

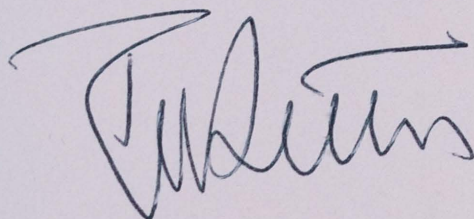
CONFIDENTIAL
CABINET DECISION
No. 7486

Submission No: 6340

Title: **ANTI-DISCRIMINATION BILL**

Cabinet approved -

- (a) the Anti-Discrimination Bill for introduction at the September/October Sitzings of the Legislative Assembly (subject to minor amendments as may be required); and
- (b) the Second Reading Speech, Explanatory Memorandum and Committee Notes to the Bill.



R.A.SETTER
Secretary to Cabinet

28 September 1992

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FOR CABINET

SUBMISSION No:6340.....

| | |
|--|--|
| Title: | ANTI-DISCRIMINATION BILL |
| Minister | THE HON. SHANE L STONE MINISTER FOR PUBLIC EMPLOYMENT |
| Purpose: | TO INTRODUCE THE ANTI-DISCRIMINATION BILL |
| Relation to existing policy: | CONSISTENT WITH EXISTING POLICY: CABINET DECISIONS NOS 6429 OF 03.04.1990 6568 OF 07.08.1990 7064 OF 15.10.1991 7065 OF 15.10.1991 7358 OF 23.07.1992 7423 OF 14.08.1992 |
| Timing/ legislative priority: | AT THE DISCRETION OF THE MINISTER |
| Announcement of decision, tabling, etc: | AT THE DISCRETION OF THE MINISTER |
| Action required before announcement: | NIL |
| Staffing implications, numbers and costs, etc: | NIL |
| Total cost: | NIL |

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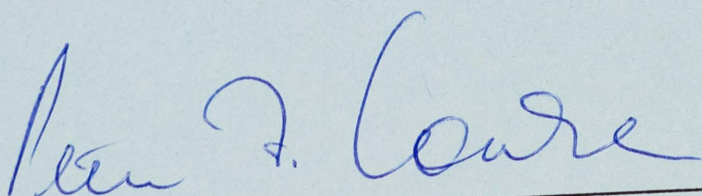
Department/Authority: DEPARTMENT OF THE CHIEF MINISTER

COMMENT ON CABINET SUBMISSION No.

TITLE: ANTI-DISCRIMINATION BILL

COMMENTS:

The recommendation is supported.



823/9

SIGNED: PETER CONRAN

DESIGNATION: SECRETARY

DATE: 24 SEP 1992

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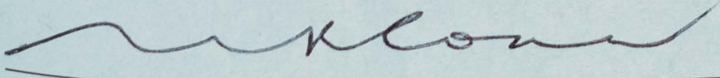
Department/Authority.....NORTHERN TERRITORY TREASURY.....

COMMENT ON CABINET SUBMISSION No.

TITLE:ANTI-DISCRIMINATION BILL.....

COMMENTS:

The proposed legislation is consistent with the draft Bill previously approved by Cabinet.



SIGNED: N R CONN

DESIGNATION: UNDER TREASURER

DATE: 23 SEPTEMBER 1992

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Department/Authority: LAW

COMMENT ON CABINET SUBMISSION NO.

TITLE: ANTI-DISCRIMINATION BILL

COMMENTS:

There appear to be no constitutional or legal barriers to the proposal.

The proposal does not raise any consumer implications.

The following comments are made in relation to the submission.

Comments on the Cabinet Submission

The statement in paragraph 6(a) that the Crown is liable to prosecution is wrong. Such a proposition undermines the notion of government and is contrary to fundamental constitutional and legal principles. However, this is not the effect of clause 5.

Paragraph 6(h) is incorrect in suggesting that the Commissioner can impose a "penalty". Penalties, under the scheme of the legislation, can only be imposed by a court.

In the time available, the Department of Law has not had the opportunity to comprehensively consider the Bill and all the attachments.

Comments on the Bill

Clause 20(1)

Has not been amended to include the Department's earlier comment that it permits indirect discrimination. .../2

Meredith Harrison

SIGNED: Meredith Harrison
DESIGNATION: Secretary, Department of Law
DATE: 24 September 1992

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Department/Authority: LAW

COMMENT ON CABINET SUBMISSION NO.

TITLE: ANTI-DISCRIMINATION BILL

COMMENTS:Clause 27

Fails to impose vicarious liability (i.e. to make employer liable for employee's discrimination). For example, it will allow licensees to tolerate racial discrimination by bar staff/managers.

Clause 61

Fails to allow a representative complaint.

Clause 110(1)(d) & (2)

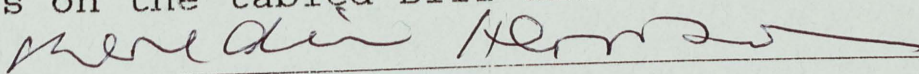
These are contrary to legal policy. The Commissioner is not a court. It is the Department's view that if these sections remain, they will attract misuse or uncertainty and that the protections in (a) to (c) should suffice.

Penalties

The penalties of \$1,000 for an individual are too low. \$2,000 is more realistic. Clause 104(2) is contrary to Cabinet Decision 6940(c) - a fine of \$2,500 should attract 6 months imprisonment. The Department considers that the penalty should be \$5,000/1 year.

Previous Comments

The Department of Law has made a number of technical and policy comments on the tabled Bill and retains those views.



SIGNED: Meredith Harrison
DESIGNATION: Secretary, Department of Law
DATE: 24 September 1992

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RECOMMENDATION

1. It is recommended that Cabinet approve:

the Anti-Discrimination Bill (Attachment A), the Second Reading Speech (Attachment B), the Explanatory Memorandum (Attachment C) and Committee Notes (Attachment D), for introduction at the September/October sittings of the Legislative Assembly (subject to such minor drafting amendments as may be required).

BACKGROUND

2. Cabinet by Decision No.7423 approved the tabling for discussion of the draft Anti-Discrimination Bill in the August Sittings of the Legislative Assembly, subject to further amendment by the Minister.
3. Advertisements seeking submissions were placed in all Northern Territory newspapers. At the same time community consultations on the draft Bill were conducted in Alice Springs and Darwin during August and September.

CONSIDERATION OF THE ISSUES

4. Publicity resulted in the receipt of over 35 written submissions generally supporting the draft Bill and in some cases recommending amendments.
5. In response to community submissions some amendments have been made to the Anti-Discrimination Bill. However, the essence of the Bill remains consistent with the draft Bill previously approved by Cabinet.
6. Amendments included in the Bill at Attachment A include the following:

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- (a) the Crown will be liable for prosecution under this legislation;
- (b) the functions of the Commissioner include provision for the Anti-Discrimination Commissioner to encourage the development of equal opportunity management programs in the public sector;
- (c) inclusion of Breastfeeding as a ground of prohibited discrimination;
- (d) the word "minor" in the sexuality exemption clause has been changed to "children" to achieve consistency throughout the Bill. "Children", for the purposes of this legislation, will be defined to be children under the age of 18;
- (e) the exemption in relation to discrimination by refusing to allow guide dogs has been widened to cover all areas, rather than accommodation only. This is consistent with the *Law Reform (Miscellaneous Provisions) Act No.10 of 1992*; *And ~~later~~ hearing*
- (f) extension of the time limit from 3 months to 6 months for the lodgement of a complaint of discrimination;
- (g) provision that where the Anti-Discrimination Commissioner is involved in investigation or conciliation of a complaint, the Minister shall appoint another person to conduct a hearing of the complaint; and
- (h) orders of the Commissioner involving a penalty, including damages or costs awarded to either party, are to be registered in a Court of

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competent jurisdiction, thus becoming a debt of the court.

OPTIONS

7. (a) To approve the Bill for introduction at the September/October sittings of the Legislative Assembly;
- (b) To not approve the Bill for introduction at the September/October sittings of the Legislative Assembly

PUBLIC IMPACT OF THE RECOMMENDATIONS

8. While the introduction of the Anti-Discrimination Bill has wide community support, some sectors within the community have difficulties with some particular provisions.

FINANCIAL CONSIDERATIONS

9. NIL

REGULATORY IMPACT

10. Regulations will be required for a number of matters including witness fees, setting of damages and serving of documentation.

EMPLOYMENT AND INDUSTRIAL RELATIONS

11. There has been general support from Union and Employer organisations for the introduction of the Bill.

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COMMONWEALTH STATE AND LOCAL GOVERNMENT RELATIONS

12. The Anti-Discrimination Bill is consistent with Commonwealth legislation.

CO-ORDINATION AND CONSULTATION

13. Copies of this submission in draft form were sent to the Department of the Chief Minister, the Department of Law and Northern Territory Treasury.

PUBLICITY

14. At the discretion of the Minister for Public Employment.

TIMING

15. At the discretion of the Minister for Public Employment.

Shane L. Stone
Minister for Public Employment

NORTHERN TERRITORY OF AUSTRALIA

ANTI-DISCRIMINATION BILL, 1992

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19. Prohibition of discrimination
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- 42. Exemptions - services for members of one sex
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116. Non-application of Act
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to promote equality of opportunity in the Territory by protecting persons from unfair discrimination in certain areas of activity and from sexual harassment and certain associated objectionable conduct, to provide remedies for persons discriminated against, and for related purposes

PART 1 - PRELIMINARY

1. SHORT TITLE

This Act may be cited as the *Anti-Discrimination Act 1992*.

2. COMMENCEMENT

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3. OBJECTS

The objects of this Act are -

- (a) to promote recognition and acceptance within the community of the equality of all persons;
- (b) to eliminate discrimination against persons on the ground of race, sex, sexuality, age, marital status, pregnancy, parenthood, breastfeeding, impairment, trade union or employer association, religious belief or activity, political opinion, affiliation or activity, irrelevant medical record or irrelevant criminal record in the area of work, accommodation or education or in the provision of goods, services and facilities, in the activities of clubs or in insurance and superannuation; and

Anti-Discrimination

(c) to eliminate sexual harassment.

4. INTERPRETATION

(1) In this Act, unless the contrary intention appears -

"accommodation" includes -

- (a) business premises;
- (b) a house or flat;
- (c) a hotel or motel;
- (d) a boarding house or hostel;
- (e) a caravan or caravan site;
- (f) a mobile home or mobile home site;
- (g) a camping site; and
- (h) a building or construction site;

"advertisement" means every form of advertisement or notice, however displayed, and whether or not displayed to the public, and includes an advertisement -

- (a) in a newspaper or other publication;
- (b) by television or radio;
- (c) by display of notices, signs, labels or goods;
- (d) by distribution of samples, circulars, catalogues, price lists or other material; and
- (e) by exhibition of pictures, models or films;

"attribute" means an attribute referred to in section 19;

"child" means a person who has not attained the age of 18 years;

"club" means an incorporated or unincorporated association of not less than 30 members that -

- (a) is established for social, literary, cultural, political, sporting, athletic, recreational or community service purposes or any other similar lawful purpose;

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- (b) provides and maintains its facilities, wholly or partly, from funds of the association; and
- (c) sells or supplies liquor for consumption on its premises;

"Commissioner" means the person appointed under section 6 to be the Anti-Discrimination Commissioner and includes a person appointed under section 11 to act as the Commissioner, when so acting;

"committee of management", in relation to a club, means the group or body of people, by whatever name called, that manages the affairs of the club;

"complainant" means the person making a complaint and includes a person joined as a complainant under section 73;

"complaint" means a complaint made under Part 6;

"de facto partner" has the same meaning as in the *De Facto Relationships Act*;

"document" includes -

- (a) paper or other material on which there is writing;
- (b) paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and
- (c) an article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device;

"educational authority" means the body or person administering an educational institution;

"educational institution" means a school, college, university or other institution at which any form of training or instruction is provided and includes -

- (a) a training institution within the meaning of the *Training Guarantee (Administration) Act 1990* of the Commonwealth; and
- (b) a place at which training or instruction is provided by an employer;

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"impairment" includes -

- (a) the total or partial loss of a bodily function;
- (b) the presence in the body of an organism which has caused or is capable of causing disease;
- (c) the presence in the body of organisms impeding, capable of impeding or which may impede the capacity of the body to combat disease;
- (d) total or partial loss of a part of the body;
- (e) the malfunction or dysfunction of a part of the body;
- (f) the malformation or disfigurement of a part of the body;
- (g) reliance on a guide dog, wheelchair or other remedial device;
- (h) physical or intellectual disability;
- (j) psychiatric or psychological disease or disorder, whether permanent or temporary; and
- (k) a condition, malfunction or dysfunction which results in a person learning more slowly than another person without that condition, malfunction or dysfunction;

"insurance" includes -

- (a) an annuity;
- (b) life assurance;
- (c) accident insurance; and
- (d) illness insurance;

"irrelevant criminal record", in relation to a person, means -

- (a) a spent record within the meaning of the *Criminal Records (Spent Convictions) Act*; or

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- (b) a record relating to arrest, interrogation or criminal proceedings where -
 - (i) no further action was taken in relation to the arrest, interrogation or charge of the person;
 - (ii) no charge has been laid;
 - (iii) the charge was dismissed;
 - (iv) the prosecution was withdrawn;
 - (v) the person was discharged, whether or not on conviction;
 - (vi) the person was found not guilty;
 - (vii) the person's conviction was quashed or set aside;
 - (viii) the person was granted a pardon; or
 - (ix) the circumstances relating to the offence for which the person was convicted are not directly relevant to the situation in which the discrimination arises;

"man" means a member of the male sex irrespective of age;

"marital status" means whether a person is -

- (a) single;
- (b) married;
- (c) married but living separately and apart from the person's spouse;
- (d) married, or has been married, to a particular person;
- (e) divorced;
- (f) widowed;
- (g) a de facto partner; or
- (h) the de facto partner, or was the de facto partner, of a particular person;

Anti-Discrimination

"near relative", in relation to a person, means -

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

"parent" includes a step-parent, adoptive parent, foster parent, guardian and a person who provides care, nurturing and support to a child;

"parenthood" means whether or not a person is a parent;

"pregnancy" includes child bearing capacity;

"prohibited conduct" means -

- (a) discrimination, other than discrimination exempted from the application of this Act;
- (b) sexual harassment;
- (c) victimisation;
- (d) discriminatory advertising;
- (e) seeking unnecessary information;
- (f) failure to accommodate a special need; or
- (g) aiding a contravention of this Act;

"race" includes -

- (a) the nationality, ethnic or national origin, colour, descent or ancestry of a person; and
- (b) that a person is or has been an immigrant;

"respondent", in relation to a complaint, means the person alleged in the complaint to be have engaged in prohibited conduct and includes a person joined as a respondent under section 73;

"services" include -

- (a) access to or use of any land, place, vehicle or facility that members of the public are, or a section of the public is, permitted to use;

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- (b) banking or the supply of loans, finance, credit guarantees, hire purchase schemes or any other type of financial accommodation;
- (c) services connected with the selling or leasing of an interest in land;
- (d) recreation, including entertainment, sports, tourism and the arts;
- (e) the supply of refreshments;
- (f) services connected with transport and travel;
- (g) services of any profession, occupation, trade or business; and
- (h) services provided by a government, statutory corporation, a company or other body corporate in which a government has a controlling interest, or a council or community government council within the meaning of the *Local Government Act*;

but does not include insurance and super-annuation;

"sexuality" means the sexual characteristics or imputed sexual characteristics of heterosexuality, homosexuality, bisexuality or transsexuality;

"supervision", in relation to a child, means to oversee or superintend the execution of or performance of work or other tasks by the child;

"woman" means a member of the female sex irrespective of age;

"work" includes work -

- (a) in a relationship of employment (including full-time, part-time, casual, permanent and temporary employment);
- (b) under a contract for services;
- (c) remunerated in whole or in part on a commission basis;
- (d) under a statutory appointment;

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- (e) by a person with an impairment in a sheltered workshop; and
- (f) under a guidance program, vocational training program or other occupational training or retraining program.

(2) For the purposes of this Act, a person may be discriminated against on the ground of race even if the person is, in addition to that race, of one or more other races.

(3) For the purposes of this Act, trade union or employer association activity shall be construed to include membership or non membership of a trade union or employer association and a lack or absence of trade union or employer association activity.

(4) For the purposes of this Act, religious belief or activity shall be construed to include Aboriginal spiritual belief or activity.

(5) For the purposes of this Act, political opinion, affiliation or activity shall be construed to include a lack or absence of political opinion, affiliation or activity.

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

(7) Unless the contrary intention appears, a reference in this Act to a person includes a reference to an unincorporated association.

5. ACT TO BIND CROWN

This Act binds the Crown, not only in right of the Territory but, to the extent that the legislative power of the Legislative Assembly permits, in all its other capacities.

PART 2 - ANTI-DISCRIMINATION COMMISSIONER

6. COMMISSIONER

(1) Subject to this Part, the Administrator may, in writing, appoint a person to be the Anti-Discrimination Commissioner.

(2) Subject to this Part, the Commissioner holds office for such period, not longer than 3 years, as is specified in the notice of appointment but is eligible for re-appointment.

Anti-Discrimination

(3) The terms and conditions of the Commissioner's appointment shall be fixed by the Administrator.

7. LEAVE OF ABSENCE

The Minister may grant leave of absence to the Commissioner on such terms as the Minister thinks fit.

8. RESIGNATION

The Commissioner may resign, in writing, delivered to the Administrator.

9. TERMINATION OF APPOINTMENT

(1) The Administrator may, in writing, terminate the appointment of a person as the Commissioner if the person -

- (a) becomes physically or mentally incapable of satisfactorily performing the duties of the office;
- (b) is guilty of misconduct of a kind that could warrant dismissal under the *Public Service Act* if the person were an employee within the meaning of that Act; or
- (c) is absent, without the Minister's leave and without reasonable excuse, for 14 consecutive days or 28 days in any 12 months.

(2) The Administrator shall, in writing, terminate the appointment of a person as the Commissioner if the person -

- (a) is convicted of an indictable offence (whether in the Territory or elsewhere);
- (b) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
- (c) engages in paid employment outside the duties of the office without the Minister's approval.

10. DISCLOSURE OF INTEREST

The Commissioner shall, as soon as practicable after being appointed and after acquiring them, in writing, notify the Minister of all direct or indirect pecuniary interests that the Commissioner has or acquires in a business, or in a body corporate carrying on a business, whether in Australia or elsewhere.

Anti-Discrimination

11. ACTING COMMISSIONER

(1) Subject to this Part, the Administrator may, in writing, appoint a person to act as the Commissioner -

- (a) during a vacancy in the office; or
- (b) during any period, or during all periods, when the Commissioner is absent from duty or from the Territory or is, for any other reason, unable to perform the duties of the office.

(2) A person appointed under subsection (1), while so acting, may exercise all the powers and perform all the functions of the Commissioner.

(3) Subject to subsection (4), the terms and conditions of a person appointed under subsection (1) shall be fixed by the Administrator.

(4) A person appointed under subsection (1) to act as the Commissioner during a vacancy in the office shall not continue to act for a period longer than 12 months.

(5) Where no appointment under subsection (1) is in force or a person so appointed is unable, for any reason, to perform the duties of the office of the Commissioner, the Minister may, in writing, appoint a person to act as the Commissioner for a period of not longer than 3 months.

12. STAFF OF COMMISSIONER

The Commissioner shall be provided by the Minister with such staff, who shall be employees within the meaning of the *Public Service Act*, as is necessary for the administration of this Act.

13. FUNCTIONS OF COMMISSIONER

- (1) The Commissioner has the following functions:
 - (a) to carry out investigations and hearings into complaints and endeavour to effect conciliation;
 - (b) to examine Acts and regulations and proposed Acts and regulations of the Territory to determine whether they are, or would be, inconsistent with the purposes of this Act, and to report the results of such examinations to the Minister;
 - (c) to institute, promote or assist in research, the collection of data and the dissemination of information relating to discrimination and the effects of discrimination;

- (d) to consult with organisations, departments and local government and community government bodies and associations to ascertain means of improving services and conditions affecting groups that are subjected to prohibited conduct;
- (e) to research and develop additional grounds of discrimination and to make recommendations for the inclusion of such grounds in this Act;
- (f) to examine practices, alleged practices or proposed practices of a person, at the Commissioner's own initiative or when required by the Minister, to determine whether they are, or would be, inconsistent with the purposes of this Act, and, when required by the Minister, to report the results of the examination to the Minister;
- (g) to promote in the Territory an understanding and acceptance, and public discussion, of the purposes and principles of equal opportunity;
- (h) to promote an understanding and acceptance of, and compliance with, this Act;
- (j) to promote the recognition and acceptance of non-discriminatory attitudes, acts and practices;
- (k) to promote within the public sector the development of equal opportunity management programs;
- (m) to prepare and publish guidelines and codes of practice to assist persons to comply with this Act;
- (n) to provide advice and assistance to persons relating to this Act as the Commissioner thinks fit;
- (p) to advise the Minister generally on the operation of this Act;
- (q) if the Commissioner considers it appropriate to do so, to intervene in a proceeding that involves issues of equality of opportunity or discrimination with the leave of the court hearing the proceeding and subject to any conditions imposed by the court;
- (r) such functions as are conferred on the Commissioner by or under this or any other Act;

Anti-Discrimination

(s) such other functions as the Minister determines.

(2) The Commissioner shall not regard, for the purposes of subsection (1)(b), an Act or regulation or a proposed Act or regulation of the Territory as being inconsistent with the purposes of this Act by reason of a provision of the Act or regulation or proposed Act or regulation that is included solely for the purpose of promoting equal opportunity for a group of persons who are disadvantaged or have a special need because of any of the attributes referred to in section 19.

(3) The Commissioner shall not regard an act or practice as being inconsistent with the purposes of this Act where the act or practice is done or engaged in solely for the purpose referred to in subsection (2).

14. POWERS OF COMMISSIONER

Subject to this Act, the Commissioner has power to do all things that are necessary or convenient to be done for or in connection with or incidental to the performance of the Commissioner's functions under this Act.

15. DELEGATION

(1) The Commissioner may, in writing, delegate to a person, including the person from time to time holding, acting in or performing the duties of, an office, designation or position, any of the powers and functions of the Commissioner under this or any other Act, other than Part 6 Division 4 or this power of delegation.

(2) A power or function delegated under this section, when exercised or performed by the delegate, shall, for the purposes of this Act, be deemed to have been exercised or performed by the Commissioner.

(3) A delegation under this section does not prevent the exercise of a power or performance of a function by the Commissioner.

16. ANNUAL REPORT

(1) The Commissioner shall furnish a report to the Minister not later than 30 September in each year on the operation of this Act for the 12 months to 30 June immediately preceding.

(2) The Minister may, in writing, direct the Commissioner to report on specified matters in a report furnished under subsection (1).

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(3) A direction given under subsection (2) shall be included in the report furnished under subsection (1).

(4) The Minister shall cause a copy of each report furnished under subsection (1) to be laid before the Legislative Assembly not later than 6 sitting days of the Assembly after the report has been so furnished.

17. SPECIAL REPORT

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

(2) If the Minister so determines, a report under subsection (1) shall be included in a report furnished under section 16.

