



ANNO TRICESIMO OCTAVO

ELIZABETHAE II REGINAE

A.D. 1989

No. 68 of 1989

An Act to amend the Equal Opportunity Act, 1984.

[Assented to 29 October 1989]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Equal Opportunity Act Amendment Act, 1989*.
- (2) The *Equal Opportunity Act, 1984*, is in this Act referred to as "the principal Act".

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Amendment of long title

3. The long title to the principal Act is amended by inserting "or intellectual" after "physical".

Interpretation

4. Section 5 of the principal Act is amended—

- (a) by striking out from subsection (1) the definitions of "employee" and "employer" and substituting the following definitions:

"employee"—

- (a) includes the holder of a public or statutory office (not being a judicial or magisterial office);

and

- (b) includes an unpaid worker:

"employer"—

- (a) in relation to the holder of a public or statutory office—means the Crown;

- (b) in relation to an unpaid worker—means an organization for which the unpaid worker performs services:

"employment" includes unpaid work;

(b) by inserting in subsection (1) after the definition of “employment agency” the following definitions:

“impairment” means intellectual impairment or physical impairment:

“intellectual impairment” means permanent or temporary loss or imperfect development of mental faculties (except where attributable to mental illness) resulting in reduced intellectual capacity;;

(c) by striking out from subsection (1) the definition of “physical impairment” and substituting the following definition:

“physical impairment” means—

(a) the total or partial loss of any function of the body;

(b) the total or partial loss of any part of the body;

(c) the malfunctioning of any part of the body;

or

(d) the malformation or disfigurement of any part of the body,

whether permanent or temporary, but does not include intellectual impairment or mental illness;

(d) by inserting in subsection (1) “or umpiring” after “coaching” in paragraph (g) of the definition of “services to which this Act applies”;

and

(e) by striking out from subsection (1) ‘ “voluntary worker” ’ and substituting ‘ “unpaid worker” ’.

Interpretative provisions

5. Section 6 of the principal Act is amended by inserting after subsection (2) the following subsection:

(3) For the purposes of this Act, a person (“the discriminator”) treats another unfavourably on the basis of a particular attribute or circumstance if the discriminator treats that other person less favourably than in identical or similar circumstances the discriminator treats, or would treat, a person who does not have that attribute or is not affected by that circumstance.

The Commissioner

6. Section 8 of the principal Act is amended by striking out subsections (3) and (4) and substituting the following subsections:

(3) The Commissioner is not a Public Service employee.

(4) The terms and conditions of the Commissioner’s appointment will be fixed by the Governor on the recommendation of the Commissioner for Public Employment.

(5) A Public Service employee may be appointed to act temporarily as the Commissioner.

Repeal of s. 9 and substitution of new section

7. Section 9 of the principal Act is repealed and the following section is substituted:

Staff

9. (1) The Commissioner will have such staff as is necessary for the administration of this Act.

(2) The Commissioner’s staff will consist of Public Service employees.

Functions of the Commissioner

8. Section 11 of the principal Act is amended by striking out from subsections (1) and (2) "physical".

Advice, assistance and research

9. Section 12 of the principal Act is amended—

(a) by striking out paragraph (a) of subsection (2) and substituting the following paragraph:

(a) if requested to do so by or on behalf of a person who has an impairment—

(i) give information or advice on the benefits, assistance or support that may be available in respect of the person's impairment;

(ii) assist the person to gain access to any such benefits, assistance or support;

or

(iii) assist the person, to the extent the Commissioner thinks desirable, to resolve any problem in relation to participation, or attempts to participate, in the economic or social life of the community;

(b) by striking out "handicapped persons" wherever appearing in paragraphs (b) and (c) of subsection (2) and substituting, in each case, "those who have impairments";

(c) by striking out "handicapped persons" last occurring in subsection (2) and substituting "persons who have impairments";

and

(d) by striking out subsection (3) and substituting the following subsection:

(3) Subsection (2) applies to a person whose impairment, whether in itself or in conjunction with the physical environment or the attitude of others, or the person's own attitude, to the impairment, substantially reduces his or her participation, or capacity to participate, in the economic or social life of the community.

Repeal of s. 13

10. Section 13 of the principal Act is repealed.

Annual report by Commissioner

11. Section 14 of the principal Act is amended by striking out from paragraph (b) of subsection (1) "sections 11, 12 and 13" and substituting "sections 14 and 12".

Registrar

12. Section 28 of the principal Act is repealed by striking out subsections (2) and (3) and substituting the following subsection:

(2) The Registrar is a Public Service employee.

Exemptions

13. Section 34 of the principal Act is amended by striking out subsection (3) and substituting the following subsection:

(3) This Division does not apply to discrimination on the ground of a woman's pregnancy if—

- (a) the discrimination is based on the fact that the woman is not, or would not be, able—
- (i) to perform adequately, and without endangering herself, the unborn child or other persons, the work genuinely and reasonably required of her;
- or
- (ii) to respond adequately to situations of emergency that should reasonably be anticipated in connection with her duties;
- and
- (b) in the case of discrimination arising out of dismissal from employment, there is no other work that the employer could reasonably be expected to offer the woman.

