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**SEX DISCRIMINATION ACT 1994**

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**No. 92 of 1994**

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SCHEDULE 1

VACATION OF, AND REMOVAL FROM, OFFICE OF COMMISSIONER

**SEX DISCRIMINATION ACT 1994**

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**No. 92 of 1994**

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**AN ACT to prohibit discrimination and other specified conduct and to provide for the investigation and conciliation of, and inquiry into, complaints in relation to discrimination and prohibited conduct**

**[Royal Assent 16 December 1994]**

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

**PART 1****PRELIMINARY****Short title**

**1**—This Act may be cited as the *Sex Discrimination Act 1994*.

## Commencement

2—This Act commences on a day to be proclaimed.

## Interpretation

3—In this Act—

“**accommodation**” includes residential and business accommodation;

“**authorized**” means authorized by the Commissioner;

“**award**” means an award made under the *Industrial Relations Act 1984*;

“**child**” includes an adopted child, a step-child, foster child or an ex-nuptial child;

“**club**” means an incorporated or unincorporated association of at least 30 persons associated together for a lawful purpose, that—

(a) provides and maintains its facilities, wholly or partly, from the funds of the association; and

(b) sells or supplies liquor for consumption on its premises.

“**Commissioner**” means the Sex Discrimination Commissioner appointed under section 5;

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

“**conduct of a sexual nature**” includes—

(a) making, by any means, an oral or written statement of a sexual nature to a person or in the presence of a person which that person finds offensive; or

(b) displaying matter of a sexual nature which is offensive to a person and relates to any attribute referred to in section 16;

“**de facto spouse**” means a person who lives with another person of the opposite sex as the spouse of that other person although not legally married to that other person;

“**detriment**” includes humiliation or denigration;

**“employment”** includes—

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

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

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

**“family responsibilities”** means responsibilities to care for or support—

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

**“immediate family member”** of a person includes—

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

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

**“Industrial Commission”** means the Tasmanian Industrial Commission constituted under the *Industrial Relations Act 1984*;

**“inquiry”** means an inquiry held under Division 4 of Part 4;

**“judge”** includes a judge of a court in any jurisdiction;

“**local authority**” means a council within the meaning of the *Local Government Act 1993*;

“**marital status**” means the status of being—

(a) single; or

(b) married; or

(c) married but living separately and apart from one’s spouse; or

(d) the spouse of a particular person; or

(e) divorced; or

(f) widowed;

“**organization**” includes a local authority, a Government department within the meaning of the *Tasmanian State Service Act 1984* or a State authority;

“**parent**” includes a guardian, step-parent, adoptive parent and foster parent;

“**parental status**” means the status of being a parent or childless;

“**person**” includes an organization;

“**pregnancy**” includes child-bearing capacity;

“**prohibited conduct**” means—

(a) conduct or harassment referred to in section 17; and

(b) victimization referred to in section 18; and

(c) aiding a contravention of this Act;

“**publish**” includes to authorize publication or cause to be published;

“**representative complaint**” means a complaint referred to in section 52;

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

“**respondent**” means a person or organization against whom a complaint is made;

“**services**” includes services—

(a) relating to access to and use of any place that members of the public are permitted to enter; or

(b) relating to banking, the insurance or the provision of credit, grants, loans or finance; or

(c) relating to entertainment or refreshment; or



- (d) relating to transportation or travel; or
- (e) relating to any profession, trade or business; or
- (f) provided by a public authority or a local authority; or
- (g) relating to selling, buying, leasing, assigning or disposing of an interest in land;

“**special need**” includes a need based on health or financial status;

“**spouse**” includes a former spouse, a de facto spouse and a former de facto spouse;

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

“**State programme**” means a programme conducted by or on behalf of the State;

“**trade union**” means—

- (a) an organization of employees that is a registered organization; or
- (b) a trade union within the meaning of—
  - (i) the *Industrial Relations Act 1984*; or
  - (ii) the *Industrial Relations Act 1988* of the Commonwealth; or
- (c) any other similar body;

“**Tribunal**” means a Tribunal established under section 12.

### Act to bind Crown

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

**PART 2****SEX DISCRIMINATION COMMISSIONER AND TRIBUNAL****Appointment of Commissioner**

5—(1) The Governor may appoint a person to be the Sex Discrimination Commissioner for a period not exceeding 5 years and on any terms and conditions the Governor determines.