18. LEGISLATIVE ASSEMBLY MEMBERS NOT TO BE APPOINTED

(1) A member of the Legislative Assembly shall not be appointed as the Commissioner, to act as the Commissioner or to conduct a hearing under Part 6 Division 4.

(2) Subject to subsection (3), the appointment of a person as the Commissioner, to act as the Commissioner or to conduct a hearing under Part 6 Division 4 ceases on the person becoming a member of the Legislative Assembly.

(3) Notwithstanding subsection (2), an appointment of a person referred to in that subsection shall continue in force in respect of a complaint made before the person became a member of the Legislative Assembly and in respect of which the person was performing any functions under this Act until the completion of proceedings under this Act in respect of the complaint.

PART 3 - DISCRIMINATION

Division 1 - Prohibited Grounds of Discrimination

19. PROHIBITION OF DISCRIMINATION

(1) Subject to subsection (2), a person shall not discriminate against another person on the ground of any of the following attributes:

- (a) race;
- (b) sex;
- (c) sexuality;
- (d) age;

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- (e) marital status;
- (f) pregnancy;
- (g) parenthood;
- (h) breastfeeding;
- (j) impairment;
- (k) trade union or employer association activity;
- (m) religious belief or activity;
- (n) political opinion, affiliation or activity;
- (p) irrelevant medical record;
- (q) irrelevant criminal record;
- (r) association with a person who has, or is believed to have, an attribute referred to in this section.

(2) It is not unlawful for a person to discriminate against another person on any of the attributes referred to in subsection (1) if an exemption under Part 4 or 5 applies.

20. DISCRIMINATION

(1) For the purposes of this Act, discrimination includes -

(a) any distinction, restriction, exclusion or preference made on the basis of an attribute that has the effect of nullifying or impairing equality of opportunity; and

(b) harassment on the basis of an attribute,

in an area of activity referred to in Part 4.

(2) Without limiting the generality of subsection (1), discrimination takes place if a person treats or proposes to treat another person who has or had, or is believed to have or had -

(a) an attribute;

(b) a characteristic imputed to appertain to an attribute; or

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- (c) a characteristic imputed to appertain generally to persons with an attribute,

less favourably than a person who has not, or is believed not to have, such an attribute.

(3) For discrimination to take place, it is not necessary that -

- (a) the attribute is the sole or dominant ground for the less favourable treatment; or
- (b) the person who discriminates regards the treatment as less favourable.

(4) The motive of a person alleged to have discriminated against another person is, for the purposes of this Act, irrelevant.

21. DISCRIMINATION BY REFUSING TO ALLOW GUIDE DOG, &c.

(1) For the purposes of this Act, a person discriminates on the ground of impairment against a person with a visual, hearing or mobility impairment if the person treats the person with the impairment less favourably because the person has a dog to assist the person in relation to the impairment.

(2) Subsection (1) applies notwithstanding that it is the practice of the person to treat less favourably other persons who have dogs.

(3) Nothing in this section shall limit the operation of section 20 in relation to discrimination on the ground of impairment.

(4) This section does not affect the liability of a person with a dog for any damage caused by the dog.

Division 2 - Prohibited Conduct

22. PROHIBITION OF SEXUAL HARASSMENT

(1) A person shall not, in an area of activity referred to in Part 4, sexually harass another person.

(2) Sexual harassment takes place if a person -

- (a) subjects another person to an unwelcome act of physical intimacy;
- (b) makes an unwelcome demand or request (whether directly or by implication) for sexual favours from the other person;

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- (c) makes an unwelcome remark with sexual connotations; or
- (d) engages in any other unwelcome conduct of a sexual nature,

and -

- (e) that person does so -
 - (i) with the intention of offending, humiliating or intimidating the other person; or
 - (ii) in circumstances where a reasonable person would have anticipated the possibility that the other person would be offended, humiliated or intimidated by the conduct; or
- (f) that other person is, or reasonably believes that he or she is likely to be, subjected to some detriment if he or she objects to the act, demand, request, remark or conduct.

(3) For the purposes of subsection (2)(e)(ii), circumstances that are relevant in determining whether a reasonable person would have anticipated the possibility that the other person would be offended, humiliated or intimidated by the conduct include -

- (a) the sex, age or race of the other person;
- (b) any impairment that the other person has;
- (c) the relationship between the other person and the person engaging in the conduct; and
- (d) any other circumstance of the other person.

23. PROHIBITION OF VICTIMISATION

(1) A person shall not victimise another person because the other person -

- (a) has made, or intends to make, a complaint;
- (b) has given, or intends to give, evidence or information in connection with proceedings under this Act;
- (c) has alleged, or intends to allege, that a person has committed an act which would amount to a contravention of this Act; or

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(d) has done anything in relation to a person under or by reference to this Act.

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

(3) Subsection (1)(c) does not apply to or in relation to an allegation that is false and not made in good faith.

24. FAILURE TO ACCOMMODATE SPECIAL NEED

(1) A person shall not fail or refuse to accommodate a special need that another person has because of an attribute.

(2) For the purposes of subsection (1) -

(a) a failure or refusal to accommodate a special need of another person includes making inadequate or inappropriate provision to accommodate the special need; and

(b) a failure to accommodate a special need takes place when a person acts in a way which unreasonably fails to provide for the special need of another person if that other person has the special need because of an attribute.

(3) Whether a person has unreasonably failed to provide for the special need of another person depends on all the relevant circumstances of the case including, but not limited to -

(a) the nature of the special need;

(b) the cost of accommodating the special need and the number of people who would benefit or be disadvantaged;

(c) the financial circumstances of the person;

(d) the disruption that accommodating the special need may cause; and

(e) the nature of any benefit or detriment to all persons concerned.

25. DISCRIMINATORY ADVERTISING

A person shall not publish, cause to be published or authorise the publication of an advertisement which promotes or expresses or could reasonably be understood to promote or express prohibited conduct or an intention to engage in prohibited conduct.

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26. UNNECESSARY INFORMATION

(1) A person shall not ask another person, whether orally or in writing, to supply information on which unlawful discrimination might be based.

(2) Subsection (1) does not apply to a request that is necessary to comply with, or is specifically authorised by -

- (a) a law of the Territory or the Commonwealth;
- (b) an order of a court;
- (c) a provision of an order or award of a court or tribunal having power to fix minimum wages and other terms of employment;
- (d) a provision of an industrial agreement; or
- (e) an order of the Commissioner.

(3) Subsection (1) does not apply if the person proves, on the balance of probabilities, that the information was reasonably required for a purpose that did not involve discrimination.

27. PROHIBITION OF AIDING CONTRAVENTION OF ACT

(1) A person shall not cause, instruct, induce, incite, assist or promote another person to contravene this Act.

(2) A person who causes, instructs, induces, incites, assists or promotes another person to contravene this Act is jointly and severally liable with the other person for the contravention of this Act.

PART 4 - AREAS OF ACTIVITIES WHERE
DISCRIMINATION PROHIBITED

Division 1 - Preliminary

28. AREAS OF ACTIVITIES

This Act applies to prohibited conduct in the areas of -

- (a) education;
- (b) work;
- (c) accommodation;
- (d) goods, services and facilities;

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- (e) clubs; and
- (f) insurance and superannuation.

Division 2 - Education

29. DISCRIMINATION IN EDUCATION

(1) An educational authority shall not discriminate -

- (a) by failing or refusing to accept a person's application for admission as a student;
- (b) in refusing or rejecting a person's admission as a student;
- (c) in the way in which a person's application is processed;
- (d) in the arrangements made for, or the criteria used in, deciding who should be offered admission as a student; or
- (e) in the terms and conditions on which a person is admitted as a student.

(2) An educational authority shall not discriminate -

- (a) in any variation of the terms and conditions of a student's enrolment;
- (b) by failing or refusing to grant, or limiting, access to any benefit arising from the enrolment that is supplied by the authority;
- (c) by excluding a student; or
- (d) by treating a student less favourably in any way in connection with the student's training or instruction.

30. EXEMPTIONS

An educational authority that operates, or proposes to operate, an educational institution wholly or mainly for students of a particular race, sex or religion, or who have a general or specific impairment, may exclude applicants who -

- (a) are not of the particular race, sex or religion; or
- (b) do not have a general or specific impairment.

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Division 3 - Work

31. DISCRIMINATION IN WORK AREA

- (1) A person shall not discriminate -
 - (a) in deciding who should be offered work;
 - (b) in the terms and conditions of work that is offered;
 - (c) in failing or refusing to offer work;
 - (d) by failing or refusing to grant a person seeking work access to a guidance program, vocational training program or other occupational training or retraining program; or
 - (e) in developing the scope or range of a program referred to in paragraph (d).

- (2) A person shall not discriminate -
 - (a) in any variation of the terms and conditions of work;
 - (b) in failing or refusing to grant, or limiting, access to opportunities for promotion, transfer, training or other benefit to a worker;
 - (c) in dismissing a worker; or
 - (d) by treating a worker less favourably in any way in connection with work.

(3) A person shall not discriminate against a worker on the grounds of the worker's religious belief or activity by refusing the worker permission to carry out a religious activity during working hours being an activity -

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

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32. DISCRIMINATION IN PROFESSIONAL AND TRADE ORGANISATIONS

(1) An organisation of workers, employers or people who carry on an industry, profession, trade or business shall not discriminate -

- (a) in failing to accept a person's application for membership of the organisation;
- (b) in the arrangements made for deciding who may join;
- (c) in deciding who may join; or
- (d) in the terms on which a person may join.

(2) An organisation of workers, employers, or people who carry on an industry, profession, trade or business shall not discriminate -

- (a) in any variation of the terms of membership of the organisation;
- (b) in denying or limiting access to any benefit arising from the membership;
- (c) in depriving a person of membership; or
- (d) by treating a person less favourably in any way in connection with the membership.

33. DISCRIMINATION BY QUALIFYING BODY

(1) A person who has power to grant, renew or extend a qualification or authorisation that (whether by itself or together with other qualifications or authorisations) is needed for, or facilitates, the practice of a profession, or the carrying on of a trade or business shall not discriminate -

- (a) in granting, renewing or extending a qualification or authorisation or failing to do so; or
- (b) in the terms on which a qualification or authorisation is granted, renewed or extended.

(2) A person who has power to grant, renew or extend a qualification or authorisation that (whether by itself or together with other qualifications or authorisations) is needed for or facilitates the practice of a profession or the carrying on of a trade or business shall not discriminate against another person -

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- (a) in any variation of the terms on which a qualification or authorisation was granted, renewed or extended;
- (b) in revoking or withdrawing a qualification or authorisation or failing to do so; or
- (c) by treating the other person less favourably in any way in connection with the grant, renewal or extension of a qualification or authorisation.

34. DISCRIMINATION IN EMPLOYMENT AGENCY AREA

A person who carries on a business (whether or not for reward or profit) of introducing people seeking work to employers shall not discriminate -

- (a) by failing or refusing to supply a service of the business, whether to a person seeking work or an employer seeking a worker;
- (b) in the terms and conditions on which a service is offered or supplied;
- (c) in the way in which a service is supplied; or
- (d) by treating a person seeking work or an employer seeking a worker less favourably in any way in connection with a service.

35. EXEMPTIONS - WORK

(1) A person may discriminate against another person in the area of work -

- (a) by fixing reasonable terms and conditions if that other person, because of age or impairment, has a restricted capacity to do the work; or
- (b) if the discrimination is based -
 - (i) on a genuine occupational qualification which the other person is required to fill; or
 - (ii) on the other person's inability to adequately perform the inherent requirements of the work even where the special need of the other person has been or were to be accommodated.

(2) A person may discriminate in offering work where the work is to be performed in the person's home.

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36. EXEMPTIONS - AGE

A person may discriminate on the grounds of age by imposing a standard age for commencement of work or a standard retirement age.

37. EXEMPTIONS - SEXUALITY

A person may discriminate against another person on the grounds of sexuality in the area of work where -

- (a) the work involves the care, instruction or supervision of children; and
- (b) the discrimination is reasonably necessary to protect the physical, psychological or emotional well-being of children, having regard to all the relevant circumstances of the case including the person's actions.

Division 4 - Accommodation

38. DISCRIMINATION IN ACCOMMODATION AREA

(1) A person shall not discriminate against another person -

- (a) by failing or refusing to accept an application for accommodation;
- (b) by failing or refusing to supply accommodation;
- (c) by failing or refusing to renew or extend the supply of accommodation;
- (d) in the way in which an application for accommodation is processed; or
- (e) in the terms and conditions on which accommodation is offered, renewed or extended.

(2) A person shall not discriminate against a person to whom accommodation is supplied -

- (a) in any variation of the terms and conditions on which the accommodation is supplied;
- (b) in failing or refusing to grant, or limiting, access to any benefit associated with the accommodation;
- (c) in evicting the person from the accommodation; or

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- (d) by treating the person less favourably in any way in connection with the accommodation.

39. DISCRIMINATION BY REFUSING TO ALLOW REASONABLE ALTERATIONS

A person shall not discriminate against a person with an impairment by failing or refusing to allow the person to alter accommodation to meet the person's special needs if -

- (a) the alteration is at the expense of that person;
- (b) the alteration does not require an alteration to the accommodation of another person;
- (c) the restoration of the accommodation to its previous condition is reasonably practicable; and
- (d) the person undertakes at his or her expense to restore the accommodation to its previous condition before leaving it, and it is reasonably likely that the person will do so.

40. EXEMPTIONS

(1) A person may discriminate against a person in deciding who is to reside in accommodation that forms part of, and is intended to continue to form part of, the main home of the person or a near relative of the person.

(2) An educational authority that operates, or proposes to operate, an educational institution wholly or mainly for students of a particular sex or religion, or who have a general or specific impairment, may provide accommodation wholly or mainly for -

- (a) students of the particular sex or religion; or
- (b) students who have a general or specific impairment.

(3) A person may discriminate against a person with respect to a matter that is otherwise prohibited under this Division if -

- (a) the accommodation concerned is under the direction or control of a body established for religious purposes; and
- (b) the discrimination -
 - (i) is in accordance with the doctrine of the religion concerned; and

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(ii) is necessary to avoid offending the religious sensitivities of people of the religion.

(4) A person may discriminate against a person with respect to a matter that is otherwise prohibited under this Division if -

- (a) the accommodation concerned is under the direction or control of a body established for a charitable purpose; and
- (b) the discrimination is in accordance with the particular purpose for which the accommodation was established by the body.

Division 5 - Goods, Services and Facilities

41. DISCRIMINATION IN GOODS, SERVICES AND FACILITIES AREA

(1) A person who supplies goods, services or facilities (whether or not for reward or profit) shall not discriminate against another person -

- (a) by failing or refusing to supply the goods, services or facilities;
- (b) in the terms and conditions on which the goods, services or facilities are supplied;
- (c) in the way in which the goods, services or facilities are supplied; or
- (d) by treating the other person less favourably in any way in connection with the supply of the goods, services or facilities.

(2) Subsection (1) does not apply to a person who supplies goods, services or facilities for or on behalf of an association that -

- (a) is established for social, literary, cultural, political, sporting, athletic, recreational or community service purposes or other similar lawful purposes; and
- (b) does not carry out its purposes for the purpose of making a profit.

42. EXEMPTIONS - SERVICES FOR MEMBERS OF ONE SEX

Nothing in this Division applies to or in relation to the provision of a service the nature of which is such that it can only be provided to members of one sex.

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43. EXEMPTIONS - CULTURAL OR RELIGIOUS SITES

A person may restrict access to land, a building or place of cultural or religious significance by people who are not of a particular sex, age, race or religion if the restriction -

- (a) is in accordance with the culture or the doctrine of the religion; and
- (b) is necessary to avoid offending the cultural or religious sensitivities of people of the culture or religion.

44. EXEMPTIONS - AGE-BASED BENEFITS

A person may supply benefits and concessions on the basis of age with respect to a matter that is otherwise prohibited under this Division.

45. EXEMPTIONS - CHILD TO BE ACCOMPANIED BY ADULT

A person may require, as a term of supplying goods, services or facilities to a child, that the child be accompanied by an adult if there is a reasonable risk that a child could cause a disruption or endanger himself or herself, or others, if not accompanied by an adult.

Division 6 - Clubs

46. DISCRIMINATION IN CLUB MEMBERSHIP AND CLUB ACTIVITIES

(1) A club, the committee of management of a club or a member of the committee of management shall not discriminate against a person who is not a member of the club -

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

(2) A club, the committee of management of a club or a member of the committee of management shall not discriminate against a member of the club -

- (a) in the terms and conditions of membership that are afforded to the member;

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- (b) by failing or refusing to accept the member's application for a particular class or type of membership of the club;
- (c) by failing or refusing to grant the member access, or limiting the member's access, to any benefit provided by the club;
- (d) by depriving the member of membership or varying the terms and conditions of membership of the club; or
- (e) by treating the member less favourably in any way in connection with membership of the club.

47. EXEMPTIONS

(1) A club, the committee of management of a club or a member of the committee of management may exclude applicants for membership of the club who are not members of the group of people with an attribute for whom the club was established if the club operates wholly or mainly -

- (a) to preserve a minority culture; or
- (b) to prevent or reduce disadvantage suffered by people of that group.

(2) A club, the committee of management of a club or a member of the committee of management may discriminate against a person on the ground of age in membership of the club if the club provides association wholly or mainly for people of a specific age or age group.

(3) A club, the committee of management of a club or a member of the committee of management may discriminate against a person on the ground of sex -

- (a) in membership of the club if the club provides association only for people of one sex; or
- (b) if the discrimination occurs in relation to the use or enjoyment of a benefit provided by the club where -
 - (i) it is not practicable for the benefit to be used or enjoyed simultaneously, or to the same extent, by both men and women; and
 - (ii) either the same or an equivalent benefit is provided for the use of men and women separately from each other, or men and women are each entitled to a fair and reasonable proportion of the use and enjoyment of the benefit.

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(4) In determining a matter relating to the application of subsection (3)(b) regard shall be had to -

- (a) the purposes for which the club is established;
- (b) the membership of the club, including any class or type of membership;
- (c) the nature of the benefits provided by the club;
- (d) the opportunities for the use and enjoyment of those benefits by men and women; and
- (e) any other relevant circumstances.

Division 7 - Insurance and Superannuation

48. DISCRIMINATION IN INSURANCE AND SUPERANNUATION

(1) A person shall not discriminate -

- (a) by failing or refusing to supply insurance or superannuation;
- (b) in the terms and conditions on which insurance or superannuation is supplied; or
- (c) in the way in which insurance or superannuation is supplied.

(2) A person shall not discriminate against another person seeking work with the person in the terms and conditions of work that is offered that relate to insurance or superannuation.

(3) A person shall not discriminate against a worker employed by the person -

- (a) in any variation of the terms and conditions of employment of the worker that relate to insurance or superannuation;
- (b) in failing or refusing to grant the worker access, or limiting the worker's access, to any benefit that relates to insurance or superannuation; or
- (c) by treating the worker less favourably in any way in connection with insurance or superannuation.

49. EXEMPTIONS

(1) A person may discriminate against a person with respect to a matter that is otherwise prohibited under this Division if one or more of the following is applicable -

- (a) the discrimination happens because of the application of a standard in force under the *Occupational Superannuation Standards Act 1987* of the Commonwealth;
- (b) the discrimination is permitted under the *Sex Discrimination Act 1984* of the Commonwealth;
- (c) the discrimination happens in order to comply with or obtain the benefits of, or to avoid penalties under, any other Act of the Commonwealth;
- (d) the discrimination is based on reasonable actuarial or statistical data from a source on which it is reasonable to rely and the discrimination is reasonable having regard to that data and other relevant factors;
- (e) if there is no reasonable actuarial or statistical data on which it is reasonable to rely, the discrimination is based on other data on which it is reasonable to rely and the discrimination is reasonable having regard to the data and any other relevant factors;
- (f) if there is no reasonable actuarial, statistical or other data on which it is reasonable to rely, the discrimination is reasonable having regard to any other relevant factors.

(2) A person may discriminate in the area of superannuation to the extent that the discrimination is based on an existing superannuation fund condition and relates to a person who became a member of the fund before the commencement of this Act or not more than 12 months after that commencement.

(3) In this section, "existing superannuation fund condition" means a superannuation fund condition in existence at the commencement of this Act.

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PART 5 - EXEMPTIONS

Division 1 - General Exemptions

50. LEGAL INCAPACITY

A person may discriminate against another person who is subject to a legal incapacity if that incapacity is relevant to the transaction in which they are involved.

51. RELIGIOUS BODIES

This Act does not apply to or in relation to -

- (a) the ordination or appointment of priests, ministers of religion or members of a religious order;
- (b) the training or education of people seeking ordination or appointment as priests, ministers of religion or members of a religious order;
- (c) the selection or appointment of people to perform functions in relation to, or otherwise participate in, any religious observance or practice; or
- (d) an act by a body established for religious purposes if the act -
 - (i) is in accordance with the religion concerned; and
 - (ii) is necessary to avoid offending the religious sensitivities of people of the religion.

52. CHARITIES

- (1) A person -
 - (a) may include in a will, deed or other instrument a discriminatory provision that provides for charitable benefits; and
 - (b) may do an act that is required to give effect to a provision referred to in paragraph (a).

(2) In this section, "charitable benefits" means benefits for purposes that are exclusively charitable according to the law in force in any part of Australia.

53. ACTS DONE IN COMPLIANCE WITH LEGISLATION, &c.

Notwithstanding anything to the contrary in this Act, a person may do an act that is necessary to comply with, or is specifically authorised by -

- (a) an Act or regulation of the Territory;
- (b) an Act or regulation of the Commonwealth;
- (c) an order of a court or tribunal;
- (d) an order or award of a court or tribunal having power to fix minimum wages and other terms and conditions of employment;
- (e) an industrial agreement in existence at the commencement of this Act;
- (f) an order of the Commissioner under this Act;
- (g) a guideline or code of practice prepared and published by the Commissioner under this Act; or
- (h) advice given by the Commissioner under this Act.

54. PREGNANCY OR CHILDBIRTH

Nothing in this Act makes it unlawful for a person to discriminate against a man on the ground of sex by reason only of the fact that that person grants to a woman rights or privileges in connection with pregnancy or childbirth.

55. PUBLIC HEALTH

A person may discriminate against a person on the ground of impairment if the discrimination is reasonably necessary to protect public health.

56. SPORT

(1) A person may restrict participation in a competitive sporting activity -

- (a) to either men or women, if the restriction is reasonable having regard to the strength, stamina or physique requirements of the activity;
- (b) to people who can effectively compete;
- (c) to people of a specified age or age group; or
- (d) to people with a general or specific impairment.

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(2) Subsection (1)(a) does not apply to a sporting activity for children who have not attained 12 years of age.

(3) In this section, "competitive sporting activity" does not include -

- (a) the coaching of people engaged in a sporting activity;
- (b) the umpiring or refereeing of a sporting activity;
- (c) the administration of a sporting activity; or
- (d) a prescribed sporting activity.

57. SPECIAL MEASURES

(1) A person may discriminate against a person in a program, plan or arrangement designed to promote equality of opportunity for a group of people who are disadvantaged or have a special need because of an attribute.

(2) Subsection (1) applies only until equality of opportunity has been achieved.