Discrimination by associations on ground of sex, marital status or pregnancy

14. Section 35 of the principal Act is amended—

- (a) by striking out from subsection (1) “After the expiration of one year from the commencement of this Act, it shall be” and substituting “It is”;
 - (b) by inserting after “sex” in paragraphs (a) and (b) of subsection (1) “, marital status or pregnancy”;
 - (c) by striking out “or” between subparagraphs (i) and (ii) of paragraph (b) of subsection (1);
- and
- (d) by inserting after subparagraph (ii) of paragraph (b) of subsection (1) the following word and subparagraph:
- or
- (iii) by expelling that member from the association or subjecting him or her to any other detriment.

Insertion of new s. 35a

15. The following section is inserted after section 35 of the principal Act:

Discrimination on the ground of sexuality by trade unions or employer bodies

35a. (1) It is unlawful for an association to which this section applies to discriminate—

- (a) against an applicant for membership on the ground of sexuality—
 - (i) by refusing or failing to admit the applicant to membership, or to a particular class of membership, of the association;
- or
- (ii) in the terms on which the applicant is, or may be, admitted to membership or a particular class of membership;
- or
- (b) against a member of the association on the ground of sexuality—
 - (i) by refusing or failing to provide a particular service or benefit to that member;

(ii) in the terms on which a particular service or benefit is provided to that member;

or

(iii) by expelling the member from the association or subjecting him or her to any other detriment.

(2) Without limiting the generality of subsection (1), an association to which this section applies discriminates against a member of a particular class in the association if, on application by the member to join a different class of membership in the association, the association accords the member a lower order of precedence on the list of applicants for that class of membership than that accorded to an applicant who is not a member of the association.

(3) In this section—

“association to which this section applies” means—

(a) an association registered under Part IX of the *Industrial Conciliation and Arbitration Act, 1972*;

(b) an organization registered under the *Industrial Relations Act 1988* of the Commonwealth;

(c) any other association formed to promote the interests of employers or employees.

Discrimination in provision of goods and services

16. Section 39 of the principal Act is amended by striking out from subsection (1) “to the public, or a section of the public,”.

Discrimination by associations on ground of race

17. Section 57 of the principal Act is amended—

(a) by striking out “or” between subparagraphs (i) and (ii) of paragraph (b) of subsection (1);

and

(b) by inserting after subparagraph (ii) of paragraph (b) of subsection (1) the following word and subparagraph:

or

(iii) by expelling that member from the association or subjecting him or her to any other detriment.

Discrimination in provision of goods and services

18. Section 61 of the principal Act is amended by striking out “to the public, or a section of the public”.

Amendment of the heading to Part V

19. The heading to Part V of the principal Act is amended by striking out “PHYSICAL”.

Repeal of s. 66 and substitution of new section

20. Section 66 of the principal Act is repealed and the following section is substituted:

Criteria for establishing discrimination on the ground of impairment

66. For the purposes of this Act, a person discriminates on the ground of impairment—

- (a) if he or she treats another unfavourably because of the other's impairment, or a past or presumed impairment;
- (b) if he or she treats another unfavourably because the other does not comply, or is not able to comply, with a particular requirement and—
 - (i) the nature of the requirement is such that a substantially higher proportion of persons who do not have such an impairment complies, or is able to comply, with the requirement than of those persons who have such an impairment;
- and
- (ii) the requirement is not reasonable in the circumstances of the case;
- (c) if he or she treats another unfavourably on the basis of a characteristic that appertains generally to persons who have such an impairment, or on the basis of a presumed characteristic that is generally imputed to persons who have such an impairment;
- (d) if, in circumstances where it is unreasonable to do so—
 - (i) he or she fails to provide special assistance or equipment required by a person in consequence of the person's impairment;
- or
- (ii) he or she treats another unfavourably because the other requires special assistance or equipment as a consequence of the other's impairment;
- (e) if he or she treats a person who is blind or deaf, or partially blind or deaf, unfavourably because the person possesses, or is accompanied by, a guide dog, or because of any related matter (whether or not it is his or her normal practice to treat unfavourably any person who possesses, or is accompanied by, a dog).

Amendment of ss. 67, 68, 69 and 70

21. Sections 67, 68, 69 and 70 of the principal Act are amended by striking out "his physical" wherever occurring.

Exemptions

22. Section 71 of the principal Act is amended by striking out from subsection (2) "physical".

Discrimination by associations on ground of impairment

23. Section 72 of the principal Act is amended—

- (a) by striking out "his physical" twice occurring;
 - (b) by striking out "or" between subparagraphs (i) and (ii);
- and
- (c) by inserting after subparagraph (ii) of paragraph (b) the following word and subparagraph:
 - or
 - (iii) by expelling that member from the association or subjecting him or her to any other detriment.