(2) A person appointed as the Commissioner may hold that office in conjunction with any position or office under the *Tasmanian State Service Act 1984*.

(3) A person appointed as the Commissioner may vacate, or be removed from, office in accordance with Schedule 1.

(4) The Minister may appoint a person to act as Commissioner for a period not exceeding 12 months if there is no Commissioner or the Commissioner is unable to perform the duties of the office of Commissioner because of illness or absence.

**Functions of Commissioner**

6—The Commissioner has the following functions:—

- (a) to advise and make recommendations to the Minister on matters relating to discrimination and prohibited conduct;
- (b) to promote the recognition and approval of acceptable attitudes, acts and practices relating to discrimination and prohibited conduct;
- (c) to consult and inquire into discrimination and the effects of discrimination and prohibited conduct;
- (d) to disseminate information about discrimination and the effects of discrimination and prohibited conduct;
- (e) to undertake research and educational programmes to promote attitudes, acts and practices against discrimination and prohibited conduct;
- (f) to prepare and publish guidelines for the avoidance of attitudes, acts and practices of discrimination and prohibited conduct;
- (g) to examine any legislation and report to the Minister as to whether it is discriminatory or not;

- (h) to investigate and seek to conciliate complaints made in relation to discrimination and prohibited conduct;
- (i) to collect and analyse data relating to complaints made in relation to discrimination and prohibited conduct;
- (j) any other prescribed functions.

### **Powers of Commissioner**

7—The Commissioner has the following powers:—

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

### **Delegation**

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

### **Arrangements with the Commonwealth**

9—(1) The Minister may make an arrangement with a Minister of the Commonwealth for—

- (a) the performance or exercise on a joint basis of any function or power of the Commissioner; or
- (b) the performance or exercise by the Commonwealth or by an instrumentality of the Commonwealth of any function or power of the Commissioner.

(2) An arrangement may contain any incidental or supplementary provision that the Minister and the Minister of the Commonwealth with whom the arrangement is made may think necessary.

(3) An act done under any arrangement has the same effect as if it were an act of the Commissioner.

(4) The Minister may arrange with the Minister of the Commonwealth with whom an arrangement is in force to vary or revoke the arrangement.

(5) The Minister is to publish a notice of arrangement, variation or revocation made under this section in the *Gazette*.

### **Annual report**

**10—(1)** The Commissioner is to submit a report to the Minister by 30 September in each year on the operation of this Act for the 12 months to 30 June immediately preceding.

(2) The Minister, in writing, may direct the Commissioner to report on specified matters in the annual report.

(3) Any direction given by the Minister is to be included in the annual report.

(4) The Minister is to arrange for the annual report to be tabled in each House of Parliament within 14 sitting days of its receipt.

### **Special report**

**11—(1)** The Minister, in writing, may at any time direct the Commissioner to provide a report on any aspect of the operation of this Act.

(2) A report under subsection (1) is to be included in the next annual report if the Minister so determines.

### **Tribunal**

**12—(1)** The Minister may—

(a) establish a Tribunal; and

(b) appoint a person or persons as member or members of the Tribunal.

(2) If the Tribunal consists of one member, that member must be a legal practitioner of not less than 7 years standing, magistrate or former judge.

- (3) If the Tribunal consists of 2 or more members:—
- (a) one of those members must be a legal practitioner of not less than 7 years standing, magistrate or former judge; and
  - (b) the other member or members must be a person or persons with the experience and expertise relevant to the inquiry before the Tribunal.
- (4) The member of the Tribunal who is a legal practitioner of not less than 7 years standing, magistrate or former judge is the chairperson of the Tribunal.

### Functions of Tribunal

- 13—The functions of a Tribunal are—
- (a) to conduct an inquiry into a complaint; or
  - (b) to review a decision of the Commissioner relating to exemptions or withdrawals.
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## PART 3

### DISCRIMINATION AND PROHIBITED CONDUCT

#### *Division 1—Types of discrimination*

#### Direct discrimination

14—(1) Discrimination to which this Act applies may be direct or indirect discrimination on the grounds of any attribute referred to in section 16.

(2) Direct discrimination takes place if a person treats another person on the basis of any attribute referred to in section 16 or a characteristic imputed to that attribute less favourably than a person without that attribute or characteristic.