58. ACCOMMODATING SPECIAL NEED UNREASONABLE

(1) A person may discriminate against another person who has a special need with respect to a matter that is otherwise prohibited under this Act if -

- (a) the other person would require special services or facilities; and
- (b) it is unreasonable to require the person to supply the special services or facilities.

(2) Whether it is unreasonable to require a person to supply special services or facilities depends on the relevant circumstances of the case including, but not limited to -

- (a) the nature of the special services or facilities;
- (b) the cost of providing the special services or facilities and the number of people who would benefit or be disadvantaged;
- (c) the financial circumstances of the person;
- (d) the disruption that providing the special services or facilities may cause; and

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- (e) the nature of any benefit or detriment to all persons concerned.

Division 2 - Granting of Exemptions

59. COMMISSIONER MAY GRANT EXEMPTIONS

(1) A person may apply to the Commissioner for an exemption from this Act in respect of discriminatory conduct that would otherwise contravene this Act.

(2) A person to whom an exemption under this section has been granted may, before the expiration of the exemption, apply to the Commissioner for the renewal of the exemption.

(3) In considering an application under subsection (1) or (2), the Commissioner may have regard to -

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

(4) After considering an application under subsection (1) the Commissioner may grant an exemption from this Act in respect of discriminatory conduct, or may refuse the application.

(5) The Commissioner -

- (a) may grant an exemption under subsection (4), subject to such conditions as the Commissioner thinks fit, for a period of not longer than 3 years; and
- (b) may revoke an exemption granted under subsection (4) on breach of a condition to which the exemption is subject.

(6) After considering an application under subsection (2) the Commissioner may renew the exemption for a further period not longer than 3 years or may refuse to renew the exemption.

(7) The Commissioner shall cause a notice of the grant, renewal or revocation of an exemption under this section to be published in the *Gazette*.

(8) A notice under subsection (7) of the grant or renewal of an exemption shall specify -

- (a) the period for which the exemption is granted or renewed; and

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- (b) the conditions, if any, to which the exemption is subject.

(9) If the Commissioner refuses to grant or renew an exemption under this section, the Commissioner shall provide to the applicant a written statement of the reasons for the refusal.

PART 6 - RESOLUTION OF COMPLAINTS

Division 1 - Complaints

60. WHO MAY COMPLAIN

Subject to this Act -

- (a) a person aggrieved by prohibited conduct; or
(b) a person, authorised in writing by the Commissioner, on behalf of a person referred to in paragraph (a),

may make a complaint to the Commissioner.

61. COMPLAINTS MAY BE DEALT WITH JOINTLY

The Commissioner may deal with 2 or more complaints jointly if they arise out of substantially the same conduct.

62. AUTHORISATION TO ACT FOR COMPLAINANT OR RESPONDENT

(1) The Commissioner may authorise a person nominated by a complainant or respondent to act on behalf of the complainant or respondent in any proceedings under this Act in respect of the complaint, and the person may act accordingly.

(2) The Commissioner may authorise a person nominated by a complainant or respondent to accompany the complainant or respondent in any proceedings under this Act in respect of the complaint and the person may assist the complainant or respondent in the proceedings.

(3) The Commissioner may withdraw an authorisation under this section if the Commissioner considers it appropriate to do so.

63. COMPLAINT MAY CONTAIN MORE THAN ONE ALLEGATION

A complaint may contain more than one allegation of prohibited conduct.

Anti-Discrimination

64. FORM OF COMPLAINT

- (1) A complaint shall -
 - (a) be in writing;
 - (b) set out in detail the alleged prohibited conduct;
 - (c) so far as practicable, specify the respondent or each respondent; and
 - (d) be lodged with, or sent by post to, the Commissioner.

(2) The Commissioner may permit a complainant to amend a complaint at any time.

65. TIME LIMIT FOR MAKING COMPLAINT

(1) Subject to subsection (2), a complaint shall be made not later than 6 months after the alleged prohibited conduct took place.

(2) The Commissioner may accept a complaint after the time referred to in subsection (1) has expired if the Commissioner is satisfied it is appropriate to do so.

66. COMMISSIONER TO ACCEPT OR REJECT COMPLAINT

The Commissioner shall, not later than 60 days after receiving a complaint, accept or reject the complaint and shall, as soon as practicable thereafter, notify the complainant of the decision.

67. COMMISSIONER TO REJECT FRIVOLOUS, &c., COMPLAINT

The Commissioner shall reject a complaint if the Commissioner reasonably believes that the complaint is -

- (a) frivolous or vexatious;
- (b) trivial;
- (c) misconceived or lacking in substance; or
- (d) fails to disclose any prohibited conduct.

68. COMMISSIONER MAY REJECT OR STAY COMPLAINT, DEALT WITH ELSEWHERE

(1) The Commissioner may reject or stay a complaint if there are concurrent proceedings in a court or tribunal in relation to the prohibited conduct alleged in the complaint.

Anti-Discrimination

(2) A time limit for doing anything under this Act in relation to a complaint does not run while the complaint is stayed under subsection (1).

69. REJECTION OF COMPLAINT

Where a complaint is rejected under section 66 -

- (a) the Commissioner shall provide the complainant with written reasons as to why the complaint was rejected; and
- (b) the complaint lapses and the complainant shall not make a further complaint relating to the conduct that was the subject of the complaint.

70. RESPONDENT TO BE NOTIFIED IF COMPLAINT ACCEPTED

Where a complaint is accepted under section 66, the Commissioner shall, as soon as practicable after accepting the complaint, notify the respondent in writing of the substance of the complaint.

71. WITHDRAWAL OF COMPLAINT

(1) A complainant may, at any time, apply to the Commissioner to withdraw the complaint.

(2) The Commissioner may, on receipt of an application under subsection (1), investigate the circumstances of the application and, if satisfied that the application is made voluntarily, the Commissioner shall -

- (a) grant the application and notify the respondent that the complaint has been withdrawn; and
- (b) with the consent of the complainant and the respondent, record the terms of any agreement reached between the complainant and the respondent.

(3) The withdrawal of a complaint under this section does not prevent the Commissioner investigating the complaint under Division 2.

(4) Except with the permission of the Commissioner, a complainant who withdraws a complaint under this section shall not make another complaint in relation to the same conduct.

72. LAPSE OF COMPLAINT IF COMPLAINANT LOSES INTEREST

(1) If the Commissioner is satisfied that a complainant has lost interest in continuing with a complaint, the Commissioner shall advise the complainant in writing that the complaint will lapse unless the complainant indicates that the complainant wishes to continue with it.

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(2) If a complainant, on being advised under subsection (1), does not give an indication within 60 days that the complainant wishes to continue with the complaint, the complaint lapses and the Commissioner shall, as soon as practicable thereafter, notify the complainant and the respondent that the complaint has lapsed.

(3) Where a complaint lapses under this section, the complainant shall not make another complaint in relation to the same conduct.

73. COMMISSIONER MAY JOIN PERSON AS PARTY

The Commissioner may, by written notice served on a person, join the person as a party to a complaint.

Division 2 - Investigations

74. INVESTIGATION OF COMPLAINT

(1) The Commissioner shall carry out an investigation under this Division of alleged prohibited conduct if -

- (a) requested to do so by the Minister; or
- (b) the Commissioner accepts a complaint under section 66.

(2) The Commissioner may carry out an investigation under this Division if, during the course of carrying out the Commissioner's functions, it appears that prohibited conduct has occurred.

(3) An investigation carried out under subsection (1)(a) or (2) shall, for the purposes of this Act, be deemed to be an investigation of a complaint and this Act shall apply to and in relation to -

- (a) the investigation;
- (b) any other proceedings under this Act in relation to the prohibited conduct; and
- (c) the Commissioner,

as if a complaint had been made.

75. CONDUCT OF INVESTIGATION

(1) An investigation under this Division shall be conducted in such manner as the Commissioner thinks fit.

(2) An investigation under this Division shall be carried out with as little formality and technicality, and with as much expedition as the requirements of this Act and a proper consideration of the matters before the Commissioner permit.

(3) In carrying out an investigation under this Division, the Commissioner -

- (a) shall make a thorough examination of all matters relevant to the investigation; and
- (b) where the Commissioner considers it appropriate, ensure that each party to the investigation is given a reasonable opportunity to present his or her case.

76. COMPLETION OF INVESTIGATION

(1) The Commissioner shall, on completing an investigation under this Division in respect of a complaint, determine that the complaint is -

- (a) dismissed; or
- (b) if satisfied that there is *prima facie* evidence to substantiate the allegation of prohibited conduct in the complaint -
 - (i) to proceed to conciliation; or
 - (ii) if the Commissioner believes it cannot be resolved by conciliation, to proceed to a hearing.

(2) The Commissioner shall give notice of a determination under subsection (1) to the complainant and the respondent.

(3) The Commissioner shall, on completing proceedings under this Act in respect of a matter investigated under section 74(1)(a) or (2), report to the Minister on the matter together with such recommendations, if any, as the Commissioner thinks fit.

77. REPORT OF COMMISSIONER

(1) The Commissioner may prepare a report relating to the investigation of a complaint under this Division which may be considered at a subsequent hearing of the complaint.

(2) A report prepared under subsection (1) shall not contain a record of oral statements made by a person in the course of the investigation.

Anti-Discrimination

(3) Where a report prepared under subsection (1) is considered at the hearing of the complaint, a copy of the report shall be provided to the complainant and the respondent.

Division 3 - Conciliation Process

78. CONCILIATION OF COMPLAINT

If the Commissioner determines under section 76 that a complaint is to proceed to conciliation, the Commissioner shall endeavour to resolve it in that way.

79. CONCILIATION PROCEEDINGS

(1) For the purpose of resolving a complaint by conciliation, the Commissioner may direct a person to take part in such conciliation proceedings under this Division (including a conciliation conference) as the Commissioner thinks will resolve the complaint.

(2) A direction under subsection (1) shall be in writing and specify the time when and place where the conciliation proceedings will be held.

(3) Conciliation proceedings under this Division shall be held in private.

(4) A person to whom a direction is given under subsection (1) shall not contravene or fail to comply with the direction.

Penalty: In the case of a body corporate - \$5,000.
In the case of a natural person - \$1,000.

80. FAILURE TO ATTEND CONCILIATION PROCEEDINGS

(1) If, without reasonable excuse, a party to a complaint does not comply with a direction given under section 79, the Commissioner may, where the party is -

- (a) the complainant, dismiss the complaint and may direct the complainant to pay to the respondent such costs as the Commissioner thinks fit; or
- (b) the respondent, direct the respondent to pay to the complainant such costs as the Commissioner thinks fit.

(2) An amount ordered to be paid as costs under this section may be registered as a judgment debt in a court of competent jurisdiction and may be recovered accordingly.

Anti-Discrimination

81. CONCLUSION OF CONCILIATION PROCEEDINGS

(1) If a complaint is resolved by conciliation, the Commissioner may, with the consent of the complainant and the respondent, record the terms of the agreement reached between the complainant and the respondent and, where the Commissioner does so, the Commissioner shall -

- (a) have the agreement signed by the complainant and the respondent; and
- (b) provide a copy of the agreement to the complainant and the respondent.

(2) If a complaint is not resolved by conciliation, the Commissioner shall notify the complainant and the respondent that conciliation proceedings under this Division have ceased.

82. CONCILIATION PROCEEDINGS NOT ADMISSIBLE

Anything said, written or done in the course of conciliation proceedings under this Division is not to be taken into account in subsequent proceedings under this Act in relation to the complaint.

Division 4 - Hearings

83. CONDUCT OF HEARING BY COMMISSIONER

Subject to this Act, the Commissioner shall conduct a hearing of a complaint where the Commissioner -

- (a) determines under section 76 that the complaint cannot be resolved by conciliation;
- (b) has attempted to resolve the complaint by conciliation but has not succeeded in so doing; or
- (c) believes that the nature of the complaint is such that it should be dealt with by a hearing.

84. REQUEST FOR HEARING AFTER 6 MONTHS

(1) If the Commissioner has not finished dealing with a complaint at the expiration of 6 months after accepting the complaint under section 66, either the complainant or the respondent may, in writing, request the Commissioner to conduct a hearing of the complaint.

(2) The Commissioner may defer acting on a request under subsection (1) for up to 28 days, if there is a significant prospect that the complaint can be resolved by conciliation within that period.

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(3) Subject to subsection (2), if a request under subsection (1) is made by the respondent, the Commissioner shall ask the complainant whether the complainant agrees to the conduct of a hearing of the complaint.

(4) A complainant shall, not later than 28 days after being asked by the Commissioner under subsection (3), agree or refuse to agree to the conduct of the hearing.

(5) If the complainant refuses to agree to the conduct of a hearing under subsection (4), the complaint lapses and the complainant may not make a further complaint in relation to the prohibited conduct alleged in the complaint.

(6) The Commissioner may extend the period referred to in subsection (4) if the complainant asks, in writing, for an extension before the period expires.

(7) Subject to subsection (2), if a request under subsection (1) is made by the complainant, the Commissioner shall conduct a hearing of the complaint.

(8) The Commissioner shall notify the complainant and the respondent as to whether the complaint has lapsed or will proceed to a hearing.

85. CONDUCT OF HEARING OTHER THAN BY COMMISSIONER

(1) Where the Commissioner has conducted the investigation of a complaint under Division 2 or taken part in the conciliation process of a complaint under Division 3 the Commissioner shall not conduct the hearing of the complaint under this Division and the Minister shall appoint a person to conduct the investigation of the complaint.

(2) A person appointed under this section may, in respect of the hearing of the complaint for which the person is appointed, exercise the powers and perform the functions of the Commissioner and, for the purposes of the hearing, shall be deemed to be the Commissioner.

86. HEARING TO BE PUBLIC

The hearing of a complaint shall be in public unless the Commissioner directs otherwise.

87. COMMISSIONER TO ATTEMPT CONCILIATION

If the Commissioner considers, either before or during the hearing of a complaint, that the complaint may be resolved by conciliation, the Commissioner may endeavour to resolve the complaint by conciliation.

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88. ORDERS AFTER HEARING

(1) If, after the hearing of a complaint, the Commissioner finds the prohibited conduct alleged in the complaint is substantiated, the Commissioner may make one or more of the following orders:

- (a) an order requiring the respondent not to repeat or continue the prohibited conduct;
- (b) an order requiring the respondent to pay to the complainant or another person, within a specified period, an amount, being an amount not more than that prescribed, that the Commissioner considers appropriate as compensation for loss or damage caused by the prohibited conduct;
- (c) an order requiring the respondent to do specified things to redress loss or damage suffered by the complainant or any other person because of the prohibited conduct;
- (d) an order declaring void all or part of an agreement made in connection with the prohibited conduct, either from the time the agreement was made or subsequently.

(2) In this section, the specified things a respondent may be required to do, include, but are not limited to the following:

- (a) employing, re-instating or re-employing a person;
- (b) promoting a person;
- (c) moving a person to a specified position within a specified time.

(3) In this section, "damage", in relation to a person, includes the offence, embarrassment, humiliation, and intimidation suffered by the person.

(4) If, after the hearing of a complaint, the Commissioner finds the prohibited conduct alleged in the complaint is not substantiated the Commissioner shall make an order dismissing the complaint.

89. APOLOGIES AND RETRACTIONS

(1) In addition to an order under section 88, the Commissioner may order a respondent to apologize to a complainant and make such retractions as the Commissioner considers appropriate.

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(2) For the purposes of subsection (1), the Commissioner may order an apology or retraction to be published or made in such manner as the Commissioner thinks fit.

Division 5 - Miscellaneous

90. CONDUCT OF PROCEEDINGS

(1) In the conduct of proceedings under this Act, the Commissioner -

- (a) is not bound by the rules of evidence and the Commissioner may obtain information on any matter as the Commissioner considers appropriate;
- (b) shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms;
- (c) may give directions relating to procedure that, in the Commissioner's opinion, will enable costs or delay to be reduced and will help to achieve a prompt hearing of the matters at issue between the parties;
- (d) may draw conclusions of fact from any proceeding before a court or tribunal;
- (e) may adopt any findings or decisions of a court or tribunal that may be relevant to the proceedings; and
- (f) may conduct proceedings in the absence of a party who was given reasonable notice to attend but failed to do so without reasonable excuse.

91. BURDEN AND STANDARD OF PROOF

(1) Subject to this section, it is for the complainant to prove, on the balance of probabilities, that the prohibited conduct alleged in the complaint is substantiated.

(2) Where a respondent wishes to rely on an exemption, it is for the respondent to raise and prove, on the balance of probabilities, that the exemption applies.

92. POWERS OF COMMISSIONER IN RESPECT OF PROCEEDINGS

(1) The Commissioner may, in writing, order a person -

- (a) to attend proceedings under this Act until excused;

- (b) to give evidence on oath or affirmation;
- (c) to provide to the Commissioner a document or class of documents as specified in the order; or
- (d) to provide to the Commissioner, in writing signed by the person, information in the possession of the person relevant to the proceedings as specified in the order.

(2) If a document is provided to the Commissioner under subsection (1), the Commissioner -

- (a) may take possession of, and may copy or take extracts from, the document;
- (b) may retain possession of the document for such period as is reasonably necessary; and
- (c) during the period a document is retained under paragraph (b), shall allow a person who, if the document were not in the possession of the Commissioner, would be entitled to inspect it, to inspect the document at all reasonable times.

(3) For the purposes of subsection (1) -

- (a) the Commissioner may administer an oath or affirmation; and
- (b) a witness attending the proceedings may be examined, cross-examined and re-examined.

(4) A person is not required to give evidence or provide a document under this section if the person objects on the ground of privilege that the person would be entitled to claim if the person were a witness in proceedings in the Supreme Court.

(5) A person shall not, without reasonable excuse, contravene or fail to comply with an order of the Commissioner under subsection (1).

Penalty: In the case of a body corporate - \$5,000.
In the case of a natural person - \$1,000.

93. FEES FOR WITNESSES

(1) A person requested or ordered to attend proceedings under this Act shall be paid, in respect of the person's attendance, such fees and allowances for expenses, if any, as may be prescribed.

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(2) Subject to subsection (3), the fees and allowances payable under subsection (1) shall be paid -

(a) in a case where the person was requested or ordered at the request of a person, other than the Territory, by the person who made the request; or

(b) in any other case, by the Territory.

(3) The Commissioner may determine that the fees and allowances payable to a person under subsection (2)(a) be paid, in whole or in part, by the Territory.

94. LEGAL PRACTITIONER MAY ASSIST COMMISSIONER

(1) The Commissioner may make arrangements for a legal practitioner to appear at proceedings under this Act to assist the Commissioner.

(2) A legal practitioner assisting the Commissioner under this section is subject to the Commissioner's direction and control.

95. PARTIES MAY BE LEGALLY REPRESENTED

A complainant or a respondent may be represented before the Commissioner by a legal practitioner with the leave of the Commissioner.

96. COSTS

(1) Subject to subsection (2) and section 80, each party to a complaint shall pay his or her own costs in respect of proceedings under this Act.

(2) Notwithstanding subsection (1), the Commissioner may make an order as to costs.

97. UNINCORPORATED ASSOCIATION REPRESENTED BY COMMITTEE MEMBER

(1) If proceedings under this Act involve an unincorporated association -

(a) the president;

(b) the secretary; or

(c) a member of the committee of management,

of the association at the time the alleged prohibited conduct to which the proceedings relate occurred, and who is specified in the complaint, is the nominal party.

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(2) Where a document or notice is required to be served on or given to an unincorporated association under this Act it may be given to or served on the nominal party.

98. ACTUARIAL OR STATISTICAL DATA

(1) If a person has done an act of discrimination that would, but for section 49, be unlawful, the Commissioner may by notice in writing require the person, not later than 21 days after service of the notice, to give the Commissioner the actuarial or statistical data or the source of the data on which the act of discrimination was based.

(2) A person on whom a notice is served under subsection (1) shall not, without reasonable excuse, contravene or fail to comply with the notice.

Penalty: In the case of a body corporate - \$5,000.
In the case of a natural person - \$1,000.

99. PUBLICATION OF EVIDENCE

(1) The Commissioner may order that any oral or documentary evidence given at proceedings under this Act not be published except as directed by the Commissioner.

(2) A person shall not, without reasonable excuse, contravene or fail to comply with an order or a direction under subsection (1).

Penalty: In the case of a body corporate - \$5,000.
In the case of a natural person - \$1,000.

100. ANONYMITY

(1) If the Commissioner considers that the preservation of anonymity of a person who is, or has been, involved in proceedings under this Act is necessary to protect the work security, privacy or any human right of the person, the Commissioner may make an order prohibiting the disclosure of the person's identity.

(2) In this section, a reference to involvement in proceedings under this Act includes -

- (a) making a complaint and continuing with the complaint, whether by investigation, conciliation or hearing;
- (b) being a respondent to a complaint;
- (c) involvement in a prosecution for an offence against this Act;

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- (d) supplying information and producing documents to a person who is performing a function under this Act; and
- (e) appearing as a witness in proceedings under this Act.

(3) A person shall not, without reasonable excuse, contravene or fail to comply with an order of the Commissioner under subsection (1).

Penalty: In the case of a body corporate - \$5,000.
In the case of a natural person - \$1,000.

101. INTERIM ORDERS

(1) Subject to subsection (2), the Commissioner may, at any stage of proceedings under this Act in respect of a complaint, make an interim order pending the completion of the proceedings -

- (a) to preserve -
 - (i) the status quo between; or
 - (ii) the rights of, the parties to the complaint; or
- (b) to preserve the status quo between the parties to the complaint as existing before the prohibited conduct alleged in the complaint took place.

(2) The Commissioner shall not make an order under subsection (1) unless the Commissioner has given the parties to the complaint an opportunity to be heard and has taken into account the submissions, if any, put to the Commissioner by the parties.

(3) A person shall not, without reasonable excuse, contravene or fail to comply with an interim order made under subsection (1).

Penalty: In the case of a body corporate - \$5,000.
In the case of a natural person - \$1,000.

102. DISCONTINUANCE OF COMPLAINT

(1) The Commissioner may, at any stage of proceedings under this Act in respect of a complaint, discontinue the proceedings if the Commissioner reasonably believes that the complaint is -

- (a) frivolous or vexatious;

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- (b) trivial;
- (c) misconceived or lacking in substance; or
- (d) fails to disclose any prohibited conduct.

(2) Where a complaint is discontinued under subsection (1)(a), the Commissioner may order the complainant to pay to the respondent an amount, being an amount not more than that prescribed, that the Commissioner considers appropriate as compensation for loss or damage caused to the respondent by the complainant making the complaint.

103. WRITTEN REASONS FOR ORDERS

A complainant or respondent may, not later than 28 days after the Commissioner makes an order under section 88, request the Commissioner to give written reasons for the order and the Commissioner shall, not later than 28 days after receiving the request, give the written reasons.

104. ENFORCEMENT OF ORDERS

(1) A person shall not, without reasonable excuse, contravene or fail to comply with an order of the Commissioner under this Part.

Penalty: In the case of a body corporate - \$10,000.
In the case of a natural person - \$2,500 or imprisonment for 3 months.