Discrimination by qualifying bodies

24. Section 73 of the principal Act is amended by striking out “his physical” twice occurring.

Discrimination by educational authorities

25. Section 74 of the principal Act is amended—

(a) by striking out from subsection (1) “his physical”;

(b) by inserting after “a student” in subsection (2) “on the ground of impairment”;

and

(c) by striking out from subsection (3) “physical” twice occurring.

Discrimination by person disposing of an interest in land

26. Section 75 of the principal Act is amended by striking out from subsection (1) “his physical”.

Discrimination in provision of goods and services

27. Section 76 of the principal Act is amended—

(a) by striking out from subsection (1) “to the public, or a section of the public,”;

(b) by striking out from subsection (1) “against a person” and substituting “against another on the ground of impairment”;

and

(c) by striking out from subsection (2) “physical” twice occurring.

Discrimination in relation to accommodation

28. Section 77 of the principal Act is amended by striking out “his physical” twice occurring.

Superannuation schemes and provident funds

29. Section 78 of the principal Act is amended by striking out from subsection (1) “his physical”.

Exemption in relation to salary, etc.

30. Section 79 of the principal Act is amended by striking out “physical”.

Exemption for charities

31. Section 80 of the principal Act is amended by striking out from paragraph (a) “physical”.

Repeal of s. 81 and substitution of new section

32. Section 81 of the principal Act is repealed and the following section is substituted:

Exemption in relation to sporting activities

81. This Part does not render unlawful the exclusion of a person who has an impairment from participation in a sporting activity—

(a) if the activity requires physical or intellectual attributes that the person does not possess;

or

(b) if, in the case of a sporting activity conducted wholly or mainly for persons who have a particular impairment, the person’s impairment is not of that kind.

Exemption for projects for benefit of persons with a particular impairment

33. Section 82 of the principal Act is amended by striking out “physical”.

Repeal of s. 83

34. Section 83 of the principal Act is repealed.

Exemption in relation to insurance, etc.

35. Section 85 of the principal Act is amended by striking out “physical”.

Sexual harassment

36. Section 87 of the principal Act is amended—

(a) by striking out subsections (1) and (2) and substituting the following subsections:

(1) It is unlawful for an employer (being a natural person) to subject an employee, or a person seeking employment, to sexual harassment.

(2) It is unlawful for an employee to subject a fellow employee, or a person seeking employment with the same employer, to sexual harassment.;

and

(b) by striking out subsection (7) and substituting the following subsection:

(7) It is unlawful for an employer to fail to take such steps as may be reasonably practicable to prevent an employee from subjecting a fellow employee, or a person seeking employment, to sexual harassment.

Amendment of heading to Division 1 of Part VIII

37. The heading to Division I of Part VIII of the principal Act is amended by striking out “ENFORCEMENT OF PERSONAL REMEDIES” and substituting “COMPLAINTS AND INQUIRIES”.

The making of complaints

38. Section 93 of the principal Act is amended by striking out subsection (1) and substituting the following subsections:

(1) A complaint alleging that a person has acted in contravention of this Act may be made—

(a) by any person aggrieved by the act;

(b) by any person aggrieved by the act, on behalf of himself or herself and any other person aggrieved by the act;

(c) where a person aggrieved by the act has an intellectual impairment—by a person who is, in the opinion of the Commissioner, a suitable representative of the interests of the aggrieved person.

(1a) A person cannot make a complaint pursuant to subsection (1) (b) on behalf of some other person unless that other person has consented in writing to the making of the complaint.

(1b) A person who consents to a complaint being made on his or her behalf is bound by any decision or order made on the complaint.

(1c) A complaint—

(a) must be in writing and set out the details of the alleged contravention;

and

(b) must be lodged with the Commissioner.

Insertion of new s. 93a

39. The following section is inserted after section 93 of the principal Act:

Institution of inquiries

93a. (1) Where it appears to the Tribunal, on application made by the Commissioner with the approval of the Minister, that a person may have acted in contravention of this Act, the Tribunal may refer the matter to the Commissioner for investigation.

(2) The person the subject of an application under this section is a party to the application and the Commissioner must, on lodging the application with the Tribunal, furnish the person with a copy of the application.

Investigations

40. Section 94 of the principal Act is amended by striking out subsection (1) and substituting the following subsection:

(1) On a complaint being lodged or a matter being referred, the Commissioner may conduct an investigation into the alleged contravention.

Manner in which Commissioner may deal with alleged contraventions

41. Section 95 of the principal Act is amended—

- (a) by striking out from subsection (3) “the subject matter of the complaint (other than a complaint to which subsection (1) applies)” and substituting “a matter (not being the subject of a complaint to which subsection (1) applies)”;
- (b) by striking out from paragraph (a) of subsection (8) “the subject matter of a complaint” and substituting “a matter”;
- (c) by inserting after “has,” in paragraph (c) of subsection (8) “within three months of being notified of the Commissioner’s decision,”;
- (d) by striking out from subsection (8) “complaint” last occurring and substituting “matter”;

and

(e) by inserting after subsection (8) the following subsection:

(8a) Where a matter referred to the Commissioner for investigation is to be referred to the Tribunal for hearing and determination, the Commissioner will lodge a complaint with the Tribunal in respect of the matter.