(3) For direct discrimination to take place, it is not necessary—

- (a) that the attribute be the sole or dominant ground for the unfavourable treatment; or

- (b) that the person who discriminates regards the treatment as unfavourable; or
- (c) that the person who discriminates has any particular motive in discriminating.

**Indirect discrimination**

**15—(1)** Indirect discrimination takes place if a person imposes a condition, requirement or practice which is unreasonable in the circumstances and has the effect of disadvantaging a member of a group of people who—

- (a) share, or are believed to share, an attribute referred to in section 16; or
- (b) share, or are believed to share, any of the characteristics imputed to appertain to such an attribute—

more than a person who is not a member of such a group.

(2) For indirect discrimination to take place, it is not necessary that the person who discriminates is aware that the condition, requirement or practice disadvantages the group of people.

**Prohibition of discrimination**

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

- (a) gender;
- (b) marital status;
- (c) pregnancy;
- (d) parental status;
- (e) family responsibilities.

*Division 2—Prohibited conduct***Prohibition of certain conduct and harassment**

17—(1) A person must not engage in any conduct which offends, humiliates, intimidates, insults or ridicules another person on the basis of an attribute referred to in section 16 in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated, intimidated, insulted or ridiculed.

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

(3) Sexual harassment takes place if a person—

(a) subjects another person to an unsolicited and unwelcome act of physical contact of a sexual nature; or

(b) makes an unwelcome sexual advance or an unwelcome request for sexual favours to another person; or

(c) makes any unwelcome remark or statement with sexual connotations to another person or about another person in that person's presence; or

(d) makes any unwelcome gesture, action or comment of a sexual nature; or

(e) engages in conduct of a sexual nature in relation to another person—

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

**Prohibition of victimization**

18—(1) A person must not victimize another person because that other person—

(a) made, or intends to make, a complaint under this Act; or

(b) gave, or intends to give, evidence or information in connection with any proceedings under this Act; or

(c) alleged, or intends to allege, that any person has committed an act which would amount to a contravention of this Act; or

- (d) refused, or intends to refuse, to do anything that would amount to a contravention of this Act; or
- (e) has done anything in relation to any person under or by reference to this Act.

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

### **Promoting prohibited conduct or discrimination**

**19—(1)** A person must not publish or display, or cause or permit to be published or displayed, any signs, notices or advertising matter which promotes, expresses or depicts prohibited conduct or discrimination.

(2) Subsection (1) does not apply to anything which is used for the purpose of discouraging prohibited conduct or discrimination.

### **Prohibition of aiding contravention of Act**

**20—(1)** A person must not knowingly—

- (a) cause another person to contravene this Act; or
- (b) induce another person to contravene this Act; or
- (c) aid another person to contravene this Act.

Penalty: Fine not exceeding 20 penalty units.

(2) All persons referred to in subsection (1) are jointly and severally liable for any contravention under this Act.

### ***Division 3—Application of Act to certain areas of activity***

#### **Areas of activity**

**21—**Subject to the exemptions specified in Division 4 of this Part, this Act applies to discrimination and prohibited conduct against a person engaged in, or undertaking any activity in connection with or pursuant to, any of the following:—

- (a) employment;
- (b) education and training;



- (c) provision of facilities, goods and services;
- (d) accommodation;
- (e) classes of memberships and activities of clubs;
- (f) administration of State laws and State programmes;
- (g) awards, enterprise agreements and industrial agreements.

#### *Division 4—General exemptions*

##### **Charities**

22—A person may—

- (a) include a discriminatory provision in a document or instrument that provides exclusively for charitable benefits wholly or partly for persons with any attribute referred to in section 16; and
- (b) do any act which is required to give effect to such a provision.

##### **Actions required by law**

23—A person may discriminate against another person if that discrimination is reasonably necessary to comply with, or is specifically authorized by—

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

#### *Division 5—Specific exemptions*

##### **Disadvantaged groups and special needs**

24—A person may discriminate against another person in any area if it is for the purpose of carrying out a scheme for the benefit of a group which is disadvantaged or has a special need because of an attribute referred to in section 16.

### Equal opportunities

**25**—A person may discriminate against another person in any programme, plan or arrangement designed to promote equal opportunity for a group of people who are disadvantaged or have a special need because of an attribute referred to in section 16.