(2) A person who is entitled to payment under an order made under this Part may register the order in a court of competent jurisdiction by filing in the court -

- (a) a copy of the order, certified as a true copy by the Commissioner; and
- (b) an affidavit stating the amount remaining unpaid.

(3) An order registered under subsection (2) is a judgment debt of that court and may be recovered accordingly.

105. REVIEW BY OMBUDSMAN

The rejection of a complaint or the discontinuance of proceedings in respect of a complaint by the Commissioner under this Act is an administrative action for the purposes of the *Ombudsman (Northern Territory) Act* and may be investigated in accordance with that Act by the Ombudsman appointed under that Act.

PART 7 - APPEALS

106. APPEALS AGAINST DECISION OF COMMISSIONER

(1) A party to a complaint aggrieved by a decision or order of the Commissioner may appeal to the Local Court against the decision or order.

(2) An appeal shall be made -

(a) not later than 28 days after the day on which the decision or order was made; or

(b) if the Commissioner did not give written reasons at the time the decision or order was made, and the party making the appeal subsequently requests the Commissioner to do so, not later than 28 days after the day on which the party received the reasons in writing.

(3) An appeal under this section shall be made in accordance with the rules of the Local Court.

107. POWERS OF LOCAL COURT

The Local Court, on hearing an appeal under this Part, may -

(a) affirm or vary the decision or order appealed against;

(b) quash the decision or order appealed against and substitute any decision or order that the Commissioner may make under this Act;

(c) remit the matter to the Commissioner for further hearing or consideration, or for rehearing; and/or

(d) make such other orders (including as to costs) as the Court considers appropriate.

PART 8 - MISCELLANEOUS

108. NON DISCLOSURE OF PRIVATE INFORMATION

(1) Subject to this section, a person who, in exercising a power or performing a function under this Act, acquires information about a person's affairs or has custody of, or access to, a document about a person's affairs shall not -

(a) make a record of the information; or

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- (b) communicate the information or produce the document to another person.

Penalty: In the case of a body corporate - \$5,000.
In the case of a natural person - \$1,000.

(2) Subsection (1) does not apply to making a record of information, communicating information or producing a document if it -

- (a) is required for the exercise of a power or the performance of a function under this Act;
- (b) is required or permitted under another Act or an Act of the Commonwealth, a State or another Territory of the Commonwealth; or
- (c) relates to the commission of an offence against a law in force in the Territory.

(3) Subject to this section, a person who, in exercising a power or performing a function under this Act, acquires information about a person's affairs or has custody of, or access to, a document about a person's affairs shall not be required -

- (a) to give the information to a court; or
- (b) to produce the document in a court.

(4) Subsection (3) does not apply if giving the information or producing the document -

- (a) is required for the exercise of a power or the performance of a function under this Act;
- (b) is required or permitted by another Act or an Act of the Commonwealth, a State or another Territory of the Commonwealth; or
- (c) is to a court in the prosecution of an offence against a law in force in the Territory.

(5) Nothing in subsection (2)(b) or (c) or (4)(b) or (c) relates to information acquired during conciliation proceedings under this Act.

(6) In this section -

"court" includes a tribunal, authority or person having power to require the production of documents or the answering of questions;

"produce" includes permit access to.

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109. DISCRIMINATORY ADVERTISING PROHIBITED

(1) A person shall not publish, cause to be published or authorise the publication of an advertisement which promotes or expresses or could reasonably be understood to promote or express prohibited conduct or an intention to engage in prohibited conduct.

Penalty: In the case of a body corporate - \$5,000.
In the case of a natural person - \$1,000.

(2) A prosecution for an offence against subsection (1) shall not be commenced or continued if a complaint has been made in respect of the advertisement and the complaint has lapsed or been withdrawn or dismissed, or the person alleged to have committed the offence has complied with an agreement or order made in respect of the complaint.

110. OFFENCES IN RESPECT OF PROCEEDINGS

(1) A person shall not -

(a) hinder a person exercising a power or performing a function under this Act;

(b) use insulting language towards a person exercising a power or performing a function under this Act;

(c) knowingly or recklessly provide false or misleading information to a person exercising a power or performing a function under this Act;
or

(d) do an act or thing in relation to the Commissioner that would constitute a contempt of court. X

Penalty: In the case of a body corporate - \$5,000. ||
In the case of a natural person - \$1,000.

(2) For the purposes of the law relating to contempt of court, the Commissioner is to be treated as a court.

111. INDUCEMENT

A person shall not knowingly or recklessly make a false or misleading statement to a person in order to induce the publication or display of an advertisement that promotes or expresses prohibited conduct.

Penalty: In the case of a body corporate - \$5,000.
In the case of a natural person - \$1,000.

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112. COMMENCEMENT OF PROCEEDINGS FOR OFFENCES

A prosecution for an offence against this Act shall be commenced not later than -

- (a) 12 months after the offence was committed; or
- (b) 6 months after the offence comes to the Commissioner's knowledge,

whichever period ends last, but a prosecution shall not to be commenced more than 2 years after the offence is committed.

113. PROTECTION FROM LEGAL PROCEEDINGS

(1) No action or proceedings, whether civil or criminal, shall be commenced or continue against a person for or in relation to an act, omission or thing done in good faith by the person in the performance or exercise, or purported performance or exercise, of a function or power under this Act.

(2) No action or proceeding, whether civil or criminal, shall be commenced or continue against a person in respect of any loss or damage suffered by another person by reason only that the person -

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

114. SELF INCRIMINATION

It is not a reasonable excuse for the purposes of section 92(5) for a person to refuse or fail to give evidence or information or to provide a document to the Commissioner that the giving of the evidence or information or the providing of the document might incriminate the person, but the evidence, information or document is not admissible in evidence against the person in any civil or criminal proceeding before a court, other than a proceeding for an offence under section 110.

115. SERVICE OF DOCUMENT

A notice or document required to be served on or given to a person under this Act may be served or given -

- (a) by delivering it to the person;
- (b) by posting it to the person at the person's place of residence or business; or

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- (c) by leaving it at the person's place of residence or business with a person who is apparently over the age of 16 years and living or working there.

116. NON-APPLICATION OF ACT

(1) This Act does not apply to prohibited conduct which took place before the commencement of this Act.

(2) Subsection (1) does not prevent evidence of conduct which took place or practices which were used before the commencement of this Act being taken into account in determining whether a person has been subjected to prohibited conduct.

117. REGULATIONS

(1) The Administrator may make regulations, not inconsistent with this Act, prescribing matters -

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting the generality of subsection (1), the Regulations may make provision exempting persons, activities or things from the operation of this Act or specified provisions of this Act.

SECOND READING SPEECH
ANTI-DISCRIMINATION BILL

MR SPEAKER, I NOW MOVE THAT THE BILL BE READ A SECOND TIME.

MR SPEAKER, IT IS WITH PLEASURE THAT AFTER CONSIDERABLE COMMUNITY CONSULTATION, SPANNING MORE THAN TWO YEARS, I NOW INTRODUCE THIS IMPORTANT PIECE OF LEGISLATION INTO THE LEGISLATIVE ASSEMBLY.

MR SPEAKER, THE AIM OF THE LEGISLATION IS TO PROMOTE EQUALITY OF OPPORTUNITY IN THE TERRITORY BY PROTECTING PERSONS FROM UNFAIR DISCRIMINATION IN CERTAIN AREAS OF ACTIVITY, FROM SEXUAL HARASSMENT AND CERTAIN OTHER OBJECTIONABLE BEHAVIOUR AND TO PROVIDE REDRESS FOR THOSE WITH GENUINE COMPLAINTS OF DISCRIMINATION.

MR SPEAKER, LEGISLATION IS OFTEN THE EMBODIMENT OF PRINCIPLES DEEMED BY OUR SOCIETY TO BE IMPORTANT. FOR EXAMPLE, OUR COMMUNITY FINDS THE ABUSE OF CHILDREN UNACCEPTABLE, SO THIS ASSEMBLY HAS ENACTED BOTH THE CRIMINAL CODE AND THE COMMUNITY WELFARE ACT. MR SPEAKER, SOCIETY IN AUSTRALIA BELIEVES THAT CONSUMERS SHOULD BE PROTECTED FROM DISHONEST AND UNCONSCIONABLE RETAILERS, SO ALL STATES AND THE NORTHERN TERRITORY HAVE PASSED CONSUMER PROTECTION LEGISLATION.

MR SPEAKER, THE BILL THAT I HAVE INTRODUCED REFLECTS THE VIEWS OF THE COMMUNITY THAT DISCRIMINATION IS NOT ACCEPTABLE IN OUR SOCIETY. IN THIS REGARD THE TERRITORY IS FOLLOWING THE PATTERN EXHIBITED BY THE COMMONWEALTH, THE STATES AND OVERSEAS COUNTRIES WHO HAVE HAD LEGISLATION FOR SOME YEARS. THE NORTHERN TERRITORY ANTI-DISCRIMINATION BILL ENSURES THAT TERRITORIANS WILL HAVE THE SUPPORT OF ANTI-DISCRIMINATION

LEGISLATION DESIGNED BY TERRITORIANS, FOR TERRITORIANS, TO FIT THE SPECIAL NEEDS OF TERRITORIANS.

MR SPEAKER, THE BILL WILL SERVE TWO MAIN PURPOSES.

THE FIRST PURPOSE MR SPEAKER, IS TO PROVIDE A CODE OF CONDUCT TO SUPPORT TERRITORIANS IN THEIR EFFORTS TO GIVE OTHERS 'A FAIR GO' AND TO PROVIDE REDRESS FOR THOSE WITH A GENUINE COMPLAINT OF DISCRIMINATION.

THE SECOND PURPOSE IS TO PROVIDE AN EDUCATIONAL PROCESS FOR PEOPLE IN THE TERRITORY TO ENSURE THAT EVERYONE UNDERSTANDS THEIR RESPONSIBILITIES IN ENSURING NON OCCURRENCE OF DISCRIMINATORY BEHAVIOUR.

MR SPEAKER, IT HAS BEEN SAID THAT FOR EQUAL OPPORTUNITY TO BECOME A REALITY, AN ATTITUDINAL CHANGE IS REQUIRED IN THE COMMUNITY. MR SPEAKER, THESE ADVOCATES ALSO ARGUE THAT LEGISLATION WILL NOT ALTER COMMUNITY ATTITUDES.

I CANNOT AGREE WITH THOSE ARGUMENTS, MR SPEAKER. CHANGE OF ATTITUDE USUALLY COMES AS A RESULT OF EDUCATION. FOR EXAMPLE, MR SPEAKER, WHEN SEAT BELT LEGISLATION WAS FIRST ENACTED, MANY PEOPLE FELT THAT THEIR CIVIL LIBERTIES WERE BEING ERODED. MANY STATED THAT THEY WOULD NEVER FREELY WEAR A SEAT BELT. APPROPRIATE EDUCATIONAL PROGRAMS AND LEGISLATION HAVE RESULTED IN CHANGED ATTITUDES. FEW PEOPLE WOULD VENTURE FAR THESE DAYS WITHOUT WEARING SAFETY BELTS.

MR SPEAKER, I BELIEVE THIS BILL, WHEN IT BECOMES LAW, WILL BE THE CATALYST TO CHANGE ATTITUDES.

MR SPEAKER, AT THE LAST SITTINGS OF THIS LEGISLATIVE ASSEMBLY, I TABLED, FOR COMMUNITY DISCUSSION AND COMMENT, A DRAFT OF THIS BILL. AT THAT TIME, I INDICATED THAT WIDE

COMMUNITY CONSULTATION HAD TAKEN PLACE DURING THE TWO YEARS PRIOR TO DRAFTING THE BILL FOR DISCUSSION.

THAT COMMUNITY CONSULTATION, MR SPEAKER, INCLUDED DISTRIBUTION OF A DISCUSSION PAPER, FOLLOWED BY PUBLIC MEETINGS IN EACH MAJOR CENTRE AND FORMATION OF A COMMUNITY BASED WORKING PARTY TO REVIEW THE 30 SUBMISSIONS RECEIVED IN RELATION TO THE DISCUSSION PAPER.

FOLLOWING THE TABLING OF THE DISCUSSION DRAFT BILL, MR SPEAKER, THE COMMUNITY WAS AGAIN INVITED TO PARTICIPATE. ADVERTISEMENTS WERE PLACED IN EVERY NEWSPAPER IN THE TERRITORY, SEEKING SUBMISSIONS ON THE CONTENTS OF THE DRAFT BILL FROM ANY INTERESTED GROUP OR INDIVIDUAL.

MR SPEAKER, AS WELL AS ADVISING THE TERRITORY PUBLIC THAT ANY INDIVIDUAL OR GROUP WAS AT LIBERTY TO MAKE A SUBMISSION ON THE DRAFT BILL, A PUBLIC MEETING PLUS SEPARATE MEETINGS WITH SPECIFIC INTEREST GROUPS WERE HELD IN ALICE SPRINGS TO CANVAS COMMUNITY VIEWS. IN ADDITION, A FORUM INITIATED BY THE AUSTRALIAN FEDERATION OF UNIVERSITY WOMEN, IN CONJUNCTION WITH PEAK WOMEN'S ORGANISATIONS IN DARWIN, WAS ATTENDED BY A LARGE CROSS SECTION OF THE COMMUNITY.

MR SPEAKER, I WAS PRESENT AT THE LATTER MEETING AND WAS ABLE TO GAUGE REACTIONS TO THE DRAFT BILL. THERE WERE MANY POSITIVE COMMENTS AT THAT FORUM, INCLUDING SEVERAL SUGGESTIONS FOR DRAFTING CHANGES TO THE BILL. MR SPEAKER, SOME OF THOSE SUGGESTIONS ARE REFLECTED IN THE BILL THAT I HAVE INTRODUCED TO THIS ASSEMBLY.

MR SPEAKER, OVER 35 WRITTEN SUBMISSIONS WERE RECEIVED IN RELATION TO THE DRAFT DISCUSSION BILL. I WISH TO PLACE ON RECORD, MR SPEAKER, MY APPRECIATION FOR THOSE GROUPS AND

INDIVIDUALS WHO PROVIDED ME WITH COMMENTS ON THE DISCUSSION DOCUMENT.

ISSUES RAISED IN THOSE SUBMISSIONS WERE WIDE RANGING COVERING SUCH DIVERSE ISSUES AS THE NEED TO INCLUDE THE GROUND OF BREASTFEEDING, CONCERN THAT THE CROWN COULD NOT BE PROSECUTED FOR OFFENCES UNDER THE ACT, THE NEED FOR AN ANTI-DISCRIMINATION TRIBUNAL, REMOVAL OF THE SEXUALITY EXEMPTION CLAUSE IN RELATION TO EMPLOYMENT INVOLVING THE CARE OR SUPERVISION OF CHILDREN, COMMONWEALTH/STATE RELATIONS, THE NEED TO WIDEN THE EXEMPTION FOR EDUCATION TO INCLUDE RACE IN SPECIAL ATTRIBUTE SCHOOLS, CONSISTENCY IN USE OF THE DEFINITION OF "CHILD AND MINOR"; AND THE NEED TO EXTEND THE TIME FOR LODGMENT OF COMPLAINTS.

MR SPEAKER, THOSE SUBMISSIONS HAVE BEEN INVALUABLE IN ASSISTING ME AND MY COLLEAGUES IN DETERMINING THE FINAL BILL.

EVERY SUBMISSION HAS BEEN CAREFULLY CONSIDERED, MR SPEAKER AND I CAN ADVISE THAT WE HAVE BEEN ABLE TO INCLUDE THE MAJORITY OF CHANGES SUGGESTED IN THOSE SUBMISSIONS.

SOME OF THOSE CHANGES INCORPORATED INCLUDE: THE CROWN WILL NOW BE LIABLE IF DAMAGES ARE AWARDED FOR A PROVEN OFFENCE UNDER THE LEGISLATION. FOLLOWING STRONG REPRESENTATIONS FROM PUBLIC SECTOR WORKERS AND UNIONS, THE FUNCTIONS OF THE COMMISSIONER NOW INCLUDE PROVISION FOR THE COMMISSIONER TO ENCOURAGE THE DEVELOPMENT OF EQUAL OPPORTUNITY MANAGEMENT PLANS IN THE PUBLIC SECTOR.

DISCRIMINATION AGAINST THOSE RELIANT ON GUIDE DOGS IS NOW TO BE COVERED IN ALL AREAS, NOT JUST IN ACCOMMODATION AND I THANK THE HONOURABLE MEMBER FOR NHULUNBUY FOR RAISING THAT POINT.

THE TIME LIMIT FOR LODGING COMPLAINTS OF DISCRIMINATION HAS BEEN EXTENDED FROM THREE MONTHS AFTER THE ALLEGED DISCRIMINATION OCCURRED. SUBMISSIONS INDICATED THAT MANY PEOPLE FROM NON ENGLISH SPEAKING BACKGROUNDS IN PARTICULAR, COULD EXPERIENCE DIFFICULTY IN FORMULATING A CLAIM WITHIN THE SHORT TIME FRAME OF 3 MONTHS. I AM PLEASED TO ADVISE MR SPEAKER, THAT AS A RESULT OF THOSE COMMUNITY SUBMISSIONS, THE TIME LIMIT FOR LODGING A COMPLAINT WILL BE 6 MONTHS. THE COMMISSION WILL ALSO HAVE THE ABILITY TO ACCEPT A CLAIM LODGED AFTER THAT TIME, IN CERTAIN CIRCUMSTANCES.

MR SPEAKER IT WAS ALSO BROUGHT TO OUR ATTENTION THAT PROFESSIONAL AND TRADE ORGANISATIONS AND QUALIFYING BODIES HAD NOT BEEN INCLUDED AS AREAS WHERE DISCRIMINATION WAS PROHIBITED. THOSE PARTICULAR BODIES WHO HAVE THE POWER TO GRANT, RENEW OR EXTEND A QUALIFICATION OR AUTHORISATION REQUIRED TO FACILITATE THE PRACTICE OF A TRADE OR PROFESSION HAVE NOW BEEN INCLUDED.

BREASTFEEDING HAS ALSO BEEN INCLUDED AS A GROUND OF PROHIBITED DISCRIMINATION AND THE DEFINITIONS OF "CHILD" AND "MINOR" ARE NOW DEFINED AS "CHILD MEANS A PERSON WHO HAS NOT ATTAINED THE AGE OF 18 YEARS".

SUBMISSIONS INDICATED CONCERN THAT THERE WAS NOT ADEQUATE PROVISION FOR APPEALS AGAINST A DECISION OF THE COMMISSIONER. THE BILL BEFORE YOU NOW PROVIDES THAT AN APPEAL ON FACT OR LAW MAY BE MADE TO THE MAGISTRATES COURT. AS THERE IS NOT TO BE AN EQUAL OPPORTUNITY TRIBUNAL, A NUMBER OF SUBMISSIONS RAISED PROBLEMS THAT MIGHT ENSUE WHERE THE COMMISSIONER HAD BEEN INVOLVED IN INVESTIGATION OR CONCILIATION OF A COMPLAINT AND THEN BE REQUIRED TO CONDUCT A FORMAL HEARING WHERE CONCILIATION HAD FAILED. AFTER CONSIDERATION OF ARGUMENTS PUT, THE GOVERNMENT HAS RESOLVED THAT THE MINISTER MUST AUTOMATICALLY APPOINT ANOTHER PERSON

TO CONDUCT THE HEARING WHERE THE COMMISSIONER HAS BEEN PERSONALLY INVOLVED IN INVESTIGATION OR CONCILIATION.

AS A RESULT OF THE EXTENSIVE CONSULTATIONS AND THE RESULTANT CHANGES TO WHICH I HAVE REFERRED, MR SPEAKER, WE HAVE BEFORE US NOW, A BILL THAT I BELIEVE REFLECTS THE WISHES OF THE MAJORITY OF THE NORTHERN TERRITORY COMMUNITY.

MR SPEAKER, AT THE TIME OF TABLING THE INITIAL DISCUSSION BILL, I IDENTIFIED THE PROPOSED GROUNDS OF PROHIBITED DISCRIMINATION. THE GROUNDS OF PROHIBITED DISCRIMINATION NOW CONTAINED IN THE BILL AT CLAUSE 19 ARE: AGE, RACE, SEX, SEXUALITY, MARITAL STATUS, PREGNANCY, BREASTFEEDING, IMPAIRMENT, TRADE UNION OR EMPLOYER ASSOCIATION MEMBERSHIP OR NON-MEMBERSHIP OR ACTIVITY, RELIGIOUS BELIEF, POLITICAL OPINION AFFILIATION OR ACTIVITY, IRRELEVANT CRIMINAL RECORD, IRRELEVANT MEDICAL RECORD, PARENTHOOD AND SEXUAL HARASSMENT.

THE AREAS WHERE DISCRIMINATION ON THESE GROUNDS WILL BE UNLAWFUL INCLUDE:

EDUCATION, WORK, PROFESSIONAL AND TRADE ORGANISATIONS, QUALIFYING BODIES, ACCOMMODATION, PROVISION OF GOODS, SERVICES AND FACILITIES, MEMBERSHIP OF CERTAIN CLUBS, INSURANCE AND SUPERANNUATION.

MR SPEAKER, THE PROPOSED BILL IS UNIQUE, AS IT INCLUDES GROUNDS OF PROHIBITED DISCRIMINATION NOT GENERALLY COVERED IN OTHER JURISDICTIONS. THOSE GROUNDS INCLUDE PARENTHOOD, BREASTFEEDING, IRRELEVANT CRIMINAL RECORD AND IRRELEVANT MEDICAL RECORD, RELIGIOUS AND POLITICAL ACTIVITY AND MEMBERSHIP OR NON MEMBERSHIP OF A TRADE UNION OR EMPLOYER ASSOCIATION.

MR SPEAKER, I FEEL IT INCUMBENT UPON ME TO DRAW THE ATTENTION OF HONOURABLE MEMBERS TO SOME OF THE GENERAL PROVISIONS OF THE BILL.

AN IMPORTANT ASPECT OF THE BILL IS RELATED TO THE PROHIBITION OF SEXUAL HARASSMENT. IN MOST OTHER JURISDICTIONS WHERE LEGISLATION OF THIS NATURE APPLIES, SEXUAL HARASSMENT IS USUALLY PROHIBITED ONLY IN EMPLOYMENT. MR SPEAKER, THE NORTHERN TERRITORY GOVERNMENT UNDERSTANDS THAT THE COMMUNITY FEELS STRONGLY ON THIS ISSUE AND THE BILL, THEREFORE, AT CLAUSE 22 PROVIDES FOR PROHIBITION OF SEXUAL HARASSMENT IN ALL AREAS DESCRIBED IN THE BILL.

MR SPEAKER, IT IS AN ACKNOWLEDGED FACT THAT THE TERRITORY HAS THE MOST MULTI-CULTURAL POPULATION IN THIS COUNTRY. WE HAVE A DIVERSE CULTURAL AND RACIAL COMPOSITION THAT MEANS THAT THERE ARE MANY DIFFERENT EXTENDED FAMILY SITUATIONS AND DIFFERENT PARENTAL RESPONSIBILITIES. TO COVER THESE DIFFERENT PARENTAL RELATIONSHIPS THE DEFINITION OF "PARENT" AT CLAUSE 4 IN THE BILL INCLUDES A STEP-PARENT, ADOPTIVE PARENT, FOSTER PARENT, GUARDIAN AND A PERSON WHO PROVIDES NURTURING AND SUPPORT TO A CHILD.