Power of Tribunal to make certain orders

42. Section 96 of the principal Act is amended—

(a) by striking out subsection (1) and substituting the following subsection:

(1) The Tribunal may, on determining that the respondent in proceedings under this Part has acted in contravention of this Act, make any one or more of the following orders:

- (a) an order requiring the respondent to pay compensation (of such amount as the Tribunal thinks fit) to any person for loss or damage arising from the contravention;
- (b) an order requiring the respondent to refrain from any further contravention of the Act;
- (c) an order requiring the respondent or any other party to the proceedings to perform specified acts with a view to redressing loss or damage arising from the contravention;
- (d) an order dismissing the matter.;

and

(b) by striking out from subsection (3) "a complainant" and substituting "a person".

Proceedings under the Industrial Conciliation and Arbitration Act

43. Section 100 of the principal Act is amended by striking out "physical" twice occurring.

SCHEDULE

The principal Act is further amended as follows:

Section 5 (1)—

Strike out "his husband or wife *de facto*" from paragraph (f) of the definition of "marital status" and substitute "a *de facto* husband or wife".

Strike out "of a member duly acting in his" from the definition of "member" and substitute "duly acting in a member's".

Strike out "his" from the definition of "near relative".

Strike out the definition of "race" and substitute the following definition:

"race" of a person means the nationality, country of origin, colour or ancestry of the person or of any other person with whom he or she resides or associates.

Section 6—

Strike out from subsection (1) "the duties of his office" and substitute "official duties".

Strike out from subsection (1) "by his employer".

Strike out from subsection (2) "he" and substitute "the person".

Strike out from subsection (2) "his" and substitute "the".

Section 12 (1)—

Strike out "notify that person in writing that he declines to furnish the advice" and substitute "give written notice to that person that the advice will not be furnished".

Section 14 (2)—

Strike out "to him".

Strike out "his".

Section 15 (1)—

Strike out "any of his".

Strike out "office in the Public Service of the State" and substitute "Public Service position".

Section 16 (1)—

Strike out "on his part".

Strike out "his powers or duties under this Act" and substitute "official powers or duties".

Section 18—

Insert "or she" after "he" wherever it occurs in subsections (3) and (4).

Strike out subsections (5) and (6) and substitute the following subsections:

(5) Where a judge or magistrate is appointed as the Presiding Officer, or as a Deputy Presiding Officer, the following provisions apply:

(a) the appointment will be for a term of office of three years and, on completion of a term of office, the appointee will be eligible for reappointment;

(b) the office will become vacant if—

(i) the appointee completes a term of office and is not reappointed;

or

(ii) the appointee ceases to be a judge or magistrate.

(6) Where a legal practitioner is appointed as a Deputy Presiding Officer, the following provisions apply:

(a) the appointment will be for a term of office of three years and, on completion of a term of office, the appointee will be eligible for reappointment;

(b) the appointee may be removed from office by the Governor on the ground of—

(i) mental or physical incapacity to carry out official duties satisfactorily;

(ii) neglect of duty;

or

(iii) dishonourable conduct;

(c) the office will become vacant if—

(i) the appointee completes a term of office and is not reappointed;

(ii) the appointee is removed from office;

or

(iii) the appointee resigns by notice in writing to the Minister.

Section 19—

Strike out subsections (3), (4) and (5) and substitute the following subsections:

(3) A member of the panel—

(a) will be appointed for a term of office of three years;

and

(b) on the completion of a term of office, will be eligible for reappointment.

(4) The Governor may remove a member of the panel from office on the ground of—

(a) mental or physical incapacity to carry out official duties satisfactorily;

(b) neglect of duty;

or

(c) dishonourable conduct.

(5) The office of a member of the panel will become vacant if—

(a) the member completes a term of office and is not reappointed;

(b) the member is removed from office;

or

(c) the member resigns by notice in writing to the Minister.

Section 21 (2)—

Strike out “him” and substitute “the member”.

Strike out “his or its” twice occurring and substitute, in each case, “official”.

Section 24—

Strike out “his absence” from subsection (2) and substitute “the absence of that person”.

Strike out from paragraph (a) of subsection (3) “he” and substitute “the person”.

Strike out from paragraph (b) of subsection (3) “him” and substitute “the person”.

Section 25—

Strike out from paragraph (d) of subsection (1) “that he will truly answer all questions put to him” and substitute “to answer truthfully all questions put”.

Strike out from paragraph (e) of subsection (1) “he has been”.

Strike out from paragraph (e) of subsection (1) “to him”.

Strike out from subsection (2) “he shall be” and substitute “the person is”.

Strike out subsection (3) and substitute the following subsection:

(3) A person is not obliged to answer a question or to produce a book, paper or document if the answer or the contents of the book, paper or document would tend to incriminate the person of an offence.

Section 26 (3)—

Strike out “to him”.