### Gender

**26**—(1) A person may discriminate against another person on the ground of gender—

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

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

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

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

### Family responsibilities and other attributes

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

### Sport

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

(2) Competitive sporting activity does not include—

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

### Insurance and superannuation

29—(1) Subject to subsection (2), a person may discriminate against another person in the provision of services relating to insurance or superannuation if—

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

(b) the discrimination—

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

(2) A person must not discriminate against another person under subsection (1) unless the person has—

(a) notified the other person of—

- (i) the intention to so discriminate; and
- (ii) the right of that person to request information about the data referred to in subsection (1) (b); and

(b) provided that person with that information if so requested.

**Division 6—Exemptions****Exemptions**

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

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

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

(3) After considering an application, the Commissioner may—

- (a) grant an exemption for a specified conduct from the provisions of this Act; or
- (b) refuse to grant such an exemption.

(4) The Commissioner may—

- (a) grant an exemption unconditionally or on conditions for a period not exceeding 3 years; and
- (b) revoke an exemption on breach of a condition; and
- (c) vary a condition or impose a condition during the period of the exemption.

(5) The Commissioner may—

- (a) renew an exemption for a further period not exceeding 3 years; or
- (b) refuse to renew an exemption.

(6) The Commissioner is to publish notice of any grant, renewal or revocation of an exemption in the *Gazette*.

(7) A notice of the grant or renewal of an exemption is to state—

- (a) the period for which it has been granted or renewed; and
- (b) the conditions to which the exemption is subject.

(8) If the Commissioner refuses to grant or renew an exemption, the Commissioner is to—

- (a) provide the applicant with a written statement of the reasons for the refusal; and
- (b) inform the applicant that the refusal may be reviewed by the Tribunal.

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

### **Review of exemptions**

**31—(1)** A person may apply to the Tribunal for a review of a decision of the Commissioner under section 30 to—

- (a) grant an exemption; or
- (b) renew an exemption; or
- (c) refuse to grant an exemption; or
- (d) refuse to renew an exemption; or
- (e) impose or vary a condition.

(2) An application is to be—

- (a) in writing; and
- (b) made within 28 days of receipt of the statement referred to in section 30 (8).

(3) On receipt of an application, the Tribunal may review the decision of the Commissioner and—

- (a) confirm that decision; or
- (b) quash the decision and direct the Commissioner to take such action as the Tribunal considers appropriate.

**PART 4****DISPUTE RESOLUTION*****Division 1—Complaints*****Who may complain**

**32—(1)** Any of the following persons and organizations may complain to the Commissioner about discrimination or prohibited conduct:—

- (a) a person against whom the alleged discrimination or prohibited conduct was directed;
- (b) a person—
  - (i) against whom the alleged discrimination or prohibited conduct was directed; and
  - (ii) who is a member of a class of persons against whom alleged similar discrimination or prohibited conduct was directed, on behalf of that class, if the Commissioner is satisfied that a majority of those members are likely to consent;
- (c) a trade union which represents—
  - (i) a member of that union against whom the alleged discrimination or prohibited conduct was directed; or
  - (ii) a class of members of that union against whom the alleged discrimination or prohibited conduct was directed, if the Commissioner is satisfied that a majority of those members are likely to consent;
- (d) an organization against which the alleged discrimination or prohibited conduct was directed, if the Commissioner is satisfied that a majority of those members are likely to consent;
- (e) an agent of a person or organization referred to in this section;
- (f) a person or organization on behalf of the person against whom the alleged discrimination or prohibited conduct was directed.

(2) The Commissioner may investigate any discrimination or prohibited conduct if satisfied that there are reasonable grounds for doing so.

**Acting on behalf of complainant**

**33—(1)** The Commissioner may authorize a person or organization nominated—

(a) by a complainant to act on behalf of the complainant; and

(b) by a respondent to act on behalf of the respondent.

(2) The Commissioner may withdraw an authorization if the Commissioner considers it appropriate to do so.

**Form of complaints**

**34—(1)** A complaint is to—

(a) be made in writing and signed by the complainant; and

(b) identify the person, class of persons or organization against whom the alleged discrimination or prohibited conduct was directed and against whom the complaint is made; and

(c) set out details of the alleged discrimination or prohibited conduct; and

(d) be lodged with the Commissioner or sent to the Commissioner by post.

