

LEGISLATIVE COUNCIL

Read 1° 2 December 1982

(Brought from the Legislative Assembly)

A BILL

for

An Act to amend Unlawful certain Kinds of Discrimination on the ground of Impairment, to amend the *Equal Opportunity Act 1977*, and for other purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):

1. (1) This Act may be cited as the *Equal Opportunity* Short title.
(*Discrimination against Disabled Persons*) Act 1982.

(2) In this Act the *Equal Opportunity Act 1977* is called the Principal Act
Principal Act. No. 9025.

10 (3) This Act shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the Commence-
Government Gazette. ment.

15 2. In section 3 (1) of the Principal Act after the interpretation of "Employment" there shall be inserted the following Amendment of
interpretations: No. 9025 s. 3.
Interpretation.

"Impairment" means—

- (a) total or partial loss of a bodily function;
- (b) total or partial loss of a part of the body;
- (c) malfunction of a part of the body; and

(d) malformation or disfigurement of a part of the body.

“Malfunction of a part of the body” includes—

- (a) a mental or psychological disease or disorder; and
- (b) a condition or malfunction as a result of which a persons learns more slowly than persons who do not have that condition or malfunction.’

New Part IIIA.
inserted in
No. 9025.

3. (1) After section 27 of the Principal Act there shall be inserted the following expression:

‘PART IIIA.—DISCRIMINATION ON THE GROUND OF IMPAIRMENT 10

DIVISION 1—GENERAL

Unlawful
discrimination
against
impaired
persons.

27A. (1) A person discriminates against another person on the ground of that other person’s impairment, whether the impairment presently exists or existed in the past but has now ceased to exist in any circumstances relevant for the purpose of a provision of this Act if on the ground of— 15

- (a) the other person’s impairment, whether the impairment presently exists or existed in the past but has now ceased to exist; or
- (b) a characteristic that appertains generally to persons having or who have had that impairment; or 20
- (c) a characteristic that is generally imputed to persons having or who have had that impairment—

the first-mentioned person treats the other person less favourably than in the same or similar circumstances he treats or would treat a person without that impairment. 25

(2) A person discriminates against another person on the ground of his impairment if he discriminates against that other person on the ground that he does not or is unable to comply with a requirement— 30

- (a) with which a substantially higher proportion of persons without that impairment comply or are able to comply than the proportion of persons with that impairment who comply or are able to comply; and
- (b) which is not reasonable having regard to the circumstances of the case. 35

(3) For the purposes of sub-section (2) a requirement is not reasonable if in seeking to enable a person with an impairment, to comply with the requirement as easily as a person without an impairment, unreasonable expense or inconvenience is involved. 40

(4) For

(4) For the purposes of this section, a person does not discriminate against another person on the ground of impairment merely because he adopts or carries out a special programme, plan or arrangement designed to prevent or reduce disadvantages suffered by a class of persons excluding that other person.

DIVISION 2—DISCRIMINATION IN EMPLOYMENT

27B. (1) It is unlawful for an employer or prospective employer to discriminate against a person on the ground of that person's impairment—

Unlawful
discrimination
in respect of
employment
offers and
terms of
employment.

- 10 (a) by including in an advertisement for a position a statement that limits or a statement that would reasonably be understood to limit the class of person who may apply for the position to those who do not have that impairment;
- 15 (b) in interviewing or otherwise assessing applicants for employment;
- (c) in determining who should be offered employment;
- (d) in the terms on which he offers employment; or
- (e) by refusing or deliberately omitting to offer employment.

20 (2) It is unlawful for an employer to discriminate against an employé on the ground of his impairment, whether the impairment arose before or arises during the period of the employment and whether or not the impairment was apparent before employment or became apparent during the period of employment—

- 25 (a) by denying him access or limiting his access to opportunities for promotion, transfer or training, or to any other benefits associated with employment; or
- (b) by dismissing him or subjecting him to any other detriment.