Section 29—

Delete this section and substitute the following section:

Definition of “discriminate”

29. (1) In this Part—

“discriminate” means—

(a) discriminate on the ground of sex;

(b) discriminate on the ground of sexuality;

(c) discriminate on the ground of marital status;

(d) discriminate on the ground of pregnancy,

and “discrimination” has a corresponding meaning.

(2) For the purposes of this Act, a person discriminates on the ground of sex—

(a) if he or she treats another person unfavourably because of the other’s sex;

(b) if he or she treats another unfavourably because the other does not comply, or is not able to comply, with a particular requirement and—

(i) the nature of the requirement is such that a substantially higher proportion of persons of the opposite sex complies, or is able to comply, with the requirement than of those of the other’s sex;

and

(ii) the requirement is not reasonable in the circumstances of the case;

or

(c) if he or she treats another person unfavourably on the basis of a characteristic that appertains generally to persons of the other’s sex, or on the basis of a presumed characteristic that is generally imputed to persons of that sex.

(3) Subject to subsection (4), for the purposes of this Act, a person discriminates on the ground of sexuality—

(a) if he or she treats another person unfavourably because of the other’s sexuality, or a presumed sexuality;

(b) if he or she treats another person unfavourably because the other does not comply, or is not able to comply, with a particular requirement and—

(i) the nature of the requirement is such that a substantially higher proportion of persons of a different sexuality complies, or is able to comply, with the requirement than of those of the other’s sexuality;

and

(ii) the requirement is not reasonable in the circumstances of the case;

or

(c) if he or she treats another person unfavourably on the basis of a characteristic that appertains generally to persons of the other’s sexuality, or presumed sexuality, or on the basis of a presumed characteristic that is generally imputed to persons of that sexuality.

(4) Where—

(a) a person discriminates against another on the basis of appearance or dress;

(b) that appearance or dress is characteristic of, or an expression of, that other person’s sexuality;

but

(c) the discrimination is reasonable in all the circumstances,

the discrimination will not, for the purposes of Division II, be taken to be discrimination on the ground of sexuality.

(5) For the purposes of this Act, a person discriminates on the ground of marital status—

(a) if he or she treats another person unfavourably because of the other's marital status;

(b) if he or she treats another person unfavourably because the other does not comply, or is not able to comply, with a particular requirement and—

(i) the nature of the requirement is such that a substantially higher proportion of persons of a different marital status complies, or is able to comply, with the requirement than of those of the other's marital status;

and

(ii) the requirement is not reasonable in the circumstances of the case;

or

(c) if he or she treats another person unfavourably on the basis of a characteristic that appertains generally to persons of that marital status, or on the basis of a presumed characteristic that is generally imputed to persons of that marital status.

(6) For the purposes of this Act, a person discriminates against a pregnant woman—

(a) if he or she treats the woman unfavourably because of her pregnancy;

(b) if he or she treats the woman unfavourably because she does not comply, or is not able to comply, with a particular requirement and—

(i) the nature of the requirement is such that a substantially higher proportion of women who are not pregnant complies, or is able to comply, with the requirement than of those who are pregnant;

and

(ii) the requirement is not reasonable in the circumstances of the case;

or

(c) if he or she treats the woman unfavourably on the basis of a characteristic that appertains generally to pregnant women, or on the basis of a presumed characteristic that is generally imputed to pregnant women.

Section 30—

Strike out from paragraph (b) of subsection (1) "he offers employment" and substitute "employment is offered".

Strike out from paragraph (a) of subsection (2) "on which he employs the employee" and substitute "of employment".

Strike out from paragraph (b) of subsection (2) "denying him access, or limiting his access," and substitute "denying or limiting access".

Strike out from paragraphs (c) and (d) of subsection (2) "him" wherever it occurs and substitute, in each case, "the employee".

Section 31—

Strike out from paragraph (b) of subsection (2) "he offers to engage him as an agent" and substitute "such an engagement is offered".

Strike out from paragraph (b) of subsection (3) "denying him access, or limiting his access," and substitute "denying or limiting access".

Strike out from paragraph (b) of subsection (3) "his position as an agent" and substitute "the agent's position".

Strike out from paragraph (c) of subsection (3) "his" and substitute "the".

Strike out from paragraph (d) of subsection (3) "him" and substitute "the agent".

Section 32 (3)—

Strike out from paragraph (a) "he allows the contract worker" and substitute "the contract worker is allowed".

Strike out from paragraph (b) "him" and substitute "the contract worker".

Strike out from paragraph (c) "denying him access, or limiting his access," and substitute "denying or limiting access".

Strike out from paragraph (d) "him" and substitute "the contract worker".

Section 33 (4)—

Strike out from paragraph (a) "on which it affords him membership of the firm" and substitute "of membership of the firm".

Strike out from paragraph (b) "denying him access, or limiting his access," and substitute "denying or limiting access".

Strike out from paragraphs (c) and (d) "him" wherever it occurs and substitute, in each case, "the partner".

Section 35—

Strike out from subsection (1) "his" twice occurring.

Strike out from subparagraph (i) of paragraph (a) of subsection (1) "him" and substitute "the applicant".