(2) The Commissioner may provide procedural advice and assistance to any person who requires assistance to make a complaint.

**Time limit on complaints**

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

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

**Rejection of complaints**

**36—(1)** The Commissioner may reject any complaint if—

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

- (b) the complaint does not relate to discrimination or prohibited conduct; or
  - (c) the complainant has commenced proceedings in a court or tribunal in relation to the same events and that court or tribunal may order remedies similar to those available under this Act.
- (2) The Commissioner is to decide whether to accept or reject a complaint within 42 days of its receipt.
- (3) The Commissioner is to notify the complainant of the decision to accept or reject the complaint as soon as practicable.

### **Review of rejected complaints**

- 37—(1) The Commissioner is to—
- (a) provide a written statement of the reasons for the rejection of any complaint to the complainant; and
  - (b) inform the complainant that the rejection may be reviewed by the Tribunal.
- (2) A complainant whose complaint was rejected by the Commissioner may apply to the Tribunal for the rejection to be reviewed.
- (3) An application to the Tribunal is to be made within 28 days of receipt of the statement referred to in subsection (1).
- (4) If, on reviewing the rejection, the Tribunal is satisfied that the Commissioner made a correct decision in rejecting the complaint, the complaint lapses.
- (5) If, on reviewing the rejection, the Tribunal is not satisfied that the Commissioner made a correct decision in rejecting the complaint, the Tribunal is to refer the complaint back to the Commissioner for investigation.
- (6) If a complainant does not make an application in relation to a rejected complaint within the period specified in subsection (3), the complaint lapses at the end of that period.
- (7) A complainant whose complaint lapses under subsection (4) or (6) is not entitled to make another complaint in relation to the same matter.



**Agreements not to complain**

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

(2) In assessing whether it is fair to accept the complaint, the Commissioner is to consider all the relevant circumstances of the case including—

- (a) the knowledge of the parties to the agreement; and
- (b) any benefit gained by the complainant in return for the agreement; and
- (c) whether the terms of the agreement were reasonable in the circumstances; and
- (d) the degree of good faith shown by the parties in implementing the agreement.

**Notification of acceptance of complaints**

**39—**If the Commissioner accepts a complaint, the Commissioner, within 10 days of accepting it, is to—

- (a) notify the respondent of that acceptance; and
- (b) provide the respondent with reasons for accepting the complaint; and
- (c) give the respondent—
  - (i) a summary of the complaint; or
  - (ii) with the consent of the complainant, a copy of the complaint.

**Withdrawal of complaints**

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

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

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

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

- (a) grant the withdrawal; and
- (b) record the term of any agreement reached between the complainant and the respondent; and
- (c) refer any application for costs to the Tribunal for an order under section 64.

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

- (a) the Commissioner or an authorized person from investigating the complaint under section 41 if satisfied that—
  - (i) the complaint was not withdrawn voluntarily; or
  - (ii) it is in the public interest to do so; or
- (b) the Minister from referring the complaint to the Tribunal.

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

### *Division 2—Investigation*

#### **Investigation of complaints**

**41—(1)** The Commissioner or an authorized person may investigate a complaint in any manner that is appropriate to the circumstances.

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

#### **Referral by Minister**

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

(2) The Minister may withdraw any matter referred under subsection (1) from an investigation.

(3) After investigating a matter referred under subsection (1), the Commissioner or authorized person is to submit a report to the Minister on the matter together with any recommendations.

### **Completion of investigation**

**43—**(1) The Commissioner or an authorized person, on the completion of the investigation of the complaint, is to determine that the complaint—

- (a) is dismissed; or
- (b) is to proceed to conciliation; or
- (c) is to proceed to an inquiry.

(2) The Commissioner or authorized person, as soon as practicable, is to notify the determination to—

- (a) the complainant; and
- (b) the respondent.

### ***Division 3—Conciliation***

#### **Conciliation of complaints**

**44—**The Commissioner or an authorized person must attempt to resolve by conciliation any complaint that the Commissioner or the authorized person believes may be resolved in that way.

#### **Conciliation conference**

**45—**(1) The Commissioner or an authorized person, by written notice, may direct a person to take part in a conciliation conference at a specified time and place.

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

Penalty: Fine not exceeding 10 penalty units.

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

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

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

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

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

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

### **Conciliated complaints**

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

(2) The record made by the Commissioner or authorized person is to be signed by both parties.

