this Act, it is necessary to establish that a body corporate has done an act on a particular ground, it is sufficient to establish that a person who acted on behalf of the body corporate in the matter so acted on that ground.

Acts done
on behalf
of bodies.

(2) Where a person attends a conference under section 86, or appears before the Tribunal on behalf of a body or persons, whether corporate or unincorporate, any conduct by that person when so attending or appearing shall be deemed, for the purposes of this Act, to be conduct of the body.

163. (1) A reference in this Act to an employer shall be read and construed in relation to employment in a Department within the meaning of the Public Service Act 1978 as a reference to the Permanent Head, within the meaning of that Act, of that Department and any thing determined or done with respect to—

References to
employer.

- (a) the offer of any such employment;
- (b) the terms and conditions on which any such employment is afforded;
- (c) the opportunities afforded for promotion, transfer, training or other benefits associated with any such employment; or
- (d) dismissal from any such employment,

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

(2) A reference in this Act to an employer shall be read and construed in relation to employment in the Police Force of Western Australia as a reference to the Commissioner of Police and anything determined or done with respect to—

- (a) the offer of any such employment;

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

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

(d) dismissal from any such employment,

or with respect to any other matter concerning employment, by an officer or employee in the Police Department or the Police Force of Western Australia who is authorized to determine and do things in that respect shall be deemed to have been determined or done by the Commissioner of Police.

(3) The Governor may make regulations providing that a reference in this Act to an employer shall, in relation to employment in an authority specified in the regulations, be read and construed as a reference to the officer or employee of that authority specified in respect of that authority in the regulations and any thing determined or done with respect to—

(a) the offer of any such employment;

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

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

(d) dismissal from any such employment,

or with respect to any other matter concerning employment, by an officer or employee in any such authority who is authorized to determine and do things in that respect shall be deemed to have been determined or done by the officer or employee specified in the regulations.

(4) In subsection (3), "authority" means an authority to which Part IX applies other than the Public Service of the State and the Police Force of Western Australia.

164. It is not a reasonable excuse for the purposes of section 158 for a person to refuse or fail to furnish information or produce a document that the furnishing of the information or the production of the document might incriminate the person, but evidence of the furnishing of the information or the production of the document is not admissible in evidence against the person in any civil or criminal proceeding before a court, other than a proceeding for an offence under section 159.

Self-incrimination.

165. (1) Subject to subsection (2), where a complaint alleging that a person has done an act that is unlawful under Division 4 of Part II is lodged with the Commissioner under section 83, a person shall not make a record of, or divulge or communicate to any other person, any particulars of that complaint until—

Particulars of certain complaints not to be communicated.

(a) the Commissioner has commenced to inquire into the act; or

(b) where, under section 89, the Commissioner decides not to inquire into the act—

(i) if, within the period of 21 days after the complainant receives a notice under section 89 in relation to the complaint, the complainant has not served a notice under section 90 on the Commissioner—the expiration of that period of 21 days; or

(ii) in any other case—

(A) the Commissioner commences to hold an inquiry into the complaint; or

- (B) the complainant notifies the Commissioner that the complainant does not wish the inquiry to be held,

whichever is the earlier.

Penalty:

- (a) in the case of a natural person—\$1 000; or
- (b) in the case of a body corporate—\$5 000.

(2) Nothing in subsection (1) prohibits—

- (a) the Commissioner, a member of the Tribunal, a member of the staff assisting the Commissioner or a person acting under the direction or authority of the Tribunal or of the Commissioner or pursuant to a delegation under section 94 from making a record of, or divulging or communicating, any particulars of a complaint in the performance of a duty under or in connection with this Act or in the performance or exercise of a function or power under this Act;
- (b) a person from divulging or communicating any particulars of a complaint to—
 - (i) the complainant or a person on whose behalf the complaint was made;
 - (ii) the person alleged to have done the act to which the complaint relates;
 - (iii) the legal representative of a person referred to in subparagraph (i) or (ii); or
 - (iv) the employer or principal of the person referred to in subparagraph (i) or (ii);