Strike out from subparagraph (ii) of paragraph (a) of subsection (1) "he" and substitute "the applicant".

Strike out from subsection (3) "him" and substitute "the member".

Section 37—

Strike out from paragraph (a) of subsection (1) "his" and substitute "an".

Strike out from paragraph (b) of subsection (1) "him" and substitute "the person".

Strike out from paragraph (b) of subsection (2) "denying him access, or limiting his access," and substitute "denying or limiting access".

Strike out from paragraphs (c) and (d) of subsection (2) "him" wherever it occurs and substitute, in each case, "the student".

Section 39—

Strike out from subsection (1) “against a person” and substitute “against another”.

Strike out from paragraph (d) of subsection (1) “he supplies the goods or performs the services” and substitute “the goods are supplied or the services are performed”.

Strike out from subsection (2) “his” and substitute “the person’s”.

Section 40—

Strike out from subsection (1) “against a person” and substitute “against another”.

Strike out from paragraph (a) of subsection (1) “he offers him accommodation” and substitute “accommodation is offered”.

Strike out from paragraph (b) of subsection (1) “his” and substitute “an”.

Strike out from paragraph (c) of subsection (1) “his application, or according him” and substitute “such an application or according the applicant”.

Strike out from paragraph (a) of subsection (2) “he provides the accommodation for that person” and substitute “accommodation is provided”.

Strike out from paragraph (b) of subsection (2) “denying him access, or limiting his access,” and substitute “denying or limiting access”.

Strike out from paragraphs (c) and (d) of subsection (2) “him” wherever it occurs and substitute, in each case, “the person”.

Strike out from paragraph (a) of subsection (3) “his” and substitute “that person”.

Insert after “his” in paragraph (b) of subsection (3) “or her”.

Section 41—

Strike out “his”.

Section 42—

Strike out paragraph (a) of subsection (1) and substitute the following paragraph:

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

Strike out from paragraph (b) of subsection (1) “he administers the scheme” and substitute “the scheme is administered”.

Strike out from subsection (3) “his” twice occurring and substitute, in each case, “the member’s”.

Strike out from subsection (3) “to him”.

Section 43—

Strike out paragraph (a) and substitute the following paragraph:

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

Strike out from paragraph (b) “he administers the scheme or fund” and substitute “the scheme or fund is administered”.

Section 51—

Delete this section and substitute the following section:

Criteria for establishing discrimination on the ground of race

51. For the purposes of this Act, a person discriminates on the ground of race—

(a) if he or she treats another person unfavourably by reason of the other’s race;

(b) if he or she treats another person unfavourably because the other does not comply, or is not able to comply, with a particular requirement and—

(i) the nature of the requirement is such that a substantially higher proportion of persons of a different race complies, or is able to comply, with the requirement than of those of the other’s race;

and

(ii) the requirement is not reasonable in the circumstances of the case;

or

(c) if he or she treats another person unfavourably on the basis of a characteristic that appertains generally to persons of the other’s race, or on the basis of a presumed characteristic that is generally imputed to persons of that race.

Section 52—

Strike out “his” twice occurring.

Strike out from paragraph (b) of subsection (1) “he offers employment” and substitute “employment is offered”.

Strike out from paragraph (a) of subsection (2) “on which he employs the employee” and substitute “of employment”.

Strike out from paragraph (b) of subsection (2) “denying him access, or limiting his access,” and substitute “denying or limiting access”.

Strike out from paragraphs (c), (d) and (e) of subsection (2) “him” wherever it occurs and substitute, in each case, “the employee”.

Section 53—

Strike out “his” twice occurring.

Strike out from paragraph (b) of subsection (2) “he offers to engage him as an agent” and substitute “such an engagement is offered”.

Strike out from paragraph (b) of subsection (3) “denying him access, or limiting his access,” and substitute “denying or limiting access”.

Strike out from paragraph (b) of subsection (3) “his position as an agent” and substitute “the agent’s position”.

Strike out from paragraph (c) of subsection (3) "his" and substitute "the".

Strike out from paragraph (d) of subsection (3) "him" and substitute "the agent".

Section 54—

Strike out "his" twice occurring.

Strike out from paragraph (a) of subsection (3) "he allows the contract worker" and substitute "the contract worker is allowed".

Strike out from paragraph (b) of subsection (3) "him" and substitute "the contract worker".

Strike out from paragraph (c) of subsection (3) "denying him access, or limiting his access," and substitute "denying or limiting access".

Strike out from paragraph (d) of subsection (3) "him" and substitute "the contract worker".

Section 55—

Strike out "his" twice occurring.

Strike out from paragraph (a) of subsection (2) "on which it affords him membership of the firm" and substitute "of membership of the firm".

Strike out from paragraph (b) of subsection (2) "denying him access, or limiting his access," and substitute "denying or limiting access".

Strike out from paragraphs (c) and (d) of subsection (2) "him" wherever it occurs and substitute, in each case, "the partner".

Section 57 (1)—

Strike out "his" twice occurring.