(3) The Commissioner or authorized person is to—

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

(b) hold the original record on file.

(4) An agreement is enforceable as if it were an order of the Tribunal under section 59 (1).

### **Conciliation proceedings not admissible**

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

## ***Division 4—Inquiry***

### **Referral for inquiry**

**48—**(1) The Commissioner or an authorized person is to refer a complaint for inquiry if the Commissioner or authorized person—

(a) believes the complaint cannot be resolved by conciliation; or

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

(2) The Commissioner or an authorized person is to refer a complaint within 6 months of the date of a notification under section 39 (a) or within any further period agreed with the complainant regardless of whether an investigation has been completed.

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

(4) A referral for inquiry is to be accompanied by a report relating to any investigation made into the complaint.

(5) A report is not to set out or describe anything said or done in the course of conciliation proceedings under Division 3 of this Part.

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

### **Directions conference**

**49—(1)** Before the Tribunal holds an inquiry into a complaint, the Commissioner or an authorized person is to arrange for a directions conference to be conducted in relation to the complaint.

(2) The Commissioner or an authorized person, by written notice, may require any person to—

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

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

Penalty: Fine not exceeding 10 penalty units.

(4) The Commissioner or an authorized person, if the complainant does not comply with a requirement to attend a directions conference in respect of that complaint, may—

(a) dismiss the complaint; and

(b) order that person to pay costs to the respondent.

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

### **Directions conference report**

**50—(1)** The following matters are to be addressed at a directions conference:—

(a) issues raised in the complaint which remain unresolved;

(b) application of exemptions under Divisions 4 and 5 of Part 3;

(c) admitted facts;

(d) facts to be established;

(e) witnesses to be called;

(f) documents to be provided;

(g) the listing of a complaint before the Tribunal.

(2) The Commissioner or an authorized person is to arrange for a written report to be made on the matters addressed at a directions conference.

(3) A copy of the directions conference report is to be provided, without delay, to the following persons:—

(a) each member of the Tribunal;

(b) the complainant;

(c) the respondent;

(d) any person joined as a party to the inquiry under section 51 (2).

### **Proceedings relating to inquiry**

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

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

**Representative complaints**

**52**—The Tribunal may deal with a complaint as a representative complaint if it is satisfied that the complaint was made by a person who is a member of a class of persons against whom the alleged similar discrimination or prohibited conduct was directed on behalf of that class.

**Ordinary complaint not precluded**

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

**Amendment of complaints**

**54**—(1) The Tribunal may amend any complaint—

- (a) which is made on behalf of a class of persons so that it can be dealt with as a representative complaint under section 52; or
- (b) if it considers it just to do so in the circumstances.

(2) If a complaint is amended, the Tribunal may make any order for costs it considers appropriate.

**Hearing of inquiry**

**55**—(1) An inquiry is to be held in public unless the Tribunal directs that it be held in private.

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

(3) A person may use an interpreter at an inquiry.

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

**Conduct of inquiry**

**56—**(1) The Tribunal is to conduct an inquiry with as little formality and as expeditiously as the requirements of this Act and a proper consideration of the matters before the Tribunal permit.

(2) The Tribunal may give directions relating to procedure to reduce costs or delay.

(3) Any question of law or procedure is to be determined by—

- (a) the member presiding at an inquiry, if the Tribunal consists of more than one person; or
- (b) the member constituting the Tribunal, if there is only one person.

(4) A person who raises an issue at an inquiry is to prove that issue on the balance of probabilities.

**Evidence**

**57—**(1) The Tribunal may take evidence on oath or affirmation and for that purpose a member of the Tribunal may administer an oath or affirmation.

(2) The Tribunal, by written notice, may require any person to appear before it to give evidence.

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

Penalty: Fine not exceeding 10 penalty units.

(4) The Tribunal—

- (a) is not bound by the rules of evidence but must observe the rules of natural justice; and
- (b) may inform itself on any matter as it thinks fit.

(5) The Tribunal may—

- (a) receive in evidence the transcript of evidence in any proceeding before a court or tribunal and draw any conclusion of fact from that transcript; and



- (b) adopt any finding or decision of a court or tribunal;  
and
- (c) receive in evidence any report of the Commissioner.