MR SPEAKER, THE BILL INCLUDES A COMPREHENSIVE DEFINITION OF "IMPAIRMENT" THAT IS CONSISTENT WITH PROPOSED COMMONWEALTH DISABILITY LEGISLATION, COVERING THE SITUATION OF PEOPLE WHO, FOR EXAMPLE, MAY BE HIV POSITIVE, OR THOSE WITH PHYSICAL OR INTELLECTUAL IMPAIRMENTS. MR SPEAKER, FOR THE BENEFIT OF HONOURABLE MEMBERS, THE COMMONWEALTH BILL, ONCE IT IS PASSED, WILL ALSO BE ENFORCEABLE IN THE NORTHERN TERRITORY IN BOTH THE PUBLIC AND PRIVATE SECTORS.

MR SPEAKER, AS STATED, THE BILL ALSO INCLUDES AGE AS A GROUND OF PROHIBITED DISCRIMINATION. FOR TOO LONG MANY PEOPLE IN THE COMMUNITY, PARTICULARLY OLDER WORKERS, HAVE

BEEN DISCRIMINATED AGAINST BECAUSE OF THEIR AGE. THE BILL PROPOSES THAT PEOPLE MAY NOT BE DENIED OPPORTUNITIES ON THE BASIS OF AGE IN THE AREAS COVERED IN THE LEGISLATION, INCLUDING ACCOMMODATION, EMPLOYMENT, OR FINANCE, SIMPLY BECAUSE OTHER PEOPLE HAVE PRECONCEIVED IDEAS ABOUT THE SUPPOSED ABILITY OR AGILITY OF PERSONS IN CERTAIN AGE GROUPS.

A FURTHER RESULT OF THE LEGISLATION IN RELATION TO AGE WILL BE THE PROTECTION OF YOUNG PEOPLE WHEN THEY BECOME ENTITLED TO THE ADULT WAGE AT 18 YEARS OF AGE. YOUNG PEOPLE DISADVANTAGED IN THIS WAY, WILL BE ENTITLED TO SEEK REDRESS IF THEY BELIEVE THEY HAVE BEEN DISMISSED FROM THEIR EMPLOYMENT SIMPLY BECAUSE THEY HAVE TURNED 18 AND ATTRACT ADULT WAGE RATES.

MR SPEAKER, THERE ARE SOME PROVISIONS WITHIN THE BILL THAT HAVE BEEN THE SUBJECT OF WIDESPREAD DISCUSSION AMONG CERTAIN GROUPS IN THE COMMUNITY.

THE PROVISIONS RELATING TO THE 'SEXUALITY' EXEMPTION AT CLAUSE 37, ARE THE OUTSTANDING EXAMPLE. THE DEFINITION OF SEXUALITY IN THE BILL IS "THE CHARACTERISTICS OF HETEROSEXUALITY, HOMOSEXUALITY, BISEXUALITY AND TRANSSEXUALITY'. DESPITE PUBLIC CONSULTATIONS AND DESPITE THE WORDS OF THE CLAUSE, MANY PEOPLE PROMOTE THE CLAUSE AS RELATING ONLY TO HOMOSEXUALS, THEREBY RAISING THE CONCERNS OF MANY ORDINARY FAMILIES WHO, AS A RESULT, ARE NOW ALSO FOCUSING ON THAT ASPECT.

THE EXEMPTION IS SIMILAR TO A PROVISION OF THE QUEENSLAND ANTI-DISCRIMINATION ACT, INTRODUCED BY THE LABOR GOVERNMENT IN THAT STATE. IT WILL NOT MAKE DISCRIMINATION AGAINST A PERSON UNLAWFUL ON THE GROUND OF SEXUALITY IN THE AREA OF WORK, WHERE THE WORK INVOLVES THE CARE, INSTRUCTION OR

SUPERVISION OF CHILDREN UNDER THE AGE OF 18 YEARS. THE DISCRIMINATION MUST BE REASONABLY NECESSARY TO PROTECT THE PHYSICAL, PSYCHOLOGICAL OR EMOTIONAL WELL-BEING OF CHILDREN, HAVING REGARD TO ALL THE RELEVANT CIRCUMSTANCES OF THE CASE INCLUDING THE PERSON'S ACTIONS. AND, MR SPEAKER, THE WORD "ACTIONS" IS, IN THIS CLAUSE, SIGNIFICANT.

MR SPEAKER, PERSONS IN SPECIFIC EMPLOYMENT SITUATIONS TO WHICH I HAVE REFERRED, WHO ACT APPROPRIATELY IN THE COURSE OF THEIR EMPLOYMENT HAVE NOTHING TO FEAR FROM THE LEGISLATION. IT IS ONLY THOSE WHO ENGAGE IN IMPROPER CONDUCT RELATED TO THEIR SEXUALITY, IN THE COURSE OF THEIR EMPLOYMENT, THAT WILL BE AFFECTED.

MR SPEAKER, I REITERATE WHAT I HAVE BEEN SAYING FOR SOME TIME NOW. THE PROVISION DOES NOT MEAN THAT AN EMPLOYER CAN DISCRIMINATE AGAINST AN EMPLOYEE JUST BECAUSE SHE OR HE IS HOMOSEXUAL OR HETEROSEXUAL. NOR DOES IT MEAN THAT AN EMPLOYER CAN ASK A PROSPECTIVE EMPLOYEE HIS OR HER SEXUAL ORIENTATION.

MR SPEAKER, IT DOES, HOWEVER, MEAN THAT THOSE PEOPLE WHO DO NOT CONDUCT THEMSELVES IN A PROPER MANNER IN THE COURSE OF THEIR EMPLOYMENT AND WHO ARE INVOLVED IN THE EDUCATION, CARE OR SUPERVISION OF CHILDREN, WHATEVER THEIR SEXUAL PREFERENCE, WILL NOT BE ABLE TO HIDE BEHIND THE PROVISIONS OF THE BILL, IN CLAIMING THAT THEY ARE BEING DISCRIMINATED AGAINST ON THE BASIS OF THEIR SEXUALITY.

MR SPEAKER, THIS GOVERNMENT BELIEVES IT IS IN THE INTEREST OF THE WIDER COMMUNITY THAT THIS EXEMPTION REMAINS AND, MR SPEAKER, THAT IT REFLECTS THE WISHES OF THE WIDER TERRITORY COMMUNITY.

MR SPEAKER, COMMUNITY COMMENT HAS ALSO ENSUED AROUND THE GROUND OF TRADE UNION OR EMPLOYER ASSOCIATION MEMBERSHIP OR NON MEMBERSHIP. HONOURABLE MEMBERS OPPOSITE HAVE STATED TIME AND TIME AGAIN THAT THEY SUPPORT TRUE EQUALITY, AND THAT THERE SHOULD BE NO DISCRIMINATION AGAINST MINORITY GROUPS.

YET THEIR OWN PARTY PLATFORM SUPPORTS DISCRIMINATION AGAINST NON UNIONISTS AND THE RETENTION OF "CLOSED SHOPS", THAT IS, EMPLOYMENT FOR UNIONIST ONLY. ALTHOUGH THIS GOVERNMENT DOES NOT AS YET HAVE AUTHORITY TO LEGISLATE FOR INDUSTRIAL RELATIONS MATTERS, IT NEVERTHELESS SUPPORTS THE RIGHT OF INDIVIDUALS TO WORK AND THE RIGHT TO CHOOSE WHETHER OR NOT TO JOIN A UNION OR EMPLOYER ASSOCIATION.

OF COURSE, MR SPEAKER, THERE WILL BE SOME OCCASIONS WHERE IT MAY BE NECESSARY TO PROVIDE EXEMPTIONS TO THE LEGISLATION, DESPITE THE VIEWS OF SOME MINORITY GROUPS.

AS WITH OTHER LEGISLATION SIMILAR TO THIS, MR SPEAKER, THE BILL PROVIDES IN CLAUSES 50 TO 59, FOR CERTAIN GENERAL EXEMPTIONS IN RELATION TO PUBLIC CHARITIES, DISPOSITION BY WILL OR GIFT, AGE-BASED CONCESSIONS AND ACTIONS TO PROTECT PUBLIC HEALTH, SPECIFICALLY IN THE AREA OF INFECTIOUS DISEASES. THERE ARE ALSO PROVISIONS FOR EXEMPTIONS THAT RELATE TO EMPLOYMENT BY RELIGIOUS ORGANISATIONS WHERE THE DISCRIMINATION IS NECESSARY TO AVOID OFFENDING THE RELIGIOUS SENSITIVITIES OF ADHERENTS OF THE PARTICULAR RELIGION.

A FURTHER EXEMPTION, AT CLAUSE 43, MR SPEAKER, PROVIDES FOR A PERSON TO RESTRICT IN SPECIFIED CIRCUMSTANCES, ACCESS TO LAND OR A BUILDING OR PLACE OF CULTURAL OR RELIGIOUS SIGNIFICANCE BY PEOPLE WHO ARE NOT OF A PARTICULAR SEX, AGE, RACE OR RELIGION.

SPECIFIC AREAS OF EXEMPTION ARE ALSO INCLUDED IN THE LEGISLATION. FOR EXAMPLE, PROVISION HAS BEEN INCLUDED AT CLAUSE 35 FOR THOSE TERRITORIANS WISHING TO EMPLOY PEOPLE IN THEIR OWN HOMES TO BE EXEMPT FROM THE LEGISLATION IN THAT REGARD. THIS MEANS THAT THE EMPLOYER MAY, IN THIS INSTANCE, SELECT ANYONE TO WORK IN HIS OR HER HOME, WITHOUT CHALLENGE. SIMILARLY, THOSE WHO OFFER ACCOMMODATION IN THEIR OWN RESIDENCE WILL BE EXEMPTED.

THE LEGISLATION ALSO PROVIDES, AT CLAUSE 59, FOR PERSONS TO APPLY TO THE ANTI-DISCRIMINATION COMMISSIONER FOR SPECIAL EXEMPTIONS FOR VARYING PERIODS.

I TURN NOW, MR SPEAKER TO SPECIFIC CLAUSES IN THE BILL.

CLAUSE THREE STATES THE OBJECTS OF THE LEGISLATION WHICH ARE:-

"TO PROMOTE RECOGNITION AND ACCEPTANCE WITHIN THE COMMUNITY OF THE EQUALITY OF PERSONS, TO ELIMINATE DISCRIMINATION AGAINST PERSONS ON THE GROUND OF RACE, SEX, SEXUALITY, AGE, MARITAL STATUS, PREGNANCY, PARENTHOOD, BREASTFEEDING, IMPAIRMENT, TRADE UNION OR EMPLOYER ASSOCIATION, RELIGIOUS BELIEF OR ACTIVITY, POLITICAL OPINION, AFFILIATION OR ACTIVITY, IRRELEVANT MEDICAL RECORD OR IRRELEVANT CRIMINAL RECORD IN THE AREAS OF: WORK, PROFESSIONAL AND TRADE ASSOCIATIONS OR QUALIFYING BODIES, ACCOMMODATION, EDUCATION OR IN THE PROVISION OF GOODS, SERVICES AND FACILITIES, IN THE ACTIVITIES OF CLUBS OR IN INSURANCE AND SUPERANNUATION: AND TO ELIMINATE SEXUAL HARASSMENT."

CLAUSE 4 COVERS THE DEFINITIONS THAT WILL APPLY IN THE ACT.

MR SPEAKER, OF SPECIAL IMPORTANCE IS THE DEFINITION AT SUB CLAUSE(4) WHICH PROVIDES THAT, FOR THE PURPOSE OF THIS ACT,

RELIGIOUS BELIEF OR ACTIVITY SHALL BE CONSTRUED SO AS TO INCLUDE ABORIGINAL SPIRITUAL BELIEF OR ACTIVITY. MR SPEAKER, THIS IS THE FIRST TIME A DEFINITION OF THIS NATURE HAS BEEN INCLUDED IN SIMILAR STATE LEGISLATION AND AS ABORIGINAL PEOPLE CONSTITUTE NEARLY 25% OF THE TERRITORY'S POPULATION, IT IS MOST SIGNIFICANT.

CLAUSE 5 BINDS THE CROWN TO THE REQUIREMENTS OF THIS LEGISLATION. AS I INDICATED EARLIER, MR SPEAKER, FOLLOWING COMMUNITY REPRESENTATIONS, THE CROWN WILL NOT BE IMMUNE TO PROSECUTION UNDER THE ACT.

CLAUSE 6 PROVIDES FOR APPOINTMENT OF AN ANTI-DISCRIMINATION COMMISSIONER AND CLAUSE 13, THE FUNCTIONS OF THE COMMISSIONER. THOSE FUNCTIONS, MR SPEAKER, INCLUDE INVESTIGATION AND HEARINGS OF COMPLAINTS AND WHERE POSSIBLE, CONCILIATION, EXAMINATION OF EXISTING OR PROPOSED ACTS AND REGULATIONS TO DETERMINE WHETHER THEY ARE, OR WOULD BE INCONSISTENT WITH THE PURPOSE OF THE ANTI-DISCRIMINATION ACT.

THE COMMISSIONER WILL BE REQUIRED TO CONDUCT RESEARCH INTO ADDITIONAL GROUNDS OF DISCRIMINATION, TO CONSULT WITH ORGANISATIONS, DEPARTMENTS, COMMUNITY AND LOCAL GOVERNMENT BODIES. DEVELOPMENT OF GUIDELINES AND CODES OF PRACTICE TO ASSIST PEOPLE TO COMPLY WITH THIS ACT WILL ALSO BE FUNCTIONS OF THE ANTI-DISCRIMINATION COMMISSIONER.

AS STATED, MR SPEAKER, AN IMPORTANT FUNCTION OF THE COMMISSIONER WILL BE COMMUNITY EDUCATION AND AWARENESS RAISING. SUB CLAUSE (g) REQUIRES THE COMMISSIONER TO "PROMOTE IN THE TERRITORY AN UNDERSTANDING AND ACCEPTANCE, AND PUBLIC DISCUSSION, OF THE PURPOSES AND PRINCIPLES OF EQUAL OPPORTUNITY".

THIS GOVERNMENT REGARDS THAT PARTICULAR ACTIVITY AS CENTRAL TO THE OPERATION OF THE ACT AND THE COMMISSIONER WILL, NO DOUBT, DEVELOP SUITABLE COMMUNITY AWARENESS PROGRAMS.

CLAUSE 16 REQUIRES THE COMMISSIONER TO PROVIDE AN ANNUAL REPORT TO THE MINISTER BY SEPTEMBER 30TH EACH YEAR AND THE REQUIREMENT FOR THE MINISTER TO LAY A COPY OF THE REPORT BEFORE THE LEGISLATIVE ASSEMBLY, NO LATER THAN 6 SITTING DAYS OF THE ASSEMBLY FOLLOWING RECEIPT OF THE REPORT. THE REPORT WILL PROVIDE, AMONGST OTHER ITEMS, INFORMATION ON THE EDUCATIONAL ACTIVITIES UNDERTAKEN BY THE COMMISSIONER.

CLAUSE 19 PROHIBITS DISCRIMINATION ON SPECIFIED GROUNDS AS PREVIOUSLY IDENTIFIED.

CLAUSE 20, MR SPEAKER, DEFINES DISCRIMINATION AS ANY DISTINCTION, RESTRICTION, EXCLUSION OR PREFERENCE MADE ON THE BASIS OF AN ATTRIBUTE (AS LISTED IN CLAUSE 19), THAT HAS THE EFFECT OF NULLIFYING OR IMPAIRING EQUALITY OF OPPORTUNITY, AND HARASSMENT ON THE BASIS OF AN ATTRIBUTE, IN THE AREAS OF WORK, ACCOMMODATION OR EDUCATION OR IN THE PROVISION OF GOODS, SERVICES AND FACILITIES, IN THE ACTIVITIES OF CLUBS OR IN INSURANCE AND SUPERANNUATION.

SUB CLAUSE (2) IDENTIFIES WHEN DISCRIMINATION OCCURS, WHILST SUB CLAUSE (3) PROVIDES THAT "FOR DISCRIMINATION TO TAKE PLACE, IT IS NOT NECESSARY THAT THE ATTRIBUTE IS THE SOLE OR DOMINANT GROUND FOR THE LESS FAVOURABLE TREATMENT, OR THAT THE PERSON WHO DISCRIMINATES, REGARDS THE TREATMENT AS LESS FAVOURABLE". SUB CLAUSE (4) PROVIDES THAT THE MOTIVE OF A PERSON ALLEGED TO HAVE DISCRIMINATED AGAINST ANOTHER PERSON, IS FOR THE PURPOSES OF THIS ACT, IRRELEVANT.

MR SPEAKER, THIS MEANS THAT A DISCRIMINATOR CANNOT USE THE DEFENCE THAT HE OR SHE DID NOT INTEND TO DISCRIMINATE.

AGAIN THE FOCUS WILL BE ON THE COMMISSIONER TO PROVIDE PROGRAMS ENSURING THAT THE COMMUNITY UNDERSTAND NOT ONLY THEIR RIGHTS, BUT THEIR RESPONSIBILITY NOT TO DISCRIMINATE.

CLAUSE 21 MR SPEAKER, PROHIBITS DISCRIMINATION AGAINST PEOPLE WHO ARE RELIANT ON GUIDE DOGS, ALTHOUGH THE PERSON WITH THE DOG WOULD STILL BE LIABLE FOR ANY DAMAGE CAUSED. I THANK THE HONOURABLE MEMBER FOR NHULNUNBUY FOR DRAWING MY ATTENTION TO THE OVERSIGHT IN THE DISCUSSION BILL, WHICH INADVERTANTLY REFERRED ONLY TO DISCRIMINATION AGAINST THOSE RELIANT ON GUIDE DOGS IN RELATION TO ACCOMMODATION. THE CLAUSE NOW PROHIBITS DISCRIMINATION IN ALL AREAS COVERED IN THE PROPOSED LEGISLATION.

CLAUSE 22 PROHIBITS SEXUAL HARASSMENT. I HAVE ALREADY SPOKEN, MR SPEAKER, OF THE IMPORTANCE THE GOVERNMENT PLACES ON THIS MATTER AND THAT, UNLIKE OTHER JURISDICTIONS, PROHIBITION OF SEXUAL HARASSMENT WILL COVER ALL AREAS INCLUDED IN THE BILL, NOT JUST EMPLOYMENT.

CLAUSE 23 PROTECTS FROM VICTIMIZATION, THOSE PERSONS WHO HAVE MADE OR INTEND TO MAKE A COMPLAINT UNDER THE LEGISLATION, OR HAVE GIVEN OR INTEND TO GIVE EVIDENCE IN CONNECTION WITH PROCEEDINGS UNDER THE ACT. AGAIN, THIS PROTECTION IS A MEASURE OF THE IMPORTANCE THIS GOVERNMENT PLACES ON THE FREEDOM OF INDIVIDUALS TO LAY GENUINE COMPLAINTS, WITHOUT FEAR OF RETRIBUTION.

CLAUSE 24 REQUIRES THAT PEOPLE "REASONABLY" PROVIDE FOR THE SPECIAL NEEDS OF ANOTHER PERSON IN RELATION TO A SPECIFIC ATTRIBUTE. THIS MEANS, FOR EXAMPLE, MR SPEAKER, THE REORGANISATION OF A WORKPLACE IN RELATION TO A PERSON'S IMPAIRMENT, PROVISION OF APPROPRIATE WORKBREAKS FOR A NURSING MOTHER, THE PROVISION OF FACILITIES SUCH AS BABY CHANGING AREAS FOR PARENTS IN PUBLIC BUILDINGS OR, IN SOME

CIRCUMSTANCES, PROVISION OF INTERPRETERS FOR PEOPLE FROM NON ENGLISH SPEAKING BACKGROUNDS.

"REASONABLENESS" WILL BE DETERMINED BY THE NATURE OF THE SPECIAL NEED, THE COST OF ACCOMMODATING THE SPECIAL NEED AND THE NUMBER OF PEOPLE WHO MAY BENEFIT OR BE DISADVANTAGED, THE FINANCIAL CIRCUMSTANCES OF THE PERSON, THE DISRUPTION THAT ACCOMMODATING THE SPECIAL NEED MAY CAUSE, AND THE NATURE OF ANY BENEFIT OR DETRIMENT TO ALL PERSONS CONCERNED.

CLAUSE 28 MR SPEAKER, IDENTIFIES THE AREAS OF ACTIVITY TO WHICH PROHIBITION OF DISCRIMINATION APPLIES. THOSE AREAS, MR SPEAKER, ARE EDUCATION, WORK, ACCOMMODATION, GOODS, SERVICES AND FACILITIES, CLUBS, INSURANCE AND SUPERANNUATION.

CLAUSE 29, MR SPEAKER, IDENTIFIES THE SITUATIONS IN WHICH EDUCATIONAL AUTHORITIES SHALL NOT DISCRIMINATE, WHILE CLAUSE 30 PROVIDES FOR CERTAIN EXEMPTIONS IN THIS AREA. EXEMPTIONS PROVIDE THAT AN EDUCATIONAL AUTHORITY THAT OPERATES OR PROPOSES TO OPERATE AN EDUCATIONAL INSTITUTION WHOLLY OR MAINLY FOR STUDENTS OF A PARTICULAR SEX, RACE OR RELIGION, OR FOR STUDENTS WHO HAVE A PARTICULAR IMPAIRMENT, MAY EXCLUDE APPLICANTS WHO DO NOT HAVE THE RELEVANT ATTRIBUTES. THIS IS IMPORTANT, MR SPEAKER, TO ENSURE THAT SPECIAL CLASSES PROVIDED, FOR EXAMPLE, FOR CHILDREN WITH HEARING IMPAIRMENTS, MAY BE RESTRICTED TO THOSE WITH THAT PARTICULAR IMPAIRMENT.

MR SPEAKER, CLAUSE 31 PROHIBITS DISCRIMINATION IN THE WORK AREA, WHILE CLAUSE 35 PROVIDES EXEMPTIONS IN THE AREA TO ALLOW FOR THE FIXING OF REASONABLE TERMS, FOR THOSE WORKERS WHO MAY HAVE A RESTRICTED CAPACITY FOR WORK DUE TO AGE OR IMPAIRMENT. THIS IS IMPORTANT, MR SPEAKER, AS MANY WORKERS WITH A PARTICULAR IMPAIRMENT, WHO ARE VALUED, COMPETENT

WORKERS, MAY NEED SLIGHTLY DIFFERENT WORKING HOURS AND CONDITIONS TO ENABLE THEM TO REMAIN IN THE WORKFORCE. THIS WILL ALLOW EMPLOYERS TO UTILISE THE TRAINING AND SKILL OF THOSE PERSONS, AND ALLOW THE WORKER THE DIGNITY OF REMAINING A PRODUCTIVE MEMBER OF THE WORKFORCE.