30 (3) It is not unlawful to discriminate against a person on the ground of impairment—

- (a) by the inclusion in an advertisement of a statement mentioned in paragraph (a) of sub-section (1), if—
 - 35 (i) the statement relates only to the duties and location of the employment and the location at which applicants are to be assessed;
 - (ii) the statement accurately describes the nature and location of the employment and does not contain a requirement in relation to the duties of the employment or the location at which the applicants are to be assessed mentioned in section 27A (2); and
- 40

(iii) the

- (iii) the statement is reasonable in the circumstances of the case;
- (b) in a manner mentioned in paragraph (b), (c), (d) or (e) of sub-section (1) or in sub-section (2), if the discrimination is on the basis of selecting the person who is, irrespective of impairment, best suited to perform the duties relevant to the employment; 5
- (c) in a manner mentioned in paragraph (b), (c), (d) or (e) of sub-section (1) or in sub-section (2) if, taking into account the person's past training, qualifications and experience relevant to employment of that kind and, if he is already employed by the employer, his performance as an employé, and all other factors which are relevant and reasonable in the circumstances, the person by reason of his impairment— 10
 - (i) requires or would require special services or facilities that in the circumstances of the case cannot or could not be made available and without those services or facilities is or would be unable adequately to perform the work reasonably required of him; or 15
 - (ii) for any other reason is or has become unable adequately to carry out the work reasonably required of him; and 20
- (d) in a manner mentioned in paragraph (b), (c), (d) or (e) of sub-section (1) or in sub-section (2) if because of the nature of the impairment and the environment in which the person works or is to work or the nature of the work performed or to be performed, there is or is likely to be— 25
 - (i) a risk that the person will injure others, and it is not reasonable in all the circumstances to take that risk; or 30
 - (ii) a substantial risk that the person will injure himself.
- (4) It shall not be unlawful to fix reasonable terms or conditions of or to make reasonable variations in the terms or conditions of employment where the terms as so fixed or as so varied take into account— 35
 - (a) any special limitations that a person's impairment imposes on his capacity to carry on the work involved in the employment; 40
 - (b) any special conditions or services which are required to be provided to enable him to undertake the employment or to facilitate the conduct by him of his employment; or
 - (c) where

- (c) where applicable, the provisions of section 135 of the *Labour and Industry Act 1958* and section 39 (1) of the *Industrial Relations Act 1981*.

(5) Sub-sections (1) and (2) do not apply to employment for the purposes of a private household.

(6) It is unlawful for a person in the course of a business (whether or not for fee or reward) of introducing persons seeking employment to employers to discriminate against another person on the ground of his impairment—

- 10 (a) by denying the person any of the services of the business; or
(b) in the terms on which the first-mentioned person provides those services.

15 27c. (1) This section applies to a person (in this section called “the principal”) for whom work is done by agents remunerated by commission. Discrimination
by principals
against agents.

(2) It is unlawful for a principal to discriminate against a person on the ground of that person’s impairment—

- 20 (a) in the arrangements he makes for the purpose of determining who should be engaged as a commission agent;
(b) in determining who should be engaged as a commission agent; or
25 (c) in the terms on which he engages him as a commission agent.

(3) It is unlawful for a principal to discriminate against a person on the ground of that person’s impairment, whether or not the impairment arose before or arises during the period of engagement as a commission agent or whether or not the impairment was apparent before or became apparent during the period of engagement as a commission agent—

- 30 (a) by denying him access or limiting his access to opportunities for promotion, transfer or training or to any other benefits associated with his position as a commission agent; or
35 (b) by terminating his engagement or subjecting him to any other detriment.

(4) It is not unlawful to discriminate against a person on the ground of impairment—

- 40 (a) in a manner mentioned in sub-section (2) or sub-section (3) if the discrimination is on the basis of selecting the person who is, irrespective of impairment, best suited to perform the duties relevant to the engagement;

(b) in

- (b) in a manner mentioned in sub-section (2) or sub-section (3) if taking into account the person's past training, qualifications and experience relevant to an engagement of that kind and, if he is already engaged by the principal, his performance as a commission agent and all other factors which are relevant and reasonable in the circumstances, the person by reason of his impairment—
 - (i) requires or would require special services or facilities that in the circumstances of the case cannot or could not reasonably be made available and without those services or facilities is or would be unable adequately to perform the work reasonably of him; or
 - (ii) for any other reason is or has become unable adequately to carry out the work reasonably required of him; and
- (c) in a manner mentioned in sub-section (2) or sub-section (3) if because of the nature of the impairment and the environment in which the person works or is to work or the nature of the work performed or to be performed, there is or is likely to be—
 - (i) a risk that the person will injure others, and it is not reasonable in all the circumstances to take that risk; or
 - (ii) a substantial risk that the person will injure himself.