### Publication of evidence

58—(1) The Tribunal may order that—

- (a) any oral evidence given before it is not to be published;  
and
- (b) any documentary evidence produced to it is not to be published; and
- (c) any information that might enable a party or witness to be identified is not to be published.

(2) The Tribunal may make an order subject to any conditions it thinks fit.

(3) A person must not publish any information which is exempt information under Part 3 of the *Freedom of Information Act 1991*.

Penalty: Fine not exceeding 10 penalty units.

(4) A person must not publish evidence or information contrary to an order made by the Tribunal.

Penalty: Fine not exceeding 10 penalty units.

### Orders

59—(1) If the Tribunal finds after an inquiry that a complaint, other than that relating to an award, enterprise agreement or industrial agreement, is substantiated, it may make one or more of the following orders:—

- (a) an order that the respondent must not repeat or continue the discrimination or prohibited conduct;
- (b) an order that the respondent must redress any loss or injury suffered by the complainant and caused by the respondent's discrimination or prohibited conduct;
- (c) an order that the respondent must employ, re-employ or promote the complainant;

- (d) an order that the respondent must pay to the complainant, within a specified period, an amount the Tribunal considers appropriate as compensation for any loss or injury suffered by the complainant and caused by the respondent's discrimination or prohibited conduct;
- (e) an order that the respondent must pay a specified fine not exceeding 20 penalty units;
- (f) an order that a contract or agreement is to be varied or declared void in whole or in part;
- (g) an order that it would be inappropriate for any further action to be taken in the matter;
- (h) any other order it considers appropriate.

(2) If the Tribunal finds after an inquiry that a complaint against a permanent employee within the meaning of the *Tasmanian State Service Act 1984* is substantiated, it may order the Head of the Agency in which that employee is employed to exercise any one or more of the powers specified in section 55 of that Act.

(3) If the Tribunal makes an order under subsection (2), the inquiry held under this Act is taken to be an inquiry under section 55 of the *Tasmanian State Service Act 1984*.

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

- (a) make reasonable efforts to identify persons entitled to benefit from an order of the Tribunal if such persons were not personally identified at the inquiry; and
- (b) pay a specified sum to an organization or fund which is acceptable to the Tribunal if persons referred to in paragraph (a) cannot be personally identified.

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

### **Referral of substantiated claims to Industrial Commission**

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

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

### **Apologies and retractions**

61—(1) In respect of a substantiated complaint, the Tribunal may require the respondent to apologize to the complainant and make any retractions the Tribunal considers appropriate.

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

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

(4) A person must not fail to comply with a requirement or direction made by the Tribunal under this section.

Penalty: Fine not exceeding 10 penalty units.

### **Reasons for determinations**

62—(1) The Tribunal, if requested by a complainant or respondent, must give reasons in writing for an order made under section 59.

(2) A request is to be—

(a) in writing; and

(b) made within 24 days of the date of the order.

### **Conciliation and agreement**

63—(1) If the Tribunal believes that a complaint may be resolved by conciliation, it may, during an inquiry, refer the matter to a conciliation conference under section 45.

(2) If the parties to a complaint agree to resolve the complaint whilst it is before the Tribunal for inquiry, the Tribunal is to record the terms of the agreement.

(3) The record of agreement is to be signed by the parties.

(4) An agreement is enforceable as if it were an order of the Tribunal under section 59 (1).

### Costs

**64—(1)** Subject to subsection (2), each party to an inquiry is to pay his or her own costs.

(2) The Tribunal may make an order as to costs if it considers circumstances justify such an order.

### Matters taken into account

**65—**In any order made under section 59 (1) or 64 the Tribunal may in addition to other matters take into account any or all of the following matters:—

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

### Enforcement of orders

**66—(1)** A person, or the Commissioner at the request of a person, may enforce an order made under section 59 (1) by filing the following documents, free of charge, in the Supreme Court:—

- (a) a copy of the order certified by—
  - (i) the member who presided over the inquiry, if the Tribunal consisted of more than one person; or
  - (ii) the member who constituted the Tribunal, if there was only one person;
- (b) an affidavit stating the extent to which the order has not been complied with.

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

### *Division 5—Miscellaneous*

#### **Information and documents**

**67—(1)** The Commissioner, an authorized person or the Tribunal may require any person to provide specified information or produce specified documents which the Commissioner, authorized person or Tribunal believes may be relevant to the complaint.

