

## CLAUSE NOTES

### Anti-Discrimination Amendment Bill 2012

- Clause 1:** Short title
- Clause 2:** Commencement – provision has been made for staggered commencement if needed.
- Clause 3:** Provides that the Principal Act for Part 2 is the *Anti-Discrimination Act 1998*.
- Clause 4:** Includes in the Interpretation section adjustments to the definitions of ‘child’, ‘club’ and ‘competitive sporting activity’. Also inserts new definitions of ‘gender identity’, ‘intersex’, ‘schools system’, ‘sexual orientation’, ‘transgender’ and ‘transsexual’, and associated variants of the latter two definitions.
- Clause 5:** Amends the reference to ‘conciliate’ to read ‘resolve’ instead, in line with the power in new section 74 for the Commissioner to attempt to resolve complaints by any viable method.
- Clause 6:** Amends the reference to ‘conciliation’ to read ‘complaint resolution’, in line with the power in new section 74 for the Commissioner to attempt to resolve complaints by any viable method.
- Clause 7:** Inserts a new section 12A to establish a registrar for the Anti-Discrimination Tribunal and such other officers as are deemed necessary. This will not change current

arrangements for the registry functions of the Tribunal but will formalise the position of registrar.

**Clause 8:** Includes the attributes of 'gender identity' and 'intersex' into the list of attributes that must not be discriminated against.

**Clause 9:** Amends section 17 to provide that all attributes in the Act are subject to the prohibition against conduct that offends, humiliates, intimidates, insults or ridicules another person.

**Clause 10:** Amends section 22 to provide that all attributes in the Act are subject to the prohibition against discrimination on the basis of activity in connection with the administration of any law or program of the State, or in connection with awards, enterprise agreements or industrial agreements.

**Clause 11:** Inserts new sections 56A and 56B, allowing a religious school or a schools system to apply for an exemption for the preferential admission of students from the provision of the Act that disallows discrimination on the basis of religion. The exemption is only permitted in the circumstances that the school is over-subscribed for students in that particular school group for that year, and requires the school or schools system to provide evidence against a set of criteria.

**Clause 12:** Alters the heading of Division 1 of Part 6 to read 'Interpretation' instead of 'Complaints', to allow section 59A to be inserted.

- Clause 13:** Inserts as new section 59A a definition of ‘complaint’ for the purpose of the Part, which allows complaint to also mean ‘part complaint’.
- Clause 14:** Inserts a new heading for Division 1A.
- Clause 15:** Inserts at the end of section 60 five new subsections to: allow the Commissioner to accept a complaint from a child; allow a person to make a complaint on behalf of another; allow the Commissioner to pursue a complaint as if he or she were the complainant; and allow the Commissioner to pursue a complaint where it has been withdrawn by the complainant.
- Clause 16:** Inserts a new section 60A which will allow the Commissioner to appoint a litigation guardian for a child or person living with a disability.
- Clause 17:** Inserts a new section 62A which will allow the Commissioner to combine a series of complaints on the same or related matters into one complaint for ease of resolution.
- Clause 18:** Amends section 64 by inserting a new subsection into the list of reasons for the dismissal of a complaint to permit dismissal where the complaint relates to activity that is the subject of an exemption from the Act.
- Clause 19:** Inserts a new section 65A to allow a person to remove matters from their complaint, and the Commissioner to both add or remove matters, and also to alter the details of the respondent.

- Clause 20:** Amends section 67 by inserting a subsection which requires the Commissioner to provide a respondent with both a summary and a copy of an accepted complaint.
- Clause 21:** Amends section 68 by inserting a new subsection to allow a Commissioner to accept a reinstated complaint if the original complaint was withdrawn involuntarily.
- Clause 22:** Amends section 71 to include ‘dismissal on the basis of the subject of the complaint being an exempted activity’ on the list of possible determinations by the Commissioner.
- Clause 23:** Amends section 73 to confirm that a part of lapsed complaint cannot be repeated by the same complainant.
- Clause 24:** Amends the title of Division 3 of Part 6 from ‘Conciliation’ to ‘Resolution of complaints’, in line with the power in new section 74 for the Commissioner to attempt to resolve complaints by any method viable.
- Clause 25:** Replaces s.74 with a new section which will allow the Commissioner or an authorised person to attempt to resolve a complaint by any means that consider viable, before, during or after an investigation.
- Clause 26:** Amends section 75 to allow the Commissioner or an authorised person to direct a person to conciliation before, during or after an investigation.