- (c) a person who has made a complaint in respect of a particular matter from divulging or communicating any particulars of the complaint to—
 - (i) a person to whom, or an officer of a body to which, the complainant is making a complaint or application in respect of the same matter;
 - (ii) an officer of a tribunal in which the complainant is instituting proceedings, or to which the complainant is making an application, in respect of the same matter;
 - (iii) a near relative of the complainant;
or
 - (iv) a person from whom the complainant is seeking or receiving professional treatment, counselling or advice;
- (d) a person (in this paragraph referred to as the “relevant person”) on whose behalf a complaint has been made in respect of a particular matter from divulging or communicating any particulars of the complaint to—
 - (i) a person to whom, or an officer of a body to which, the relevant person is making a complaint or application in respect of the same matter;
 - (ii) an officer of a tribunal in which the relevant person is instituting proceedings, or to which the relevant person is making an application, in respect of the same matter;
 - (iii) a near relative of the relevant person;
or
 - (iv) a person from whom the relevant person is seeking or receiving professional treatment, counselling or advice; or

- (e) an authority or person to whom particulars of a complaint may be divulged or communicated under paragraph (b), (c) or (d) from making a record of those particulars.

Protection
from civil
actions.

166. (1) The Tribunal, a member of the Tribunal, the Commissioner or a person acting under the direction or authority of the Tribunal or of the Commissioner or pursuant to a delegation under section 94 is not liable to an action or other proceeding for damages for or in relation to an act done or omitted to be done in good faith in the performance or purported performance of any function, or in the exercise or purported exercise of any power or authority, conferred on the Tribunal or the Commissioner.

(2) Where—

- (a) a complaint has been made to the Commissioner; or
- (b) a submission has been made, a document or information has been furnished, or evidence has been given, to the Tribunal or the Commissioner,

a person is not liable to an action, suit or other proceeding in respect of loss, damage or injury of any kind suffered by another person by reason only that the complaint or submission was made, the document or information was furnished or the evidence was given.

Non-
disclosure
of private
information.

167. (1) A person who is, or has at any time been, the Commissioner, a member of the Tribunal or a member of the staff assisting the Commissioner or is, or has at any time been, authorized to perform or exercise any function of the Tribunal or the Commissioner or any function on behalf of the Tribunal or the Commissioner, being a function conferred on the Tribunal or on the Commissioner under this

Act, shall not, either directly or indirectly, except in the performance of a duty under or in connection with this Act or in the performance or exercise of such a function—

- (a) make a record of, or divulge or communicate to any person, any information relating to the affairs of another person acquired by the first-mentioned person by reason of that person's office or employment under or for the purposes of this Act or by reason of that person being or having been so authorized;
- (b) make use of any such information as is mentioned in paragraph (a); or
- (c) produce to any person a document relating to the affairs of another person furnished for the purposes of this Act.

Penalty: \$2 500 or imprisonment for 3 months, or both.

(2) A person who is, or has at any time been, the Commissioner, a member of the Tribunal, or a member of the staff assisting the Tribunal or is, or has at any time been, authorized to perform or exercise any function of the Tribunal or the Commissioner or any function on behalf of the Tribunal or the Commissioner, being a function conferred on the Tribunal or on the Commissioner under this Act, shall not be required—

- (a) to divulge or communicate to a court any information relating to the affairs of another person acquired by the first-mentioned person by reason of that person's office or employment under or for the purposes of this Act or by reason of that person being or having been so authorized;
- or

- (b) to produce in a court a document relating to the affairs of another person of which the first-mentioned person has custody, or to which that person has access, by reason of that person's office or employment under or for the purposes of this Act or by reason of that person being or having been so authorized,

except where it is necessary to do so for the purposes of this Act.

(3) Nothing in this section prohibits a person from divulging or communicating information, or producing a document, that is, or is included in a class of information that is or a class of documents that are, required or permitted by an Act to be divulged, communicated or produced, as the case may be.

(4) In this section—

“court” includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

“produce” includes permit access to.

Information
stored
otherwise
than in
written form.

168. Where information is recorded or stored by means of a mechanical, electronic or other device, any duty imposed by this Act to produce the document recording that information shall be construed as a duty to provide a document containing a clear reproduction in writing of the information.

Regulations.

169. (1) The Governor may make regulations for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting the generality of subsection (1), the Governor may make regulations for or with respect to—

- (a) the forms to be used for the purposes of this Act or the regulations;
- (b) the fees to be paid in respect of the lodging of any complaint under Part VII;
- (c) the manner of serving any notice or other document;
- (d) the procedure of the Tribunal at any inquiry; and
- (e) exempting—
 - (i) any person or class of persons;
 - (ii) any activity or class of activity; or
 - (iii) any other matter or circumstance, specified in the regulations from this Act or such parts of this Act as may be so specified.

(3) Regulations made under this Act may provide that contravention of or failure to comply with a regulation constitutes an offence and provide for penalties not exceeding a fine of \$500 for offences against the regulations.