(5) It shall not be unlawful to fix reasonable terms or conditions of engagement or to make reasonable variations in the terms or conditions of engagement where the terms or conditions as so fixed or as so varied take into account—

- (a) any special limitations that a person's impairment imposes on his capacity to carry on the work involved in the engagement; or
- (b) any special conditions or services which are required to be provided to enable him to undertake work as a commission agent.

Discrimination
against contract
workers.

27D. (1) This section applies to a person (in this section called "the principal") for whom work is done by persons (in this section called "contract workers") in pursuance of a contract between the principal and the employer of those contract workers.

(2) It is unlawful for a principal to discriminate against a contract worker or an employer of contract workers on the ground of that worker's impairment, whether or not the impairment arose

before

before or arises during the period of the performance of work by the contract worker and whether or not the impairment was apparent before or became apparent during the period of the performance of work by the contract worker—

- 5 (a) in the terms on which he allows him or his employer to work;
- (b) by not allowing him or his employer to work or to continue to work;
- 10 (c) by denying him or his employer access or limiting his or his employer's access to benefits associated with the work in respect of which the contract with his employer is made; or
- (d) by subjecting him or his employer to any other detriment
- 15 (3) It is not unlawful to discriminate against a person on the ground of impairment—
- (a) in a manner mentioned in sub-section (2) if the discrimination is on the basis of selecting the person who is, irrespective of impairment, best suited to perform the duties relevant to the work;
- 20 (b) in a manner mentioned in sub-section (2) if taking into account the person's past training, qualifications and experience relevant to work of that kind and, if he is already working for the employer his performance as a contract worker and all other factors which are relevant
- 25 and reasonable in the circumstances, the person by reason of his impairment—
- (i) requires or would require special services or facilities that in the circumstances of the case can not or could not reasonably be made available and without those services or facilities is or would be unable adequately to perform the work reasonably required of him; or
- 30 (ii) for any other reason is or has become unable adequately to carry out the work reasonably
- 35 required of him; and
- (c) discrimination against an employer of contract workers or a contract worker on the ground of the contract worker's impairment, being discrimination of a kind mentioned in sub-section (2) if because of the nature
- 40 of the impairment and the environment in which the

person

person works or is to work or the nature of the work performed or to be performed, there is or is likely to be—

- (i) a risk that the person will injure others, and it is not reasonable in all the circumstances to take that risk; or
- (ii) a substantial risk that the person will injure himself.

(4) It shall not be unlawful to fix reasonable terms or conditions of work or to make reasonable variations in the terms or conditions of work where the terms or conditions as so fixed or as so varied take into account—

- (a) any special limitations that a person's impairment imposes on his capacity to carry out his work as a contract worker;
- (b) any special conditions or services which are required to be provided to enable him to undertake work as a contract worker.

Discrimination
by
partnerships.

27E. (1) It is unlawful for a firm to discriminate against a partner on the ground of that partner's impairment, whether the impairment arose before or arises in the course of the partner's membership of the firm and whether or not the impairment was apparent at the time at which the partner became a member of the firm or becomes apparent thereafter—

- (a) by denying him access or limiting his access to any benefit arising from membership of the firm; or
- (b) by expelling him from the firm or subjecting him to any other detriment.