CLAUSE 38 PROHIBITS DISCRIMINATION IN THE ACCOMMODATION AREA AND CLAUSE 39, MR SPEAKER, PROHIBITS DISCRIMINATION BY A LANDLORD, OR BUILDING OWNER, IN REFUSING TO ALLOW AN OCCUPANT WITH A SPECIAL NEED TO MAKE ALTERATIONS TO THE ACCOMMODATION TO MEET HIS OR HER SPECIAL NEEDS IN RELATION TO A PARTICULAR ATTRIBUTE OR IMPAIRMENT. SUCH ALTERATIONS AND SUBSEQUENT REMOVAL ON VACATION OF THE PREMISES ARE TO BE AT THE OCCUPANT'S EXPENSE.

IMPORTANT EXEMPTIONS ARE CONTAINED IN CLAUSE 43, MR SPEAKER, AS THEY CATER FOR THE SPECIAL NEEDS OF OUR MULTI-CULTURAL SOCIETY. THIS CLAUSE PERMITS RESTRICTED ACCESS TO LAND, A BUILDING OR PLACE OF CULTURAL SIGNIFICANCE, BY PEOPLE NOT OF A PARTICULAR SEX, AGE, RACE OR RELIGION, IF THE RESTRICTION IS IN ACCORDANCE WITH THE CULTURE OR DOCTRINE OF THE RELIGION, AND IT IS NECESSARY TO AVOID OFFENDING THE CULTURAL OR RELIGIOUS SENSITIVITIES OF PEOPLE OF THE CULTURE OR RELIGION. AS I STATED EARLIER, MR SPEAKER, THE DEFINITION OF RELIGIOUS OR CULTURAL BELIEF INCLUDES ABORIGINAL SPIRITUAL BELIEF OR ACTIVITY.

CLAUSE 44 PROVIDES FOR EXEMPTIONS ON THE BASIS OF AGE TO ALLOW, FOR EXAMPLE, DISCOUNTS TO PENSIONERS IN RELATION TO ELECTRICITY AND RATES AND SPECIAL ENTRANCE FEES FOR CHILDREN AND AGED PERSONS TO A RANGE OF FACILITIES.

CLAUSES 46 AND 47 PROVIDE FOR PROHIBITION OF DISCRIMINATION IN RELATION TO PROVISION OF GOODS AND SERVICES AND EXEMPTIONS IN RELATIONS TO MEMBERSHIP OF A CLUB FORMED TO

PRESERVE A MINORITY CULTURE, OR WHICH IS FOR PERSONS WITH A SPECIFIC IMPAIRMENT, OR FORMED FOR PERSONS OF A PARTICULAR SEX. AS I HAVE STATED EARLIER, MR SPEAKER, THE GOVERNMENT DOES NOT INTEND THIS LEGISLATION TO BE OVERLY INTRUSIVE AND RESPECTS THE RIGHT OF GROUPS TO RESTRICT MEMBERSHIP TO SPECIFIC CLUBS.

CLAUSES 51-56 ALLOW FOR EXEMPTIONS RELATED TO RELIGIOUS BODIES, CHARITIES, PREGNANCY OR CHILD BIRTH, PUBLIC HEALTH AND SPORT.

CLAUSE 57 IS IMPORTANT, MR SPEAKER, AS IT IS AN EXEMPTION DESIGNED TO ALLOW FOR DEVELOPMENT AND IMPLEMENTATION OF SPECIAL PROGRAMS FOR DISADVANTAGED GROUPS IN ORDER TO REDRESS PAST INEQUITIES. SUCH PROGRAMS ARE OFTEN TITLED "SPECIAL MEASURES" OR "EQUAL OPPORTUNITY PROGRAMS". THOSE PROGRAMS MAY ESTABLISH SPECIAL TRAINING OR BENEFITS THAT WILL LEAD TOWARD PROVIDING EQUAL OPPORTUNITY FOR THOSE GROUPS. SOME OF THESE PROGRAMS, MR SPEAKER, COULD BE DIRECTED AT UNEMPLOYED OR HOMELESS PERSONS, OR PERSONS FROM A NON ENGLISH SPEAKING BACKGROUND. THE EXEMPTION WILL ALLOW THE PROGRAMS TO BE RESTRICTED TO THOSE PEOPLE WITH THE PARTICULAR ATTRIBUTE FOR WHICH THE PROGRAMS OR BENEFITS ARE DESIGNED. SUB CLAUSE (2) PROVIDES THAT THE EXEMPTION ONLY APPLIES UNTIL EQUALITY OF OPPORTUNITY HAS BEEN ACHIEVED.

AS INDICATED EARLIER, MR SPEAKER, IN RESPONSE TO SUBMISSIONS, CLAUSE 65 NOW PROVIDES THAT A COMPLAINT SHALL BE LODGED WITHIN SIX MONTHS OF THE ALLEGED OFFENCE.

MR SPEAKER, CLAUSE 67 REQUIRES THE COMMISSIONER TO REJECT A COMPLAINT THAT THE COMMISSIONER REASONABLY BELIEVES TO BE FRIVOLOUS, VEXATIOUS OR TRIVIAL. A LATER CLAUSE PROVIDES A PENALTY IN RELATION TO FRIVOLOUS OR VEXATIOUS COMPLAINTS.

CLAUSE 75, REQUIRES THE COMMISSIONER TO DETERMINE, ON COMPLETION OF AN INVESTIGATION, WHETHER THE COMPLAINT SHOULD BE DISMISSED, PROCEED TO CONCILIATION OR, WHERE THE COMMISSIONER BELIEVES THE MATTER CANNOT BE CONCILIATED, PROCEED TO HEARING. THIS IS IMPORTANT MR SPEAKER, BECAUSE, AS I MENTIONED EARLIER, THIS LEGISLATION IS BASED ON A CONCILIATORY, EDUCATIONAL MODEL, NOT AN ADVERSARIAL ONE. IF THERE IS ANY CHANCE OF EFFECTING CONCILIATION, THE LEGISLATION REQUIRES THE COMMISSIONER TO ENDEAVOUR TO OBTAIN A CONCILIATED RESULT, RATHER THAN PROCEED TO A HEARING.

CLAUSES 77-79 SET OUT THE PROCEDURES FOR CONCILIATION OF COMPLAINTS AND PROVIDES PENALTIES FOR NON COMPLIANCE WITH DIRECTIONS OF THE COMMISSIONER, FOR EXAMPLE, FAILURE TO ATTEND CONCILIATION MEETINGS. THE PENALTIES PROVIDED ARE SUBSTANTIAL, MR SPEAKER, \$1000 FOR AN INDIVIDUAL AND \$5000 FOR A BODY CORPORATE, AS THEY REFLECT THE COMMUNITY BELIEF THAT THIS LEGISLATION AND THE CONSEQUENTIAL ACTIONS ARE IMPORTANT.

CLAUSE 80 ENABLES THE COMMISSIONER TO RECORD THE TERMS OF A CONCILIATED AGREEMENT AND HAVE THE AGREEMENT SIGNED BY BOTH PARTIES OR, WHERE CONCILIATION IS NOT EFFECTED, ADVISE BOTH PARTIES.

CLAUSES 82 TO 87 RELATE TO THE CONDUCT OF HEARINGS BY THE COMMISSIONER, REQUESTS FOR HEARINGS AFTER 6 MONTHS, CONDUCT OF HEARINGS BY A PERSON OTHER THAN THE COMMISSIONER, THE REQUIREMENT FOR HEARINGS TO BE OPEN TO THE PUBLIC, FOR THE COMMISSIONER TO ATTEMPT CONCILIATION AND PROVISION FOR ORDERS AFTER HEARINGS.

I DRAW YOUR ATTENTION TO CLAUSE 85 MR SPEAKER, AS THIS IS ANOTHER CLAUSE AMENDED FOLLOWING COMMUNITY CONSULTATION.

A NUMBER OF SUBMISSION FROM MEMBERS OF THE PUBLIC INDICATED CONCERN THAT AS THERE WAS NOT TO BE AN ANTI-DISCRIMINATION TRIBUNAL, THE COMMISSIONER COULD BE SEEN TO LACK IMPARTIALITY IF HE OR SHE HAD BEEN INVOLVED IN AN INVESTIGATION OR CONCILIATION PROCEEDINGS PRIOR TO HOLDING A FORMAL HEARING BETWEEN PARTIES. THE DRAFT BILL CONTAINED A PROVISION ALLOWING EITHER PARTY, IN THOSE CIRCUMSTANCES, TO REQUEST THE MINISTER TO PROVIDE ANOTHER PERSON TO CONDUCT THE HEARING. AFTER INVESTIGATION THE GOVERNMENT HAS REMEDIED THE SITUATION. THE CLAUSE NOW PROVIDES THAT WHERE THE COMMISSIONER HAS BEEN INVOLVED IN THE INVESTIGATION OR CONCILIATION OF A COMPLAINT, THE MINISTER SHALL AUTOMATICALLY APPOINT ANOTHER PERSON TO CONDUCT THE HEARING.

CLAUSE 88 MR SPEAKER, ENABLES THE COMMISSIONER TO MAKE ORDERS FOLLOWING CONCLUSION OF A FORMAL HEARING WHERE A COMPLAINT HAS BEEN SUBSTANTIATED. SUCH ORDERS MAY INCLUDE AN UNDERTAKING BY THE RESPONDENT NOT TO REPEAT THE PROHIBITED CONDUCT, TO PAY COMPENSATION, OR TO REINSTATE OR PROMOTE A PERSON, OR FOR THE RESPONDENT TO APOLOGISE TO THE COMPLAINANT.

IT HAS BEEN THE DESIRE OF THE GOVERNMENT MR SPEAKER, TO EMPHASISE THE CONCILIATORY, NON-ADVERSARIAL THEME OF THIS PROPOSED LEGISLATION AND TO MAKE COMPLAINT PURSUIT READILY ACCESSIBLE TO EVERYONE BY NOT UNNECESSARILY INVOLVING LEGAL PRACTITIONERS. THEREFORE, CLAUSES 94 AND 95 ENABLE THE COMMISSIONER ONLY TO ARRANGE FOR A LEGAL PRACTITIONER TO ASSIST THE COMMISSIONER, UNDER THE DIRECTION AND CONTROL OF THE COMMISSIONER, AND IF APPROPRIATE, TO GIVE LEAVE FOR A RESPONDENT TO BE REPRESENTED BY A LEGAL PRACTITIONER.

CLAUSE 99 FOLLOWS THE THEME OF CONCILIATION BY ENABLING THE COMMISSIONER TO SUPPRESS PUBLICATION OF EVIDENCE GIVEN AT A HEARING AND, UNDER CLAUSE 100, WHERE THE COMMISSIONER DEEMS

NECESSARY, TO PROHIBIT THE DISCLOSURE OF THE IDENTITY OF A PERSON INVOLVED IN THE PROCEEDINGS. ASSOCIATED PENALTIES FOR NON-COMPLIANCE OF \$1000 FOR AN INDIVIDUAL OR \$5000 FOR A BODY CORPORATE, ARE ALSO SET OUT.

CLAUSE 102 ALLOWS FOR DISCONTINUANCE OF A COMPLAINT THAT THE COMMISSIONER REASONABLY BELIEVES TO BE LACKING IN SUBSTANCE, IS TRIVIAL, FRIVOLOUS OR VEXATIOUS OR FAILS TO DISCLOSE PROHIBITED CONDUCT. THE COMMISSIONER WILL ALSO HAVE THE POWER TO ORDER APPROPRIATE COMPENSATION FOR LOSS OR DAMAGE CAUSED BY THE COMPLAINANT TO THE RESPONDENT, IF THE COMPLAINT IS FOUND TO BE FRIVOLOUS OR VEXATIOUS.

ENFORCEMENT OF ORDERS MADE BY THE COMMISSIONER, MR SPEAKER, AT CLAUSE 104 PROVIDE THAT WHERE A PERSON WITHOUT REASONABLE EXCUSE, CONTRAVENES OR FAILS TO COMPLY WITH AND ORDER OF THE COMMISSIONER AFTER A HEARING PENALTIES OF \$10,000 FOR A BODY CORPORATE AND \$2500 FOR AN INDIVIDUAL WILL APPLY. SUB CLAUSE (2) PROVIDES THAT A PERSON WHO IS ENTITLED TO PAYMENT UNDER AN ORDER MAY REGISTER THE ORDER IN A COURT OF COMPETENT JURISDICTION, WHICH THEN BECOMES A JUDGEMENT DEBT AND MAY BE RECOVERED ACCORDINGLY.

MR SPEAKER, THERE WAS SUBSTANTIAL COMMUNITY COMMENT IN RELATION TO THE APPEALS PROVISIONS IN THE DISCUSSION BILL. AS A RESULT OF THAT COMMUNITY INPUT, CLAUSE 106 NOW PROVIDES THAT AN APPEAL AGAINST A DECISION OF THE COMMISSIONER ON A POINT OR LAW OR FACT, MAY NOW BE MADE TO THE LOCAL COURT IN ACCORDANCE WITH THE RULES OF THE COURT.

CLAUSES 116 MR SPEAKER, SPECIFIES THAT THIS ACT DOES NOT APPLY TO PROHIBITED CONDUCT PRIOR TO INTRODUCTION OF THE ACT, BUT DOES NOT PREVENT EVIDENCE OF THAT PRIOR CONDUCT OR PRACTICES BEFORE COMMENCEMENT OF THE ACT, BEING TAKEN INTO ACCOUNT IN DETERMINING WHETHER A PERSON HAS BEEN SUBJECT TO

DISCRIMINATORY CONDUCT. IN OTHER WORDS, MR SPEAKER, A COMPLAINANT WILL NOT BE ABLE TO GO TO THE COMMISSIONER WITH A COMPLAINT THAT HE OR SHE WAS DISCRIMINATED AGAINST EARLIER THIS YEAR, BEFORE INTRODUCTION OF THE LEGISLATION. HOWEVER, IF DISCRIMINATION OCCURS AFTER COMMENCEMENT OF THIS ACT, AND A COMPLAINT IS THEN LAID, ACTIONS PRIOR TO COMMENCEMENT OF THE ACT, THAT CONTRIBUTED TO THE DISCRIMINATION MAY BE TAKEN INTO ACCOUNT.

MR SPEAKER, I REITERATE, THE BILL IS A COMPREHENSIVE ONE. CONSIDERABLE TIME, EFFORT AND CONSULTATION HAS BEEN SPENT ON PREPARATION OF THIS LEGISLATION, WHICH I BELIEVE, IS INNOVATIVE AND REFLECTS THE NEEDS OF THE NORTHERN TERRITORY.

THIS GOVERNMENT BELIEVES THE BILL PROVIDES THE FRAMEWORK TO MAKE TERRITORIANS AWARE OF THE PRINCIPLE OF EQUAL OPPORTUNITY, TO PROVIDE FOR ATTITUDINAL CHANGE IN RELATION TO DISCRIMINATORY BEHAVIOUR THROUGH EDUCATION AND WHERE NECESSARY, THROUGH CONCILIATION, TO GIVE OTHERS A 'FAIR GO'.

THE SPECIAL, MULTI CULTURAL, DIVERSE POPULATION THAT MAKES THE TERRITORY SUCH A UNIQUE PLACE TO LIVE, WILL BENEFIT AND GAIN STRENGTH FROM THIS LEGISLATION, MR SPEAKER, PROVIDING YET ANOTHER STEPPING STONE IN THE TERRITORY'S QUEST FOR STATEHOOD.

MR SPEAKER, IN AUGUST 1990, AT THE TABLING OF THE COMMUNITY DISCUSSION PAPER ON EQUAL OPPORTUNITY LEGISLATION, THE THEN LEADER OF THE OPPOSITION OFFERED TO CIRCULATE THE DOCUMENT AND COMMENTED IN THE DEBATE ON THE DISCUSSION PAPER, "IF WE LOOK VERY SERIOUSLY AT THE ISSUE, WE MUST ACKNOWLEDGE THAT WE HAVE A VERY REAL OPPORTUNITY TO ADDRESS IT IN AS BI-PARTISAN A MANNER AS POSSIBLE".

MR SPEAKER, I INVITE THE HONOURABLE MEMBERS OF THE OPPOSITION TO JOIN WITH AND SUPPORT THE GOVERNMENT IN PASSING THIS IMPORTANT PIECE OF LEGISLATION, THAT AIMS TO PROTECT THE RIGHTS OF INDIVIDUALS IN THE TERRITORY, TO ALLOW PEOPLE EQUALITY OF OPPORTUNITY AND TO DEVELOP AND PERFORM IN THIS COMMUNITY TO THEIR FULL POTENTIAL.

MR SPEAKER, I COMMEND THE BILL TO THE HONOURABLE MEMBERS.

Serial No

Anti-Discrimination

Mr Stone

EXPLANATORY MEMORANDUM

The Anti-Discrimination Bill has been drafted in accordance with Cabinet Decision 7423 of 14 August 1992.

The purpose of the Bill is:

- (a) To promote recognition and acceptance within the community of the equality of all persons;
- (b) To eliminate discrimination against persons on the ground of race, sex, sexuality, age, marital status, pregnancy, parenthood, breastfeeding, religious belief or activity, political opinion, affiliation or activity, irrelevant medical record or irrelevant criminal record in area of work, accommodation or education or in the provision of goods, services and facilities, in the activities of clubs or in insurance and superannuation; and
- (c) To eliminate sexual harassment.

The Bill will further the aims of similar existing Commonwealth legislation enacted as a result of ratification of various international conventions and treaties on Human Rights by the Commonwealth, supported by the States and Territories.

- (d) To provide a complaint driven mechanism based on conciliation and education to enable redress for those with a genuine complaint of discrimination; and
- (e) To establish the office and powers of an Independent Anti-Discrimination Commissioner.

Serial

Anti-Discrimination Bill

Mr Stone

COMMITTEE NOTES

- Clause 1 Short Title
- Clause 2 Empowers the Administrator to fix the date on which the Act shall come into operation.
- Clause 3 The objects of the Act.
- (a) The promotion of recognition and acceptance of the right to equality of opportunity of all people.
- (b) Elimination of discrimination against persons on the grounds of prohibited discrimination contained in section (19), in the areas of work, accommodation, education, goods, services and facilities, clubs, superannuation and insurance.
- (c) Elimination of sexual harassment in all areas covered by this Act.

Clause 4

Provides definitions of terminology and details grounds of discrimination and provisions relevant to this Act.

(1) Defines terminology relevant to this Act, including:

accommodation
advertisement
attribute
child
club
Commissioner
committee of management
complainant
complaint
de facto partner
document
educational authority
educational institution
impairment
insurance
irrelevant criminal record
man
marital status
near relative
parent
parenthood
pregnancy
prohibited conduct
race
respondent
services
sexuality
supervision
woman
work

- Clause 4
- (2) Defines ground of race, to include a person who is of one or more other races.
 - (3) Defines trade union or employer association activity, to include membership or non membership of a trade union or employer association.
 - (4) Defines religious belief, to include Aboriginal spiritual belief or activity.
 - (5) Defines political opinion, to include a lack or absence of political opinion, affiliation or activity.
 - (6) Defines failure or denial to do an act to be the same as doing an act.
 - (7) Defines reference to a person to include reference to an unincorporated association.

Clause 5 Binds the Crown.

Clause 6 Appointment of the Commissioner.

- (1) Subject to this part the Administrator may appoint a person to be the Anti-Discrimination Commissioner.
- (2) The Commissioner shall hold office for a period of no longer than 3 years, with eligibility for re-appointment.
- (3) The Administrator shall fix the terms and conditions for the appointment of the Commissioner.

- Clause 7 Enables the Minister to grant leave of absence to the Commissioner on such terms as the Minister thinks fit.
- Clause 8 Provides for the Commissioner to resign in writing to the Administrator.
- Clause 9 Termination of appointment of Commissioner.
- (1) The Administrator may, in writing, terminate the appointment of the Commissioner for reasons of:
 - (a) physical or mental incapacity;
 - (b) misconduct warranting dismissal under the *Public Service Act*; or
 - (c) absence without leave and without reasonable excuse, for 14 consecutive days or 28 days in any 12 months.
 - (2) The Administrator shall, in writing, terminate the Commissioner's appointment if:
 - (a) the person is convicted of an indictable offence within Australia;
 - (b) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or

Clause 9(2) (c) engages in paid employment outside the duties of the office without the Minister's approval.

Clause 10 The Commissioner shall, after appointment and during term of office, advise the Minister as soon as possible of any pecuniary interest, in any business or corporate body operating in Australia or elsewhere.

Clause 11 Acting Commissioner.

(1) The Administrator may, in writing, appoint a person to act as Commissioner:

(a) during a vacancy in the office; or

(b) during any period that the Commissioner is absent from duty for any reason.

(2) Enables the acting Commissioner to exercise all powers and perform all functions of the Commissioner.

(3) Requires the terms and conditions of appointment to be set by the Administrator.

(4) Requires that an acting Commissioner be appointed for no longer than 12 months.

(5) Provides for the Minister to appoint a person to act as Commissioner for a period of no longer than 3 months, where an appointment by the Administrator is not in force.

Clause 12

Requires the Minister to provide public service staff to assist the Commissioner in administering this Act.

Clause 13

Identifies the functions of the Commissioner.

- (1) Lists specific functions of the Commissioner, including:
 - (a) investigation, conciliation and hearing of complaints;
 - (b) examination of Acts and regulations, existing and proposed, in the Territory;
 - (c) research into matters relating to discrimination;
 - (d) consultation on improving services and conditions;
 - (e) identification of additional grounds of discrimination;
 - (f) investigation of alleged practices or proposed practices of discrimination, to occur at the Commissioner's own initiative or at the request of the Minister;
 - (g) promotion of equal opportunity;
 - (h) promotion of understanding and acceptance and compliance with this Act;
 - (j) promotion of recognition and acceptance of non-discriminatory behaviour;

- Clause 13(1)(k) promotion of equal opportunity management plans in the public sector;
- (m) publishing of guidelines and codes of practice;
 - (n) advising and assisting persons in relation to this Act;
 - (p) advising the Minister on the operation of the Act;
 - (q) intervention, where appropriate and with leave of the court, in proceedings in regard to issues of equality of opportunity or anti-discrimination;
 - (r) other functions as required under this or any other Act; and
 - (s) other functions which may be determined by the Minister.
- (2) Provides that any Act or regulation, existing or proposed, shall not be regarded as inconsistent with this Act if a provision within the existing or proposed Act or regulation is included solely for the purpose of promoting equality of opportunity or a special need, because of any attribute referred to in section (19).
- (3) The Commissioner shall not regard an act or practice as being inconsistent with the purposes of this Act where the act or practice is done or engaged in solely for the purposes of subsection (2).

Clause 14 Empowers the Commissioner to act as necessary to perform functions under this Act.

Clause 15 Provides for the delegation of powers and functions by the Commissioner.

(1) The Commissioner may delegate in writing to a person, including the person from time to time holding, acting in or performing the duties of an office, designation or position, any of the powers and functions of the Commissioner, other than the power of delegation and the power to appoint a person to hear a complaint under Part 6 Division 4, Hearings.

(2) A delegation performed by another person under this section shall be deemed to be performed by the Commissioner.

(3) A delegation under this section will not prevent the Commissioner from exercising any power or function under this Act.

Clause 16 Annual Report.