- Clause 27:** Inserts a new section 75A to allow the Commissioner or an authorised person to further investigate if no agreement is reached by conciliation.
- Clause 28:** Inserts a new subsection in section 78 which will allow the Commissioner to decline to refer a complaint on to the Tribunal where the complainant has failed to pursue the complaint.
- Clause 29:** Amends section 79 to incorporate matters relating to the amendment of complaints, resolution of complaints and material evidence into the list of information that the Commissioner must give to the Tribunal upon referring a complaint.
- Clause 30:** Inserts a new section 79A to allow representation at the hearing of an inquiry with permission of the Tribunal.
- Clause 31:** Amends section 80 to qualify the power of the Tribunal to dismiss a complaint and order the complainant to pay costs if the complainant fails to comply with a requirement to attend a directions conference in the case where the complaint has a reasonable excuse for failing to do so.
- Clause 32:** Inserts a new section 80A to allow the Tribunal to refer a matter for conciliation either before or during an inquiry.
- Clause 33:** Replaces section 82 with a new section which will require complaints being dealt with as representative complaints to be likely to be consented to, or actually consented to being

dealt with in that manner, by the majority of people included in the relevant class of person.

- Clause 34:** Amends section 85 to clarify that it is the hearing of an inquiry that should be public, not that whole inquiry process. Also removes the subclauses in section 85 dealing with representation at an inquiry of the Tribunal, as this is now dealt with in new section 79A.
- Clause 35:** Inserts a subsection in section 88 allowing the Tribunal to make an order that the name of a child, or any information that may allow a child to be identified is not to be published.
- Clause 36:** Inserts a subsection in section 89 allowing the Tribunal to make an order that a trust fund be established under the control of the Public Trustee to benefit persons as yet unidentified (for instance, member of a class of person in a representative complaint).
- Clause 37:** Amends section 94 to allow the Tribunal to refer a complaint to conciliation under section 75, as if the Tribunal were the Commissioner.
- Clause 38:** Inserts a new section 96A requiring the approval by the Commissioner or Tribunal to the terms of settlement between the parties where the complaint involves children or persons who do not have capacity to approve a settlement by reason of a disability.
- Clause 39:** Amends section 98 to clarify that the Tribunal may make an interim order at any stage of an inquiry or on application from the

Commissioner, may make an interim order during an investigation or conciliation.

**Clause 40:** Inserts a new section 98A allowing a complainant to apply to withdraw a complaint for inquiry or review, but if the withdrawal is approved by the Tribunal, preventing the complainant from making a similar complaint without permission from the Tribunal. It also allows the Tribunal to continue to conduct an inquiry into the withdrawn complaint, or the Commissioner to investigate a withdrawn complaint where the withdrawal was not voluntary, or where it is in the public interest to do so.

**Clause 41:** Substitutes a new section 99A to insert subsections providing that a party's representative may be ordered to pay all or part of the costs of an inquiry or review, and that the costs may be taxed by a district registrar of the Magistrates Court (Civil Division).

**Clause 42:** Amends section 100 to allow a decision of the Commissioner to decline to refer a complaint to the Tribunal to be appealed to the Supreme Court.

**Clause 43:** Amends section 101 to remove the references to 'exemption' in the section as the proof on the balance of probabilities should only apply to "exceptions".

**Clause 44:** Amends section 102 to clarify that a person is not liable for any loss suffered to another person because of the making of a complaint

or the providing of evidence only where the complaint or evidence is given in good faith.

- Clause 45:** Amends section 103 to extend the immunity from liability to all persons exercising their powers under the Act.
- Clause 46:** Inserts a new section 107A allowing the Tribunal to publish decisions, including those decisions made at a direction conference.
- Clause 47:** Amends section 109 to include some specific regulation making powers relating to process and procedure of referrals, reviews, hearing and determination under the Act.
- Clause 48:** Provides that the Principal Act for Part 3 is the *Judicial Review Act 2000*.
- Clause 49:** Amends the schedules to the Judicial Review Act by adding the *Anti-Discrimination Act 1998* to the list of Acts to which the *Judicial Review Act 2000* does not apply (as it has its own scheme for review and appeal).
- Clause 50:** Provides that the Principal Act for Part 4 is the *Personal Information Protection Act 2004*.
- Clause 51:** Amends section 3 of the PIP Act to include the Anti-Discrimination Commissioner into the definition of 'law enforcement agency' for the purposes of the *Personal Information Protection Act 2004*, thereby exempting information collected by the Commissioner under the Act from some of the Personal Information Principles.



**Clause 52:** Standard repeal provision for amending acts.