(2) It is not unlawful to discriminate against a person on the ground of impairment—

- (a) in a manner mentioned in sub-section (1) if the discrimination is on the basis of selecting the person who is, irrespective of impairment, best suited to work as a partner;
- (b) in a manner mentioned in sub-section (1) if taking into account the person's past training, qualifications and experience relevant to work of that kind the person by reason of his impairment—
 - (i) requires or would require special services or facilities that in the circumstances of the case cannot or could not reasonably be made available and without those services or facilities is or would be unable adequately to perform the work reasonably required or him; or

(ii) for

(ii) for any other reason is or has become unable adequately to carry out the work reasonably required of him; and

5 (c) in a manner mentioned in sub-section (1) if because of the nature of the impairment and the environment in which the person works or is to work or the nature of the work performed or to be performed, there is or is likely to be—

(i) a risk that the person will injure others, and it is not reasonable in all the circumstances to take that risk; or

10 (ii) a substantial risk that the person will injure himself.

(3) It shall not be unlawful to fix reasonable terms or conditions of work or to make reasonable variations in the terms or conditions of work where the terms or conditions as so fixed or as so varied take
15 into account—

(a) any special limitations that a person's impairment imposes on his capacity to carry out his work as a partner;

20 (b) any special conditions or services which are required to be provided to enable him to undertake work as a partner.

25 27F. (1) This section applies to an organization of employees, an organization of employers, or any other organization established for the purposes of members who carry on a particular profession, trade or business.

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

30 (a) by refusing, or failing to accept, his application for membership; or

(b) in the terms on which it admits him to membership.

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

35 (a) by denying him access, or limiting his access, to any benefit provided by the organization;

(b) by depriving him of membership, or varying the terms of his membership; or

(c) by subjecting him to any other detriment.

(4) It

(4) It is not unlawful to discriminate against a person, on the ground of impairment, by failing or refusing to select the person as an office bearer in an organization to which this section applies if the basis of selecting persons for that office is relative suitability to performing the duties of the office.

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DIVISION 3—DISCRIMINATION IN OTHER FIELDS

Discrimination
by licensing
authorities.

27G. (1) It is unlawful for an authority or body empowered to confer an authorization or qualification that is for or facilitates the practice of a profession or the carrying on of a profession trade or business to discriminate against a person on the ground of that person's impairment, whether or not the impairment arose before the conferring, renewal or extension of the authorization or qualification and whenever the impairment became or becomes apparent—

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- (a) by refusing or failing to confer, renew or extend the authorization or qualification; 15
- (b) in the terms upon which it is prepared to confer, renew or extend the authorization or qualification; or
- (c) by withdrawing the authorization or qualification or varying the terms or conditions upon which the authorization or qualification is held. 20

(2) Sub-section (1) does not apply to discrimination on the ground of a person's impairment—

- (a) if the person is unable adequately to perform all the work or activities reasonably required of holders of the qualification or authorization in question; 25
- (b) without limiting the generality of paragraphs (a) and (c) where the authority or person does not have power to impose conditions in relation to the qualification or authorization and the other person is unable adequately to perform some of the work or activities reasonably required of the holder of the qualification or authorization in question; 30
- (c) by the imposition in relation to a qualification or authorization of conditions or limitations which restrict the work or activities which may be performed by the holder of the qualification or authorization to kinds of work which the holder is capable of doing having regard to his impairment, if it is reasonable to impose those conditions or limitations in the circumstances of the case; or 35 40

(d) if,

(ii) that

- (ii) that can on reasonable grounds only be provided by the person performing the service on more onerous terms than the terms on which the service could reasonably be provided to a person not having that impairment. 5

27I. (1) It is unlawful for an educational authority to discriminate against a person on the ground of his impairment, whether the impairment arose before or arises after his admission as a student of the educational authority and whether or not the impairment became apparent before or becomes apparent after that admission— 10

(a) by refusing or failing to accept his application for admission as a student; or

(b) in the terms on which it accepts him as a student.

(2) It is unlawful for an educational authority to discriminate against a student on the ground of his impairment— 15

(a) by denying him access or limiting his access to any benefit provided by the educational authority; or

(b) by expelling him or subjecting him to any other detriment.