Strike out from subparagraph (i) of paragraph (a) "him" and substitute "the applicant".

Strike out from subparagraph (ii) of paragraph (a) "he" and substitute "the applicant".

Section 58—

Strike out "his".

Section 59—

Strike out "his race" twice occurring and substitute, in each case, "race".

Strike out from paragraph (a) of subsection (1) "his" and substitute "an".

Strike out from paragraph (b) of subsection (1) "him" and substitute "the person".

Strike out from paragraph (b) of subsection (2) "denying him access, or limiting his access," and substitute "denying or limiting access".

Strike out from paragraphs (c) and (d) of subsection (2) "him" wherever it occurs and substitute, in each case, "the student".

Section 60 (1)—

Strike out "his".

Section 61—

Strike out "a person on the ground of his race" and substitute "another on the ground of race".

Strike out from paragraph (d) "he supplies the goods or performs the services" and substitute "the goods are supplied or the services are performed".

Section 62—

Strike out from subsection (1) "against a person on the ground of his race" and substitute "against another on the ground of race".

Strike out from paragraph (a) of subsection (1) "he offers him accommodation" and substitute "accommodation is offered".

Strike out from paragraph (b) of subsection (1) "his" and substitute "an".

Strike out from paragraph (c) of subsection (1) "his application, or according him" and substitute "such an application or according the applicant".

Strike out from subsection (2) "his race" and substitute "race".

Strike out from paragraph (a) of subsection (2) "he provides the accommodation for that person" and substitute "accommodation is provided".

Strike out from paragraph (b) of subsection (2) "denying him access, or limiting his access," and substitute "denying or limiting access".

Strike out from paragraphs (c) and (d) of subsection (2) "him" wherever it occurs and substitute, in each case, "the person".

Section 63 (1)—

Strike out "his".

Strike out paragraph (a) and substitute the following paragraph:

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

Strike out from paragraph (b) "he administers the scheme or fund" and substitute "the scheme or fund is administered".

Section 67—

Strike out from paragraph (b) of subsection (1) "he offers employment" and substitute "employment is offered".

Strike out from paragraph (a) of subsection (2) "on which he employs the employee" and substitute "of employment".

Strike out from paragraph (b) of subsection (2) "denying him access, or limiting his access," and substitute "denying or limiting access".

Strike out from paragraphs (c) and (d) of subsection (2) "him" wherever it occurs and substitute, in each case, "the employee".

Section 68—

Strike out from paragraph (b) of subsection (2) "he offers to engage him as an agent" and substitute "such an engagement is offered".

Strike out from paragraph (b) of subsection (3) "denying him access, or limiting his access," and substitute "denying or limiting access".

Strike out from paragraph (b) of subsection (3) "his position as an agent" and substitute "the agent's position".

Strike out from paragraph (c) of subsection (3) "his" and substitute "the".

Strike out from paragraph (d) of subsection (3) "him" and substitute "the agent".

Section 69 (3)—

Strike out from paragraph (a) "he allows the contract worker to work" and substitute "the contract worker is allowed to work".

Strike out from paragraph (b) "him" and substitute "the contract worker".

Strike out from paragraph (c) "denying him access, or limiting his access," and substitute "denying or limiting access".

Strike out from paragraph (d) "him" and substitute "the contract worker".

Section 70 (2)—

Strike out from paragraph (a) "on which it affords him membership of the firm" and substitute "of membership of the firm".

Strike out from paragraph (b) "denying him access, or limiting his access," and substitute "denying or limiting access".

Strike out from paragraphs (c) and (d) "him" wherever it occurs and substitute, in each case, "the partner".

Section 71 (2)—

Insert after "himself" in paragraph (a) "or herself".

Section 72 (1) (a)—

Strike out from subparagraph (i) "him" and substitute "the applicant".

Strike out from subparagraph (ii) "he" and substitute "the applicant".

Section 73 (2)—

Strike out "he" and substitute "the person".

Section 74—

Strike out from paragraph (a) of subsection (1) "his" and substitute "an".

Strike out from paragraph (b) of subsection (1) "him" and substitute "the person".

Strike out from paragraph (b) of subsection (2) "denying him access, or limiting his access," and substitute "denying or limiting access".

Strike out from paragraphs (c) and (d) of subsection (2) "him" wherever it occurs and substitute, in each case, "the student".

Section 76—

Strike out from paragraph (d) of subsection (1) "he supplies the goods or performs the service" and substitute "the goods are supplied or the services are performed".

Strike out from subsection (2) "his" and substitute "the person's".

Strike out subsection (3) and substitute:

(3) This section does not apply to discrimination against a person on the ground of impairment in relation to the performance of a service where, in consequence of the impairment, that person requires the service to be performed in a special manner and the person performing the service—

(a) cannot reasonably be expected to perform the service in that manner;

or

(b) cannot reasonably be expected to perform the service in that manner except on more onerous terms than would otherwise apply.

Section 77—

Strike out from subsection (1) "against a person" and substitute "against another".

Strike out from paragraph (a) of subsection (1) "he offers him accommodation" and substitute "accommodation is offered".