(1) The Commissioner shall provide an annual report to the Minister no later than 30 September each year on operation of this Act for the 12 months to 30 June immediately preceding.

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

Clause 16 (3) A direction given under subsection (2) shall be included in the Annual Report.

(4) The Minister shall cause a copy of each report under subsection (1) to be laid before the Legislative Assembly within 6 sitting days of the Assembly after the report has been furnished.

Clause 17 Special report procedures.

(1) The Minister may direct the Commissioner at any time to provide a report on the operation of the Act, additional to the annual report requirement, section 16.

(2) The Minister may direct that a report required under subsection (1) be included in the annual report.

Clause 18 Legislative Assembly members not to be appointed.

(1) A member of the Legislative Assembly shall not be appointed as the Commissioner, to act as the Commissioner, or conduct a hearing under Part 6 Division 4, Hearings.

(2) The appointment of a Commissioner or person appointed to conduct a hearing, shall cease on the person becoming a member of the Legislative Assembly.

Clause 18 (3) Notwithstanding subsection (2), an appointment of a person referred to in that subsection shall continue in force in respect of a complaint made before the person became a member of the the Legislative Assembly, where the person was performing any functions under this Act, until the completion of proceedings relating to that complaint.

Clause 19 Prohibition of discrimination.

(1) Subject to subsection (2), a person shall not discriminate against another person on the ground of any of the following attributes:

- (a) race;
- (b) sex;
- (c) sexuality;
- (d) age;
- (e) marital status;
- (f) pregnancy;
- (g) parenthood;
- (h) breastfeeding;
- (j) impairment;
- (k) trade union or employer association activity;
- (m) religious belief or activity;

Clause 19 (1) (n) political opinion, affiliation or activity;

(p) irrelevant medical record;

(q) irrelevant criminal record; or

(r) association with a person who has, or is believed to have, an attribute referred to in this section.

(2) Discrimination on the specified grounds is not unlawful where exempted in either Part 4 or Part 5 of the Bill.

Exemptions in Part 4 apply to areas of education, work, accommodation, goods, services and facilities, clubs and insurance and superannuation.

Exemptions in Part 5 apply to legal incapacity, religious bodies, charities, acts complying with legislation, pregnancy or childbirth, public health, sport, special measures accommodating a special need, and to exemptions granted by the Commissioner.

Clause 20

Discrimination.

(1) For the purposes of this Act discrimination includes:

(a) any distinction, restriction, exclusion or preference made on the basis of an attribute that has the effect of nullifying or impairing equality of opportunity; and

Clause 20(1)(b) harassment in respect of attributes in areas of education, work, accommodation, goods, services and facilities, clubs and insurance and superannuation, as set out under Part 4 of the Bill.

(2) Without limiting the generality of subsection (1), discrimination takes place where a person with a particular attribute is treated less favourably than another person deemed to not have:

(a) Such an attribute; or

(b) a characteristic generally imputed to a person with a particular attribute.

(3) For discrimination to occur it is not necessary:

(a) that the attribute is the sole or dominant ground for the less favourable treatment.

(b) or that the person who discriminates regards the treatment as less favourable.

(4) The motive of the alleged discriminator is irrelevant.

Clause 21

Discrimination in relation to a guide dog.

- (1) A person shall not discriminate against another person who has a visual, hearing or mobility impairment, for reason that the other person has a dog to assist them in relation to their impairment.
- (2) Subsection (1) applies notwithstanding that it is the practice of a person to treat another person with a dog less favourably.
- (3) Upholds the operation of section (20) in regard to discrimination on the grounds of impairment.
- (4) A person with a dog shall be liable for any damage caused by the dog.

Clause 22

Prohibition of discrimination.

- (1) Prohibits sexual harassment in areas of education, work, accommodation, goods, services and facilities, clubs and insurance and superannuation (Part 4 of the Act).
- (2) Sexual harassment takes place if a person:
 - (a) subjects another person to unwelcome physical intimacy;
 - (b) makes an unwelcome demand or request for sexual favours;

Clause 22(2)(c) makes an unwelcome remark with sexual connotations; or

(d) engages in any other unwelcome conduct of a sexual nature,

(e) and that person does so:

(i) with the intention of offending, humiliating, or intimidating another person; and

(ii) in circumstances where a reasonable person would anticipate that another person would be offended, humiliated or intimidated.

(3) For the purposes of subsection (2)(e)(ii) the criteria for assessing where "a reasonable person" would be offended include:

(a) the sex, age, or race of the other person;

(b) any impairment that the other person has;

(c) the relationship of the person with the other person; and

(d) any other circumstances of the other person.

Clause 23

Prohibition of victimisation.

- (1) Prohibits victimisation of another person because the person has:
 - (a) made or intends to make a complaint;
 - (b) provided or intends to provide information or evidence in proceedings under this Act;
 - (c) made allegations or intends to make allegations of prohibited conduct against another person; or
 - (d) had done anything in relation to a person with regard to this Act.
- (2) Victimisation takes place if a person subjects or threatens to subject another person or their associate to any detriment.
- (3) Subsection (1)(c) does not apply when an allegation is false or not made in good faith.

Clause 24

Failure to accommodate a special need.

- (1) A person shall not fail or refuse to accommodate a special need that another person has because of an attribute.
- (2) For the purposes of subsection (1):
 - (a) failure to accommodate a special need includes making inadequate or inappropriate provision to accommodate the special need; and

Clause 24(2)(b) failure to accommodate a special need takes place when a person acts in a way which unreasonably fails to provide for the special need of another person, if that other person has the special need because of an attribute.

(3) Whether a person has unreasonably failed to provide for the special need of another person depends on all the relevant circumstances of the case, including but not limited to:

(a) the nature of the special need;

(b) the cost of accommodating the special need and the number of people who would benefit or be disadvantaged;

(c) the financial circumstances of the person;

(d) the disruption that accommodating the special need may cause; and

(e) the nature of any benefit or detriment to all persons concerned.

Clause 25

Prohibits discriminatory advertising by publishing, causing to publish or authorising the publication of an advertisement which could reasonably be understood to promote prohibited conduct, or an intention to engage in prohibited conduct.

Clause 25 cont Under section 109, prosecution for an offence is possible in the case of a person or corporate body.

Clause 26 Unnecessary information.

- (1) A person shall not request orally or in writing another person to provide information on which unlawful discrimination might be based.
- (2) Subsection (1) does not apply to a request that is necessary to comply with, or is specifically authorised by:
 - (a) a law of the Territory or the Commonwealth;
 - (b) an order of a court;
 - (c) a provision of an order or award of a court or tribunal having power to fix minimum wages and other terms of employment;
 - (d) a provision of an industrial agreement; or
 - (e) an order of the Commissioner.
- (3) Subsection (1) does not apply if the person proves, on the balance of probabilities, that the information obtained was reasonably required for a purpose that did not involve discrimination.

Clause 27

Prohibition of aiding contravention of the Act.

- (1) A person shall not cause, instruct, induce, incite, assist or promote another person to contravene this Act.
- (2) A person who causes, instructs, induces, incites, assists or promotes another person to contravene this Act is jointly and severally liable with the other person for the contravention of this Act.

Clause 28

Areas of activities where discrimination is prohibited include:

- (a) education;
- (b) work;
- (c) accommodation;
- (d) goods, services and facilities;
- (e) clubs; and
- (f) insurance and superannuation.

Clause 29

Describes discrimination in education.

- (1) Requires that an educational authority shall not discriminate:
 - (a) by failing or refusing to accept a person's application for admission as a student;

- Clause 29
- (b) in refusing or rejecting a person's admission as a student;
 - (c) in the way in which a person's application is processed;
 - (d) in the arrangements made for, or the criteria used in, deciding who should be offered admission as a student; or
 - (e) in the terms and conditions on which a person is admitted as a student.

(2) An educational authority shall not discriminate:

- (a) in any variation of the terms and conditions of a student's enrolment;
- (b) by failing or refusing to grant, or limiting access to any benefit arising from the enrolment that is supplied by the authority;
- (c) by excluding a student; or
- (d) by treating a student less favourably in any way in connection with the student's training or instruction.

Clause 30

An educational authority that operates, or proposes to operate, an educational institution wholly or mainly for students of a particular race, sex or religion, or who have a general or specific impairment, may exclude applicants who:

- (a) are not of a particular race, sex or religion; or

Clause 30 (b) do not have a general or specific impairment.

Clause 31 Describes prohibited conduct in the work area.

(1) Prohibits discrimination in the work area:

(a) in deciding who should be offered work;

(b) in the terms and conditions of work;

(c) in failing or refusing to offer work;

(d) by failing or refusing a work applicant access to a training, guidance, vocational or other training program; and

(e) in developing the scope or range of a training program referred to in (d).

(2) Prohibits discrimination in variations to terms and conditions of work:

(a) in any variation to the terms of work;

(b) in refusing to grant, or limiting access for a worker to opportunities of promotion, transfer, training or other benefit;

(c) when dismissing a worker; or

(d) by treating a worker less favourably in connection with work.

- Clause 31** (3) Prohibits discrimination against a worker on the ground of the worker's religious belief by refusing permission to carry out a religious activity during working hours.
- (a) The religious activity needs to be recognised as necessary or desirable by others of the same religion as the worker.
 - (b) Performance of the religious activity during working hours must be reasonable having regard to the circumstances of the work.
 - (c) Performance of the religious activity should not subject the employer to any detriment.

- Clause 32** Discrimination in professional and trade organisations.
- (1) Prohibits discrimination in an industry, profession, trade or business organisation:
 - (a) in failing to accept a person's membership application to a trade, business or business organisation;
 - (b) in deciding who may join the organisation; and
 - (c) in the terms on which a person may join the organisation.

Clause 32 (2) Prohibits discrimination by an organisation of workers, employers, or people who carry on an industry, profession, trade or business:

- (a) by variation of terms of membership of the organisation;
- (b) by denying or limiting access to any benefits arising from membership;
- (c) in depriving a person of membership of the organisation; or
- (d) by treating a person less favourably in connection with membership of the organisation.

Clause 33 Prohibits discrimination by a qualifying body.

- (1) Prohibits discrimination by qualifying bodies when granting, renewing or extending a qualification needed for the practice of a profession, business or trade:
 - (a) in granting, or failing to grant, renewing or extending a qualification or authorisation; and
 - (b) in the terms on which a qualification or authorisation is granted, renewed or extended.

- Clause 33** (2) Prohibits discrimination by a person who has the power to grant, renew or extend a qualification needed for, the practice of a profession, business or trade against another person:
- (a) in any variation to the terms on which a qualification was granted, renewed or extended;
 - (b) in revoking or withdrawing a qualification or authorisation or in failing to do so; or
 - (c) by treating the other person less favourably.

- Clause 34** Prohibits a person in the employment agency area from discriminating against persons in the conduct of the business or service, whether or not for reward or profit:
- (a) by failing or refusing to supply service to an employer or a person seeking employment;
 - (b) in the terms and conditions on which a service by an employment agency is offered or supplied.
 - (c) in the way the service of the employment agency is supplied; or
 - (d) by treating an employer or prospective employee less favourably in any way in connection with the service.

Clause 35

Provides exemptions to discrimination in the work area.

- (1) A person may discriminate against another person in the area of work:
 - (a) by fixing reasonable terms and conditions because of restricted work capacity related to age or impairment;
 - (b) if the discrimination is based:
 - (i) on a requirement to fill a genuine occupational qualification; or
 - (ii) the person is unable to perform the inherent requirements of the work even if the special needs of the person have been or were to be accommodated.
- (2) Provides that a person may discriminate in offering work which is to be performed in the employer's home.

Clause 36

Provides exemptions to discrimination in the work area allowing for imposition of a standard commencement and retirement age.

Clause 37

Provides exemptions to discrimination in the work area on the ground of sexuality:

- (a) in regard to the care, instruction or supervision of children; and

Clause 37 (b) where the discrimination is reasonably necessary to protect the physical, psychological or emotional well-being of children, having regard to all the relevant circumstances including the person's actions.

Clause 38 Discrimination in accommodation area.

(1) Prohibits discrimination:

(a) by failing or refusing to accept an application for accommodation;

(b) by failing or refusing to supply accommodation;

(c) by failing or refusing to renew or extend the supply of accommodation;

(d) in the way in which an application for accommodation is processed; or

(e) in the terms and conditions on which accommodation is offered, renewed or extended.

(2) Prohibits discrimination against a person to whom the accommodation is supplied:

(a) in any variation of the terms and conditions on which the accommodation is supplied;

(b) in failing or refusing to grant, or limiting access to a benefit associated with the accommodation;

Clause 38 (2) (c) in evicting the person from the accommodation; or

(d) by treating the person less favourably in any way in connection with the accommodation.

Clause 39 Prohibits discrimination in the area of accommodation by refusing to allow a person to make alterations to meet the person's special needs if:

(a) the alterations are at the expense of the person seeking the alteration;

(b) the alteration does not require alteration to the accommodation of another person;

(c) the restoration of the accommodation to its previous condition is reasonably practicable; and

(d) the person requiring the alteration undertakes to restore the accommodation to its previous condition at her/his own expense.

Clause 40 Provides exemptions in the area of accommodation:

(1) where the accommodation forms part of the person's main home; and

(2) where an educational authority operates an educational institution wholly or mainly for students of a particular sex or religion, or who have a general or specific impairment and provide accommodation wholly or mainly for:

Clause 40 (2) (a) students of the particular sex or religion; or

(b) students who have a general or specific impairment.

(3) Provides for exemption if:

(a) the accommodation is under the direction and control of a body established for religious purposes: and

(i) is in accordance with the doctrine of the religion concerned; and

(ii) it is necessary to avoid offending the religious sensitivities of people of the religion.

(4) Provides for exemption to discrimination in accommodation provided by charitable bodies if:

(a) the accommodation is under the direction or control of a charitable body; and

(b) is in accordance with the particular purpose for which the accommodation was established.

Clause 41 Prohibits discrimination in the supply of goods, services and facilities.

(1) Prohibits discrimination by a person who supplies goods services or facilities, whether for profit or not,

- Clause 41(1)(a)** by failing or refusing to supply the goods, services or facilities;
- (b) in the terms and conditions on which they are supplied;
 - (c) in the way in which they are supplied; or
 - (d) by treating the other person less favourably in any way in connection with their supply.
- (2) Provides exemption in relation to an association that is established for:
- (a) social, literary, cultural, political, sporting, athletic, recreational or community service purposes or other similar lawful purposes; and
 - (b) which does not carry out its purposes in order to make profit.

Further exemptions to this clause are set out under sections 42, 43, 44 and 45.

- Clause 42** Provides exemption to discrimination in the area of goods, services and facilities, where this involves services of a nature that are able to be provided only to members of one sex.

Clause 43

Exemptions.

Provides exemption to discrimination in the area of goods, services and facilities, in regard to restriction of access to cultural or religious sites by people who are not of the particular race, religion or culture associated with the site, if:

- (a) the restriction is in accordance with the culture or religious doctrine; and
- (b) the restriction is necessary to avoid offending cultural or religious sensitivities of people of the culture or religion.

Clause 44

Provides exemption to discrimination in the area of goods, services and facilities, in regard to age-based benefits and concessions, such as transport fares and electricity accounts.

Clause 45

Provides exemption to discrimination in the area of goods, services and facilities, in regard to a requirement for an adult to accompany a child below 18 years of age for the purposes of safety and non disruption.

Clause 46

Prohibits discriminatory conduct in the area of club membership and activities.

(1) A club, the committee of management of a club, or a member of the committee of management shall not discriminate against a person who is not a member of the club:

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

(b) in refusing or rejecting a person's membership of the club; or

(c) in the terms and conditions on which the club is prepared to admit the person to membership of the club.

(2) A club, the committee of management of a club, or a member of the committee of management shall not discriminate against a person who is not a member of the club:

(a) in the terms and conditions of membership that are afforded to the member;

(b) by failing or refusing to accept the member's application for a particular class or type of membership of the club;

(c) by failing or refusing to grant the member access, or limiting the member's access, to any benefit provided by the club;

Clause 46(2)(d) by depriving the member of membership or varying the terms and conditions of membership of the club; or

- (e) by treating the member less favourably in any way in connection with membership of the club.

Exemptions to this clause are set out under section 47.

Clause 47 Provides exemption to discrimination in the area of club membership and activities.

- (1) A club, the committee of management of a club, or a committee member may exclude applicants for membership of the club who are not members of the group of people with an attribute for whom the club was established, if the club operates wholly or mainly:

- (a) to preserve a minority culture; or
- (b) to prevent or reduce a disadvantage suffered by people of that group.

- (2) Provides exemption in regard to membership of clubs for people of a specific age or age group.

- (3) A club, the committee of management, or a member of the committee of management of a club may discriminate against a person on the ground of sex:

- Clause 47(3)(a)** in membership of the club if the club provides association for people of one sex;
- (b)** if the discrimination occurred in relation to the use or enjoyment of a benefit provided by the club where:
- (i)** it is not practicable for the benefit to be used or enjoyed simultaneously, or to the same extent, by both men and women; and
- (ii)** either the same or equivalent benefit is provided for the use of men and women separately from each other, or men and women are each entitled to a fair and reasonable proportion of the use and enjoyment of the benefit.
- (4)** In determining a matter relating to the application of subsection (3) ((b) regard shall be had for:
- (a)** the purposes for which the club is established;
- (b)** the membership of the club, including any class or type of membership;
- (c)** the nature of the benefits provided by the club;
- (d)** the opportunities for the use and enjoyment of those benefits by men and women; and
- (e)** any other relevant circumstances.

Clause 48

Prohibits discrimination in the area of insurance and superannuation.

- (1) A person shall not discriminate:
 - (a) by failing or refusing to supply insurance or superannuation;
 - (b) in the term and conditions on which insurance or superannuation is supplied; or
 - (c) in the way in which insurance or superannuation is supplied.
- (2) Prohibits discrimination by a person against another person seeking work with that person, in regard to the terms and conditions of work relating to insurance and superannuation.
- (3) A person shall not discriminate against a worker employed by the person:
 - (a) in any variation of the terms and conditions of employment of the worker that relate to insurance or superannuation;
 - (b) in failing or refusing to grant the worker access, or limiting the worker's access, to any benefit that relates to insurance or superannuation; or
 - (c) by treating the worker less favourably in any way in connection with insurance or superannuation

Exemptions to this clause are set out under section 49.

Clause 49

Exemptions to insurance and superannuation.

- (1) A person may discriminate against a person with respect to a matter that is otherwise prohibited under this Division if one or more of the following is applicable:
 - (a) the discrimination happens because of the application of a standard in force under the *Occupational Superannuation Standards Act 1987* of the Commonwealth;
 - (b) the discrimination is permitted under the *Sex Discrimination Act 1984* of the Commonwealth;
 - (c) the discrimination happens in order to comply with or obtain the benefits of, or to avoid penalties under, any other Act of the Commonwealth;
 - (d) the discrimination is based on reasonable actuarial or statistical data from a source on which it is reasonable to rely and the discrimination is reasonable having regard to that data and other relevant factors;
 - (e) if there is no reasonable actuarial or statistical data on which it is reasonable to rely, the discrimination is based on other data on which it is reasonable to rely and the discrimination is reasonable having regard to the data and any other relevant factors; and

Clause 49 (1) (f) if there is no reasonable actuarial, statistical or other data on which it is reasonable to rely, the discrimination is reasonable having regard to any other relevant factors.

(2) Exempts discrimination contained in an existing superannuation fund, for current members and members joining the fund within 12 months of commencement of this Act.

(3) Defines "existing superannuation fund condition".

Clause 50 Provides exemption for a person to discriminate against another person in the event of a transaction, should the other person be subject to legal incapacity relevant to the transaction.

Clause 51 Provides exemptions from this Act in regard to religious bodies. The Act does not apply to religious bodies in relation to:

(a) ordination, or appointment of priests, ministers of religion, or members of a religious order;

(b) training or education, of people seeking ordination or appointment in a religious order;

(c) selection or appointment of people to perform a function in relation to religious observance or practice; or

- Clause 51** (d) an act by a body with religious affiliations, where the act is:
- (i) in accord with the particular religion; and
 - (ii) necessary for reasons of sensitivity.

Clause 52 General exemptions in regard to charities.

- (1) Provides for a person to:
 - (a) include discriminatory provisions in instruments such as wills for the purpose of charitable benefit; and
 - (b) do an act necessary to effect a provision in paragraph (a).
- (2) Defines "charitable benefits" to mean benefits which are in accord with Australian law.

Clause 53 Provides exemptions for doing of acts necessary to comply with other legislation, including:

- (a) a Territory Act or regulation;
- (b) a Commonwealth Act or regulation;
- (c) an order of a court or tribunal;
- (d) an order or award of a court or tribunal with power to fix minimum wages and employment terms and conditions;

- Clause 53
- (e) an industrial agreement existing at the commencement of this Act;
 - (f) an order of the Commissioner;
 - (g) a guideline or code of practice prepared and published by the Commissioner; or
 - (h) advice of the Commissioner.

Clause 54

Provides exemption on grounds of sex, where a person grants rights or privileges of pregnancy or childbirth to a woman but not a man.

Clause 55

Provides exemption for discrimination against a person on grounds of impairment for the purpose of protecting public health, mainly in relation to infectious diseases.

Clause 56

Exemptions in the area of sport.

- (1) Provides exemptions for a person to restrict participation in competitive sport, in regard to:
 - (a) sex, where linked to strength or stamina;
 - (b) ability to compete;
 - (c) age or age group; and
 - (d) general or specific impairment.

Clause 56 (2) Exemption from competitive sporting activity does not apply to persons under the age of 12.

(3) "Competitive sporting activity" for the purposes of this section does not include:

(a) sports coaching;

(b) sports umpiring or refereeing;

(c) sports administration; or

(d) prescribed sporting activity.

Clause 57 Special measures exemptions.

(1) Provides exemption to allow for development of "special measures" or "equal opportunity programs" that provide special services or facilities for disadvantaged or special need groups, because of a particular attribute.

(2) Requires that these programs only continue until equal opportunity is achieved.

Clause 58

(1) Provides exemption for a person to discriminate against another person who has a special need where:

(a) supply of special services or facilities is required; and

Clause 58(1)(b) supply of services or facilities is unreasonable.

- (2) Provides that "unreasonable" requirement of a service or facility for a person with a special need is determined by all relevant matters, including:
 - (a) the nature of the special service or facility;
 - (b) necessary costs and benefit or disadvantage to others;
 - (c) the financial capacity of the person;
 - (d) potential disruption; and
 - (e) the nature of any benefit or detriment to all concerned.

Clause 59 Exemptions by the Commissioner.

- (1) Provides for a person to apply to the Commissioner for an exemption under this Act for a specific purpose, and to:
 - (2) apply for renewal of any exemption granted, prior to its expiry.
 - (3) Requires that the Commissioner, when considering an application under subsection (1) or (2), have regard for:
 - (a) intent to redress past discrimination; and
 - (b) any other relevant factor.