(3) This section does not apply to discrimination by an educational authority against a student or prospective student on the ground of that person's impairment— 20

(a) if by reason of his impairment the person requires special services or facilities that in the circumstances of the case cannot reasonably be made available and without those services or facilities would not be able to participate or continue to participate in the educational program or be reasonably likely to derive or continue to derive substantial benefit from the programme; or 25

(b) if for any other reason the person who has the impairment is or has become unable to benefit substantially from the educational program provided by the educational authority. 30

(4) This section does not apply to a discrimination against a person on the basis of the person's abilities relative to other students or prospective students of an educational authority, being abilities relevant to the kind of education provided by the authority, including the ability to undertake or complete that kind of education, where the method of assessing those abilities is reasonable in all the circumstances. 35

Discrimination
in the provision
of accommoda-
tion, &c.

27J. (1) This section applies notwithstanding anything to the contrary in any provision of this or any other Act or in any Crown grant, certificate, duplicate certificate, conveyance, lease, sub-lease, mortgage, assignment, transfer or other instrument affecting or 40

relating

relating to the title to land or an interest or estate in land and also, in respect of land to which section 97 or 97B of the *Transfer of Land Act* 1958 or the *Strata Titles Act* 1967 applies or the *Cluster Titles Act* 1974 applies, includes any document being an agreement or memorandum or articles of association or rules, by-laws or resolutions of a service company or body corporate mentioned in or established under any of those Acts in relation to land and no action or injunction for damages or otherwise shall lie against a person for breach of any covenant or obligation contained in any such instrument or document if, had the person complied with the covenant or obligation, he would have committed an act of discrimination to which this section applies.

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

- (a) by refusing his application for accommodation;
- (b) in the terms on which he offers him accommodation;
- (c) by deferring his application for accommodation or according to him a lower order of precedence in any list of applicants for that accommodation than he accords or would accord to a person who does not have that impairment.

(3) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of that other person's impairment whether that impairment arose before or arises during the other person's occupation of the accommodation and whether or not the impairment became apparent before or becomes apparent during that occupation—

- (a) by denying his access or limiting his access to any benefits associated with accommodation occupied by him;
- (b) by evicting him or subjecting him to any other detriment; or
- (c) by refusing to permit him to make reasonable alterations to that accommodation, where—
 - (i) he has undertaken to restore the accommodation to its condition before alteration on leaving the accommodation;
 - (ii) in all the circumstances of the case it is reasonably likely that he will perform the undertaking;
 - (iii) in all the circumstances of the case, the action required to restore the accommodation to its condition before alteration is reasonably practical;

(iv) the

- (iv) the alteration does not necessitate alteration of the premises of any other occupier; and
 - (v) the alteration is at the person's own expense.
- (4) It is unlawful for a person—
- (a) to refuse a person who has a visual or hearing impairment 5
rental accommodation because the person has a guide dog or a dog trained to assist him in activities where hearing is required;
 - (b) to require as a condition of the provision of rental 10
accommodation to a person who has a visual or hearing impairment and has a guide dog or a dog trained to assist in activities where hearing is required, that the dog be kept elsewhere than on the rented premises; or
 - (c) to require or request a person who has a visual or hearing 15
impairment and who rents accommodation to pay any extra charge in respect of a guide dog or a dog trained to assist in activities where hearing is required kept by him or because he occupies the rented premises with a dog.
- (5) Nothing in sub-section (3) affects the liability of a person 20
who is visually or hearing impaired for damage to property caused by a dog which is a guide dog or a dog trained to assist him in activities where hearing is required.
- (6) This section does not apply to discrimination against a 25
person on the ground of the person's impairment in relation to accommodation if—
- (a) the person would be able to use the accommodation only—
 - (i) with substantial risk of injury to himself; or
 - (ii) with risk of injury to others and it is not reasonable 30
to take that risk;
 - (b) being a person in occupation of accommodation, the person's acts or omissions are threatening or are likely to threaten the safety of neighbouring occupiers or their 35
property or are causing a nuisance;
 - (c) the accommodation is designed and intended for use only by or as provided only for persons who have a particular impairment, and the person does not have that impairment.
- (7) This section does not apply to or in relation to any provision 40
or proposed provision of accommodation in premises if—
- (a) the person who provides or proposes to provide the accommodation or a near-relative resides and intends

to continue to reside on those premises and to share the accommodation with the person for whom the accommodation is or is proposed to be provided; and

- 5 (b) the accommodation provided or proposed to be provided on those premises is for no more than six persons including the persons who already reside there and the persons who intend to reside there.