Strike out from paragraph (b) of subsection (1) "his" and substitute "an".

Strike out from paragraph (c) of subsection (1) "his application, or according him" and substitute "such an application or according the applicant".

Strike out from paragraph (a) of subsection (2) "he provides the accommodation for that person" and substitute "accommodation is provided".

Strike out from paragraph (b) of subsection (2) "denying him access, or limiting his access," and substitute "denying or limiting access".

Strike out from paragraphs (c) and (d) of subsection (2) "him" wherever it occurs and substitute, in each case, "the person".

Section 78 (1)—

Strike out paragraph (a) and substitute the following paragraph:

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

Strike out from paragraph (b) "he administers the scheme or fund" and substitute "the scheme or fund is administered".

Section 84—

Strike out "his".

Section 86—

Delete this section and substitute:

Victimization is unlawful

86. (1) It is unlawful for a person to commit an act of victimization.

(2) For the purposes of this section, a person commits an act of victimization against another person ("the victim") if he or she treats the victim unfavourably on the ground that the victim has—

(a) brought proceedings under this Act against any person;

(b) given evidence or information in any proceedings under this Act;

(c) made allegations that the victim or some other person has been the subject of an act that contravenes this Act;

(d) reasonably asserted the victim's right or the right of some other person to lodge a complaint or take any other proceedings under this Act;

or

(e) otherwise done anything under or by reference to this Act,

or on the ground that he or she knows that the victim intends to do any of those things, or suspects that the victim has done, or intends to do, any of those things.

(3) Unfavourable treatment on the ground that a person—

(a) has made a false allegation;

or

(b) has not acted in good faith,

does not constitute an act of victimization.

Section 87—

Strike out "his" from subsection (4) and substitute "a".

Strike out "his" from subsection (9) and substitute "that person's".

Strike out subsection (11) and substitute:

(11) For the purposes of this section, a person subjects another person to sexual harassment if he or she does any of the following acts in such a manner or in such circumstances that the other person feels offended, humiliated or intimidated:

(a) he or she subjects the other to an unsolicited and intentional act of physical intimacy;

(b) he or she demands or requests (directly or by implication) sexual favours from the other;

(c) he or she makes, on more than one occasion, a remark with sexual connotations relating to the other,

and it is reasonable in all the circumstances that the other person should feel offended, humiliated or intimidated by that conduct.

Section 88—

Insert after "his" in paragraph (a) "or her".

Strike out from paragraph (b) "he might incur" and substitute "might be incurred".

Strike out from paragraph (b) "by so doing".

Section 89—

Strike out "him" and substitute "the person".

Strike out from paragraph (a) "he" and substitute "he or she".

Section 91—

Strike out from subsection (1) "his".

Strike out from subsection (2) "he" and substitute "the person".

Strike out from subsection (3) "his" first occurring and substitute "an".

Strike out from subsection (3) "his" secondly occurring and substitute "the".

Strike out from subsection (3) "for that person to prove that he" and substitute "to prove that the person".

Strike out from subsection (3) "his" thirdly occurring and substitute "the".

Strike out from subsection (4) "his" and substitute "an".

Section 94—

Strike out from subsection (4) "him" and substitute "the person".

Strike out from subsection (5) "to him".

Strike out from subsection (5) "for him".

Strike out from subsection (5) "take such copies of them as he thinks fit" and substitute "take copies of them".

Section 95—

Strike out from subsection (1) "with him".

Strike out from subsection (3) "he" and substitute "the Commissioner".

Strike out from subsection (4) "before him" and substitute "at a time and place specified in the notice".

Strike out from subsection (8) "him" and "he" and substitute, in each case, "the Commissioner".

Strike out subsection (9) and substitute the following subsection:

(9) Where a complaint is referred to the Tribunal (except pursuant to subsection (8) (c)), the Commissioner must, on the request of the complainant, assist the complainant, personally or by counsel or other representative, in the presentation of the complainant's case to the Tribunal.

Section 96—

Insert after "his" in subsection (3) "or her".

Strike out from subsection (5) "him" and substitute "the person".

Section 100—

Strike out from subsections (2) and (4) "he" wherever it occurs and substitute, in each case, "that person".

Section 101—

Strike out subsection (2) and substitute the following subsection—

(2) A person proposing to act, on the advice of the Commissioner, to the detriment of another must, at least seven days before doing so, give notice to the other of the proposed action together with—

(a) a copy of that advice;

and

(b) a statement in the prescribed form of the other's rights under subsection (3),

and, in case of failure to do so, the defence under subsection (1) will not apply.

Strike out from subsection (5) "he furnished the advice" and substitute "the advice was furnished".

Section 102—

Strike out "his powers or duties under this Act" and substitute "official powers or duties".

Section 103 (2)—

Strike out this subsection and substitute:

(2) In proceedings for an offence against subsection (1), it is a defence to prove that the defendant believed on reasonable grounds that the publication of the advertisement would not contravene that subsection.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

C. L. LAUCKE, Governor's Deputy