- Clause 59
- (4) Provides that the Commissioner may either refuse application or grant exemption in respect of discriminatory conduct.
 - (5) Provides that the Commissioner may, under subsection (4):
 - (a) grant an exemption subject to such conditions as seen fit, for up to three years; and
 - (b) revoke an exemption should breach of conditions occur.
 - (6) Provides that the Commissioner may renew an exemption for up to a further 3 years, or refuse renewal.
 - (7) Requires the Commissioner to ensure that all exemptions granted, renewed or revoked are published in the *Gazette*.
 - (8) Requires that any notice published under subsection (7) specifies:
 - (a) the relevant grant or renewal time period; and
 - (b) any conditions that apply to the exemption.
 - (9) Requires the Commissioner to provide an applicant with a written statement of reasons for refusal to grant or renew an exemption.

Clause 60

Defines who may lodge a complaint.

- (a) Enables a person to make a complaint to the Commissioner, where the person has been aggrieved by conduct prohibited under this Act.
- (b) Enables a person to lodge a complaint on behalf of another person, subject to written authorisation of the Commissioner.

Clause 61

Provides for the Commissioner to deal jointly with two or more complaints resulting from the same conduct.

Clause 62

Provides authorisation procedures to act for a complainant or respondent.

- (1) Enables the Commissioner to authorise a person nominated by the complainant or respondent to act on their behalf in regard to proceedings under this Act.
- (2) Enables the Commissioner to authorise the person acting on behalf of the other person to accompany or assist the other person in any proceedings.
- (3) Provides that authorisation is subject to withdrawal, at the discretion of the Commissioner.

Clause 63

Enables a complaint to contain more than one allegation of prohibited conduct.

Clause 64

Form of a complaint.

- (1) A complaint shall:
 - (a) be lodged in writing;
 - (b) set out in detail the alleged prohibited conduct;
 - (c) identify the respondent/s; and
 - (d) be lodged with or posted to the Commissioner
- (2) Enables the complainant to amend the complaint at any time, subject to permission of the Commissioner.

Clause 65

Time limit for lodging a complaint.

- (1) Requires that a complaint be lodged no later than 6 months after the alleged prohibited conduct occurred.
- (2) Provides the Commissioner with discretionary power to extend the time limit where the Commissioner considers acceptance after 6 months is reasonable.

Clause 66

Requires that the Commissioner accept or reject a complaint within 60 days of notification and that the complainant be promptly informed of this decision.

Clause 67

Empowers the Commissioner to reject a complaint which is:

- (a) frivolous or vexatious;
- (b) trivial;
- (c) of a misconceived nature; or
- (d) genuine, but lacking substance.

Clause 68

Provides for the Commissioner to reject or stay a complaint dealt with elsewhere.

- (1) Enables the Commissioner to reject or stay a complaint related to alleged prohibited conduct when it is concurrently subject to hearing in a court or tribunal.
- (2) Provides that a time limit for doing anything under this Act will not apply while the complaint is stayed.

Clause 69

- (a) Requires that the Commissioner notify a complainant in writing of rejection of a complaint under section 66.
- (b) Provides that where a complaint lapses, a further complaint related to the same prohibited conduct shall not be made.

Clause 70

Requires that the Commissioner promptly notify a respondent in writing about the substance of an accepted complaint.

Clause 71

Procedures for withdrawal of a complaint.

- (1) Enables a complainant to apply to the Commissioner to withdraw a complaint at any time.
- (2) Provides that the Commissioner after investigation to ensure that the decision to withdraw was made voluntarily by the complainant shall:
 - (a) notify the respondent of the withdrawal; and
 - (b) with the consent of the complainant and respondent record any terms of any agreement reached.
- (3) Provides that withdrawal by the complainant does not prevent the Commissioner from considering the complaint under Division 2, Investigations.
- (4) Prohibits the complainant from lodging another complaint related to the same conduct, except where permitted by the Commissioner.

Clause 72

Defines the process required for allowing a complaint to lapse, where the Commissioner is satisfied that the complainant has lost interest in the matter.

- Clause 72
- (1) Requires that the Commissioner advises the complainant in writing of impending lapse of the complaint unless the complainant indicates otherwise.
 - (2) Allows the complainant 60 days to indicate intent before the complaint lapses and both complainant and respondent are notified by the Commissioner that the complaint has lapsed.
 - (3) Provides that where a complaint lapses under this section, further complaint in regard to the alleged prohibited conduct cannot be made.

Clause 73

Enables the Commissioner to join a person as a party to the complaint through serving of written notice on a person.

Clause 74

Defines procedures for investigation of a complaint.

- (1) Requires the Commissioner to carry out an investigation of alleged prohibited conduct:
 - (a) at the request of the Minister; or
 - (b) where the Commissioner accepts a complaint under clause 66.
- (2) Enables the Commissioner to investigate apparent prohibited conduct identified during the course of other functions under this Act.

Clause 74 (3) Provides that an investigation under (1) (a) or (2) be deemed an investigation of a complaint in relation to this Act and not this action shall apply to and in relation to:

- (a) the investigation;
- (b) any other proceedings under this Act in relation to the prohibited conduct; and
- (c) the Commissioner, as if a complaint had been made.

Clause 75 Conduct of an investigation.

- (1) The Commissioner may conduct an investigation in such manner as he/she sees fit.
- (2) An investigation under this Division shall be carried out with minimum formality and maximum expediency.
- (3) In carrying out an investigation under this Division the Commissioner:
 - (a) shall make a thorough examination of all matters relevant to the investigation; and
 - (b) where the Commissioner considers it appropriate, ensure reasonable opportunity for each party to present their case.

Clause 76

Completion of an investigation.

- (1) Provides for the Commissioner, upon completion of an investigation in respect of a complaint:
 - (a) to dismiss the complaint; or
 - (b) in the presence of prima facie evidence:
 - (i) to proceed to conciliation; or
 - (ii) hearing where necessary.
- (2) Requires that the Commissioner notify the complainant and respondent of any decision made under subsection (1).
- (3) Requires the Commissioner to report to the Minister in respect of recommendations and matters investigated under subsections 74 (1) (a), or (2).

Clause 77

- (1) Enables the Commissioner to prepare a report on investigation of a complaint which may be considered at a hearing.
- (2) Prohibits including in a report any record of oral statements made during an investigation.
- (3) Requires that where reports are prepared under subsection (1) and considered at hearing, a copy shall be provided to both parties.

Clause 78

Requires that the Commissioner endeavour to resolve a complaint through conciliation where this procedure is determined under section 76, Completion of Investigation.

Clause 79

Conciliation proceedings.

- (1) Enables the Commissioner to direct a person to take part in conciliation proceedings.
- (2) Requires that a direction shall be in writing by the Commissioner, and indicate the time and place where proceedings will be held.
- (3) Requires conciliation proceedings to be held in private.
- (4) Provides a penalty for default of \$ 5 000 for a corporate body and \$ 1 000 in the case of an individual.

Clause 80

Describes proceedings relating to failure to attend conciliation proceedings.

- (1) Enables the Commissioner to dismiss a complaint where, without reasonable excuse, a party to a complaint does not comply with a direction of the Commissioner. The Commissioner may also direct that costs be paid.
 - (a) Enables the Commissioner to direct complainant to pay costs to the respondent.

Clause 80 (1) (b) Enables the Commissioner to direct the respondent to pay costs to the complainant.

- (2) Provides for costs to be determined by the Commissioner. Costs ordered under this section may be registered in a court of law and recovered accordingly.

Clause 81 Provisions relating to conciliation proceedings.

- (1) Enables the Commissioner to record the terms of agreement reached, where conciliation has been achieved and both parties consent to the agreement being recorded.

- (a) Empowers the Commissioner to have both parties sign the agreement.

- (b) Requires the Commission to provide copies of the signed conciliation agreement to both complainant and respondent.

- (2) Requires that where conciliation is not achieved, the Commissioner shall notify both parties that conciliation proceedings have ceased.

Clause 82 Provides that conciliation proceedings are not admissible in subsequent proceedings under this Act in relation to the complaint.

Clause 83

Conduct of hearing by Commissioner.

- (a) Empowers the Commissioner to conduct a hearing of the complaint, where the Commissioner determines by way of section 76 that conciliation is not possible.
- (b) Empowers the Commissioner to conduct a hearing where conciliation is not achievable.
- (c) Empowers the Commission to conduct a hearing where the Commissioner believes the nature of the complaint requires a hearing.

Clause 84

Provides that a party may request a complaint be referred to hearing.

- (1) Enables the complainant or respondent to request a hearing after 6 months, if the Commissioner has not by then completed dealing with the complaint under section 66.
- (2) Enables the Commissioner to defer taking action on a request for up to 28 days, should there be potential for resolving the complaint by conciliation in that time.
- (3) Requires that should the request to refer the matter to hearing originate from the respondent, the Commissioner shall ask the complainant if she/he agrees to a hearing.

- Clause 84
- (4) Requires that the decision of the complainant must be made no later than 28 days after receiving the request from the Commissioner.
 - (5) Provides that should the complainant fail to agree within 28 days to a hearing at the request of the Commissioner, or fail to request a time extension in writing, the complaint lapses and cannot be pursued again in relation to the alleged prohibited conduct.
 - (6) Enables the Commissioner to extend the time limit in subsection (4) at the written request of the complainant.
 - (7) Requires that if the request is made by the complainant the Commissioner shall conduct a hearing.
 - (8) Requires that the Commissioner shall notify both parties to the complaint as to whether the complaint has lapsed or will go to a hearing.

Clause 85

Requires the Minister to appoint another person to hear a complaint.

- (1) Requires the Minister, where the Commissioner has been involved in investigation or conciliation of a complaint, to appoint another person to conduct a hearing.

Clause 85 (2) Requires that a person appointed by the Minister under subsection (1) to conduct a hearing, shall be deemed to be the Commissioner for that purpose.

Clause 86 Requires that hearing of a complaint be held in public, unless the Commissioner alone directs otherwise.

Clause 87 Enables the Commissioner to endeavour at any time before or during a hearing, to resolve the complaint through conciliation.

Clause 88 Enables the Commissioner to make orders.

(1) Enables the Commissioner to make orders where, after completion of a hearing, prohibited conduct has been substantiated.

(a) Provides for an order for non repetition or continuance of the prohibited conduct.

(b) Provides for an order for payment by the respondent of costs for compensation, loss or damage.

(c) Provides for an order declaring void all or part of any agreement made at any time in connection with the prohibited conduct.

Clause 88(1)(d) Provides for an order for the respondent to redress loss or damage suffered by the complainant or any other person because of the prohibited conduct.

- (2) Provides that specific things that a respondent may be required to do, but not limited to, include;
 - (a) employing, reinstating, re-employing, a person;
 - (b) promoting a person; or
 - (c) relocating a person within a specified time.
- (3) Defines that "damage" includes offence, embarrassment, humiliation and intimidation suffered by the person.
- (4) Requires that where the Commissioner finds alleged prohibited conduct is unsubstantiated, an order dismissing the complaint shall be made.

Clause 89

- (1) Enables the Commissioner to order a respondent to apologise and make retractions to the complainant.
- (2) Provides that an apology or retraction may be published or made in such a manner as the Commissioner considers fit.

Clause 90

Provides the manner of conduct of procedures under this Act in regard to the Commissioner.

- (a) Commissioner is not bound by the rules of evidence and may obtain information as the Commissioner considers appropriate.
- (b) Commissioner shall act with equity and good conscience having regard to the merits of the case without regard to technicalities and legal forms.
- (c) Commissioner may give directions in relation to proceedings to minimise costs or delays and to facilitate a prompt hearing of the complaint.
- (d) Commissioner may draw conclusions of fact from any proceeding before a court or tribunal.
- (e) Commissioner may adopt any findings or decisions of a court or tribunal that may be relevant to the proceedings.
- (f) Commissioner may conduct proceedings in the absence of a party who was given reasonable notice to attend but failed to attend without reasonable excuse.

Clause 91

Burden and standard of proof.

- (1) Requires that, on the balance of probabilities, the complainant prove alleged prohibited conduct is substantiated.

Clause 91 (2) Requires the respondent to prove on the balance of probabilities that an exemption is applicable.

Clause 92 Powers of the Commissioner in respect of proceedings.

(1) Enables the Commissioner to issue orders to a person in writing in respect of proceedings.

(a) Enables the Commissioner to order, in writing, a person to attend proceedings under the Act.

(b) Enables the Commissioner to order, in writing, a person to give evidence on oath or affirmation.

(c) Enables the Commissioner to order, in writing, a person to provide documents to the Commissioner.

(d) Enables the Commissioner to order, in writing, that a person provide in writing to the Commissioner information in the possession of the person relevant to the proceedings.

(2) Provides for the Commissioner to act where provided with a document under subsection 92(1), "Commissioner to issue orders to a person in writing in respect of proceedings".

(a) Provides for the Commissioner to copy or take extracts from the text of any document.

- Clause 92 (2) (b)** Provides for the Commissioner to retain a document provided.
- (c) Requires that the Commissioner make available to persons who would otherwise be entitled to view it, any document which has been provided to the Commissioner.
- (3) Provides for the Commissioner under subsection 92 (1):
- (a) to administer an oath or affirmation.
- (b) to cross examine or re-examine a witness.
- (4) Exempts a person from giving evidence or providing a document if the person objects on grounds of privilege otherwise entitled to in Supreme Court proceedings.
- (5) Provides that failure of a person to comply with an order of the Commissioner under this section is liable to penalty of \$ 5 000 for a body corporate and \$ 1 000 for an individual.

- Clause 93** Provides for payment of witness fees and allowances.
- (1) Provides that witness fees and allowances are to be prescribed by regulation.
- (2) Identifies responsibility for payment of witness fees and allowances.

Clause 93 (2) (a) Requires that where the request for a witness originated from another person, that person shall pay witness fees and allowances.

(b) Requires that in any other case the Territory shall pay witness fees and allowances.

(3) Enables the Commissioner to determine that witness fees and allowances payable to a person under subsection (2) subclause (a) may be paid in whole or part by the Territory.

Clause 94 Legal practitioner to assist the Commissioner.

(1) Enables the Commissioner to arrange for assistance from a legal practitioner at proceedings under this Act.

(2) Requires that the Legal Practitioner shall be subject to the Commissioner's direction and control.

Clause 95 Provides for a complainant or respondent to be represented by a legal practitioner where leave is granted by the Commissioner.

Clause 96 Identifies responsibility for payment of costs in respect of proceedings under this Act.

- Clause 96
- (1) Requires each party to a complaint to pay own costs subject to subsection (2) and unless an order has been made under section 80, "Failure to Attend Conciliation Proceedings".
 - (2) Enables the Commissioner to make an order regarding costs which overrides subsection (1).

Clause 97

Representation of an unincorporated association by a committee member.

- (1) Requires that under proceedings involving an unincorporated association:
 - (a) the president;
 - (b) the secretary; or
 - (c) a committee member,

is the nominal party to be specified in the complaint, provided they were in office at the time the alleged prohibited conduct occurred

- (2) Provides for notice to be served on the nominee.

Clause 98

Enables the Commissioner to request in writing from a person the data or the source of actuarial or statistical data on which that person based an act of discrimination.

- Clause 98**
- (1) Provides exemption under section (49), and allows 21 days from the date of notice for the person to supply the information.
 - (2) Provides that where this request is not fulfilled, the body corporate is subject to a penalty of \$ 5 000, or \$ 1 000 in the case of a natural person.

Clause 99 Publication of evidence.

- (1) Enables the Commissioner to order that oral or documentary evidence of proceedings not be published, unless directed otherwise by the Commissioner.
- (2) Provides a penalty for non compliance without reasonable excuse as \$ 5 000 in the case of a body corporate or \$ 1 000 for an individual.

Clause 100 Anonymity of a person involved in proceedings under this Act.

- (1) Enables the Commissioner to order non disclosure of a person's identity where protection of work security, privacy or human rights is necessary, due to the person's involvement in proceedings.
- (2) Defines that a reference to involvement in proceedings under this Act includes:
 - (a) lodging and pursuing a complaint through investigation, conciliation or hearing;
 - (b) being a respondent to a complaint;

Clause 100 (2) (c) prosecution for an offence against this Act;

(d) supplying information and documents; and

(e) appearing as a witness.

(3) Provides that failure to comply with an order is subject to penalty of \$ 5 000 and \$ 1 000 in the case of a body corporate or natural person, respectively.

Clause 101 Interim orders by the Commissioner.

(1) Enables the Commissioner to make an interim order pending completion of proceedings.

(a) Provides for interim orders to maintain:

(i) status quo between; or

(ii) rights of, parties to the complaint.

(b) Provides for interim orders to preserve status quo existing between parties prior to the alleged prohibited conduct.

(2) Requires that the Commissioner not make any interim order prior to hearing both parties reasons why the interim order should or should not be enforced.

(3) Provides that non compliance is subject to penalty of \$ 5 000 for a body corporate and \$ 1 000 for an individual.

Clause 102

Discontinuance of a complaint

- (1) Enables the Commissioner to discontinue proceedings at any stage.
 - (a) Enables the Commissioner to discontinue proceedings if there is reasonable belief that the complaint is frivolous or vexatious.
 - (b) Enables the Commissioner to discontinue proceedings where the complaint is trivial.
 - (c) Enables the Commissioner to discontinue proceedings where the complaint is misconceived or lacking in substance.
 - (d) Enables the Commissioner to discontinue proceedings where the complaint fails to disclose any prohibited conduct.
- (2) Enables the Commissioner to order that, where the complaint is discontinued under subsection (1) subclause (a), the complainant pay a prescribed amount to the respondent to compensate for loss or damages.

Clause 103

Provides a complainant or respondent with 28 days to request written reasons from the Commissioner in regard to an order, under section 88. The Commissioner shall supply written reasons within 28 days of the request.

Clause 104

Provides for the enforcement of orders.

- (1) Requires that a person, who without reasonable excuse fails to comply with an order of the Commissioner under this part, be subject to a penalty of \$ 10 000 for a body corporate and \$ 2 500 or 3 months imprisonment in the case of an individual.
- (2) Provides that a person who is entitled to a payment under an order may register the order in a court of law by filing:
 - (a) a copy of the order, certified by the Commissioner; and
 - (b) an affidavit stating the amount unpaid, for recovery.
- (3) Provides that an order registered in a court of law is a judgement debt of that court and may be recovered accordingly.

Clause 105

Provides that rejection of a complaint by the Commissioner is an administrative action for the purpose of the *Ombudsman (Northern Territory) Act*, and may be investigated accordingly by the Ombudsman.

Clause 106

Defines the appeal process.

- (1) Provides that a party aggrieved by a decision or order of the Commissioner, may appeal on a matter of fact or law to the Local Court.

- Clause 106** (2) Requires that an appeal shall be made:
- (a) within 28 days of issuing of the decision or order; or
 - (b) not later than 28 days after written reasons requested by the aggrieved party from the Commissioner have been received.
 - (3) Provides that an appeal under this section shall be in accordance with the rules of the Local Court.

- Clause 107** Provides that after hearing of an appeal, the Local Court may:
- (a) affirm or vary the order appealed against;
 - (b) quash and substitute an order or decision of the Commissioner;
 - (c) remit the matter to the Commissioner for rehearing; or
 - (d) make other orders including costs, as the Court considers appropriate.

- Clause 108** Defines requirements for non disclosure of private information by persons, and penalties for breaches in regard to this Act.
- (1) A person who, in exercising powers or functions under this Act, acquires information or documents about another person's affairs shall:

Clause 108(1)(a) not make a record of the information;
and

(b) not communicate or produce the document
to another person.

Penalties for breaches in this regard -
\$ 5 000 for a body corporate and \$ 1 000
for a natural person.

(2) Provides for disclosure:

(a) where necessary for functions under this
Act;

(b) where required or acceptable under a
Commonwealth or Northern Territory Act
or another Australian State or Territory
Act; or

(c) where necessary in relation to an
offence under Northern Territory law.

(3) Subject to this section a person, who in
exercising a power or performing a
function under this Act acquires
information about or has custody of or
access to a document about a persons
affairs, shall be required to:

(a) give the information to a court; or

(b) produce the document in a court.

(4) Provides that subsection (3) does not
apply:

Clause 108 (4) (a) where the information or document is required for a power or function under this Act;

(b) if the information or document is required by another Act of the Northern Territory, the Commonwealth, a state or another Territory; or

(c) if the giving of the information or document is to a court, in the prosecution of an offence against a law of the Territory.

(5) Provides that information acquired during conciliation shall not be revealed even in relation to statutory requirements as identified in 2 (b) or (c) or 4 (b) or (c).

(6) "Court" includes a tribunal, authority or person having power to require the production of documents or the answering of questions.

"Produce" includes permit access to.

Clause 109

Discriminatory advertising.

(1) Prohibits a person from promoting or expressing prohibited conduct through discriminatory advertising. Penalty is \$ 5 000 for a body corporate, and \$ 1 000 for a natural person.

Clause 109 (2) Requires that prosecution for an offence shall not proceed where a complaint has lapsed, been withdrawn or dismissed, or where the offender complies with an agreement or order made in respect of the complaint.

Clause 110 Defines prohibited acts of any persons in respect of proceedings.

- (1) Prohibited acts include:
- (a) hindering the exercising of a power or the performing of a function under this Act;
 - (b) use of insulting language;
 - (c) knowingly providing false or misleading information; or
 - (d) doing any other act in relation to the Commissioner, constituting contempt of court.

Penalty for default is \$ 5 000 for a body corporate or \$ 1 000 for an individual.

- (2) Provides that, for the purposes of this section, the Commissioner shall be treated as a Court.

Clause 111

Prohibits a person from making a false or misleading statement to another person, with the intention of publicly promoting or displaying discriminatory advertising of prohibited conduct. Penalty for default is \$ 5 000 for a body corporate or \$ 1 000 in the case of an individual.

Clause 112

Commencement of proceedings for offences.

- (a) Prosecution shall commence no later than 12 months after the offence; or
- (b) 6 months after the Commissioner has knowledge of the offence, whichever ends last, but prosecution shall not commence 2 years after the offence has been committed.

Clause 113

Protection from legal proceedings.

- (1) Prohibits any action or proceedings against a person acting in good faith under this Act.
- (2) Requires that no action or proceedings shall be commenced against a person in respect of loss of damage by reason only that a person has:
 - (a) lodged a complaint; or
 - (b) provided information or evidence to the Commissioner.

Clause 114

Provides that it is not a reasonable excuse for a person to fail to provide evidence, information or a document as ordered by the Commissioner where this is self incriminating, unless the material is not admissible in a court proceeding, other than that constituting contempt of court under section 110.

Clause 115

Requires that a notice or document be served on or given to a person by:

- (a) personal delivery;
- (b) posting to the person at their residence or work place; or by
- (c) leaving it at the person's residence or work place with a person over 16 years of age and who lives or works at that place.

Clause 116

Non-application of this Act.

- (1) Provides that the Act does not apply to prohibited conduct occurring prior to commencement date of the Act.
- (2) Provides that evidence of conduct or practice prior to commencement that may have contributed to subsequent unlawful discrimination, may be accessed.

Clause 117

Regulations.

- (1) Enables the Administrator to make regulations consistent with this Act, in order to prescribe matters:
 - (a) required or permitted by the Act; or
 - (b) giving effect to the Act.

- (2) Provides for Regulations to make provisions exempting persons, activities or things from this Act, or to make specified provisions of the Act without limiting the generality of subsection (1) .