(2) A requirement is to be in writing served on the relevant person.

(3) The Commissioner, authorized person or Tribunal may take and retain possession for a reasonable period, or take copies, of any document produced under subsection (1).

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

Penalty: Fine not exceeding 10 penalty units.

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

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

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

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

#### **Interim orders**

**68—(1)** The Commissioner, an authorized person or the Tribunal, at any stage of any investigation, conciliation or inquiry of a complaint, may make an interim order pending the completion of that investigation, conciliation or inquiry.

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

(3) An interim order prohibits a person from doing an act which might prejudice—

(a) the investigation of the complaint; or

(b) the conciliation of the complaint; or

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

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

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

### Dismissal of complaint

**69**—(1) The Tribunal may dismiss a complaint at any time if it is satisfied that the complaint is frivolous, vexatious, misconceived or lacking in substance.

(2) If the Tribunal dismisses a complaint on the grounds that it is frivolous or vexatious it may order the complainant to pay a specified fine not exceeding 10 penalty units.

### Appeals

**70**—(1) A person may appeal to the Supreme Court on a question of law or fact against an order made under section 59 (1) or 64.

(2) A person may appeal to the Supreme Court against a dismissal under section 59 (5).

(3) A person may appeal to the Supreme Court against a determination on a question of law under section 56 (3).

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

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**PART 5****MISCELLANEOUS****Immunity for complainants and witnesses**

**71—**(1) A person is not liable to any action, claim or demand in respect of any loss, damage or injury suffered by another person by reason only that the person—

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

(2) Subsection (1) does not apply to a complaint which the Tribunal dismisses as frivolous or vexatious.

**Immunity for Commissioner and Tribunal**

**72—**The Commissioner, any person acting for or at the direction of the Commissioner or a member of the Tribunal is not personally liable for an honest act done or omission made in the exercise or purported exercise of a power or the performance or purported performance of a function under this Act.

**Obligations of organizations**

**73—**(1) An organization must ensure that—

- (a) its members, officers, employees and agents are made aware of the discrimination and prohibited conduct to which this Act relates; and
- (b) the terms of an order made under section 59 relating to that organization are brought to the notice of those of its members, officers, employees and agents whose duties are such that they may engage in conduct of the kind to which the order relates; and
- (c) no member, officer, employee or agent of the organization engages in, repeats or continues such conduct.

(2) An organization which does not comply with subsection (1) is liable for any contravention of this Act committed by any of its members, officers, employees and agents.

**False and misleading statements**

74—A person, in giving any information under this Act, must not—

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

Penalty: Fine not exceeding 10 penalty units.

**Offences in respect of proceedings**

75—A person must not—

- (a) hinder any proceedings under this Act; or
- (b) use insulting language towards a person exercising any power or performing any function under this Act; or
- (c) create or take part in a disturbance relating to proceedings under this Act in or near a place where those proceedings are being conducted; or
- (d) do any act or thing in relation to the Tribunal that would constitute a contempt of court.

Penalty: Fine not exceeding 10 penalty units.

**Admissibility in other proceedings**

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

**Regulations**

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

(2) The regulations may—

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



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

### **Non-application of Act**

**78**—This Act does not apply to discrimination or prohibited conduct which took place and concluded before the commencement of this Act.

### **Administration of Act**

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

- (a) the administration of this Act is assigned to the Minister for the Status of Women; and
- (b) the Department responsible to the Minister for the Status of Women in relation to the administration of this Act is the Department of Tourism, Sport and Recreation.
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**SCHEDULE 1**

**Section 5 (3)**

**VACATION OF, AND REMOVAL FROM, OFFICE OF COMMISSIONER**

**1—**A person appointed as the Commissioner vacates that office if he or she—

- (a) dies; or
- (b) resigns; or
- (c) is removed from office under clauses (2) or (3).

**2—**The Minister may remove the Commissioner from office if the Commissioner—

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

**3—**The Minister may remove the Commissioner from office if satisfied that the Commissioner—

- (a) is unable to perform adequately or competently the duties of office; or

- (b) has neglected to perform those duties; or
  - (c) has been guilty of misconduct of such a nature which makes the Commissioner unsuitable to hold that office.
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*[Second reading presentation speech made in:—  
House of Assembly on 9 August 1994  
Legislative Council on 3 November 1994]*