10 (8) In sub-section (7) a reference to a near-relative of a person means a reference to that person's spouse, grandparent, father, mother, child, step-father, step-mother, step-child, brother, sister, father-in-law, mother-in-law, sister-in-law, brother-in-law, daughter-in-law, or son-in-law and includes—

- 15 (a) a person who, although not legally married to the first-mentioned person, is living with the first-mentioned person as the first-mentioned person's spouse on a permanent basis; and
(b) any other relative of the first-mentioned person who is dependent upon the earnings of the first-mentioned person.

20 DIVISION 4.—DISCRIMINATION IN SPORT

27K. (1) It is unlawful for a person to discriminate against another person on the ground of the other person's impairment by excluding him from a sporting activity.

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

(3) Sub-section (1) does not apply to discrimination against a person—

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

40 (2) In the table of Parts and Divisions in section 2 of the Principal Act, after the item relating to Part III., there shall be inserted the following item:

“PART

“PART IIIA.—DISCRIMINATION ON THE GROUND OF
PHYSICAL IMPAIRMENT SS. 27A–27K.

Division 1—General s. 27A.

Division 2—Discrimination in Employment ss. 27B–27F.

Division 3—Discrimination in Other Fields ss. 27G–27J.

Division 4—Discrimination in Sport s. 27K.”

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Amendment of
No. 9025 s. 38.
Complaints by
impaired
persons to
Registrar.

4. In section 38 (1) of the Principal Act after the word “status” there shall be inserted the words “or impairment”.

5. The Principal Act is amended as follows:

(a) In the Table of Parts and Divisions in section 2 of the Principal Act, in the item relating to Part III., for the expression “to which Act applies” there shall be substituted the expression “on the Ground of Sex or Marital Status”;

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(b) In sections 15 (1) (a) and 15 (2) after the word “status” (wherever occurring) there shall be inserted the words “or impairment”;

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(c) After section 15 (1) (a) there shall be inserted the following paragraph:

“(aa) the promotion of equality of opportunity between persons who have an impairment and persons who do not have such an impairment;”;

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(d) In the heading preceding section 16 for the expression “PART III.—DISCRIMINATION TO WHICH ACT APPLIES.” there shall be substituted the expression “PART III.—DISCRIMINATION ON THE GROUNDS OF SEX OR MARITAL STATUS.”;

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(e) After section 33 (1) (a) there shall be inserted the following paragraphs:

“(aa) the exclusion on the ground of impairment of a person from any sporting organization for persons—

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- (i) who have an impairment of another kind; or
- (ii) who do not have an impairment;

(ab) the exclusion from an organization formed for the advancement of persons who have a particular impairment, of persons—

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- (i) who do not have the impairment but have an impairment of another kind; or
- (ii) who do not have any impairment;”;

40

(f) After

(f) After section 33 (1) (c) there shall be inserted the following paragraph:

“(ca) Discrimination on the ground of impairment in the terms on which an annuity, life assurance policy, accident insurance policy or other policy of insurance is offered or may be obtained where—

(i) the discrimination is based upon actuarial or statistical data from a source on which it is reasonable to rely, and is reasonable having regard to that data and any other relevant factors; or

(ii) where no such actuarial or statistical data is available the, discrimination is reasonable having regard to any other relevant factors;”;

(g) After section 38 (1) there shall be inserted the following sub-sections:

“(1A) A person who because of impairment is unable to lodge a written complaint or take proceedings under this Act may authorize another person to act on his behalf in relation to the complaint and proceedings on the complaint, and the person so authorized shall have the same powers in relation to the lodgment of the complaint and those proceedings as he would have if he were the person on whose behalf he acts.

(1B) An authority under sub-section (1A) may be given—

(a) in writing; or

(b) in such other manner as the Registrar approves.”; and

(h) In section 52 (2) (c) after the word “status” there shall be inserted the words “or impairment”.

