

**No. 56 of 1981**

***An Act to prevent certain kinds of discrimination based on physical impairment; to provide for the resolution of problems faced by persons with physical impairments and to facilitate their participation in the economic and social life of the community; to promote goodwill, understanding and equality of opportunity between persons with physical impairments and other members of the community; and to deal with other related matters.***

*[Assented to 25th June, 1981]*

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

**PART 1- PRELIMINARY**

1. This Act may be cited as the "Handicapped Persons Equal Opportunity Act, 1981".
2. (1) This Act shall come into operation on a day to be fixed by proclamation.  
  
(2) The Governor may, in a proclamation made for the purposes of subsection (1), suspend the operation of any specified provisions of this Act until a day fixed by the proclamation, or a day to be fixed by subsequent proclamation.
3. This Act is arranged as follows:

PART I-PRELIMINARY

PART II-THE COMMISSIONER AND THE TRIBUNAL

Division I-The Commissioner

Division II-The Handicapped Persons Discrimination Tribunal

PART III-DISCRIMINATION TO WHICH ACT APPLIES

PART IV-DISCRIMINATION IN EMPLOYMENT

Division I-Discrimination by employers

**Division II-Discrimination by other bodies**

**PART V-DISCRIMINATION IN OTHER FIELDS**

**Division I- Education**

**Division II- Goods, Services and Accommodation**

**PART VI-OTHER UNLAWFUL ACTS**

**PART VII-GENERAL EXCEPTIONS**

**PART VIII-ENFORCEMENT OF THIS ACT**

**Division I- Non - Discrimination Orders**

**Division II- Enforcement of Personal Remedies**

**Division III- Appeals**

**PART IX-MISCELLANEOUS**

**4. In this Act, unless the contrary intention appears**

**"the Chairman" of the Tribunal includes the deputy of the Chairman when duly acting in the office of Chairman of the Tribunal:**

**"the Commissioner" means the person holding or acting in the office of Commissioner for Equal Opportunity under the Sex Discrimination Act, 1975:**

**"educational authority" means the person or body administering any school, college, university, or other institution at which education or training is provided:**

**"employment agency" means a person who, for fee or reward, introduces persons seeking employment to employers:**

**"member of the Tribunal" includes a deputy of a member duly acting in his place:**

**"the Minister" means the Attorney-General, or such other Minister of the Crown for the time being administering this Act:**

**"physical impairment" means**

- a. the total or partial loss of any function of the body;**

- b. the loss of a limb, or of part of a limb;
- c. the malfunctioning of any part of the body; or
- d. the malformation or disfigurement of any part of the body, but does not include an impairment to the intellect or a mental illness:

"the Registrar" means the person holding or acting in the office of Registrar of the Tribunal under this Act:

"the Tribunal" means the Handicapped Persons Discrimination Tribunal established under Part II:

This Act binds the Crown.

## **PART II THE COMMISSIONER AND THE TRIBUNAL**

### **DIVISION I-THE COMMISSIONER**

6. (1) The Commissioner is responsible to the Minister for the general administration of this Act and, in carrying out that function, is subject to the general control and direction of the Minister.

(2) The Governor may, subject to and in accordance with the Public Service Act, 1967-1978, appoint such officers as he considers necessary or expedient to assist the Commissioner in the administration of this Act.

7. The Commissioner shall foster and encourage amongst members of the public a positive, informed and unprejudiced attitude towards persons with the physical impairments.

8. (1) The Commissioner may furnish advice upon any matter within the purview of this Act and, if a written request for any such advice is made to the Commissioner, then, subject to subsection (2), the Commissioner shall either furnish the advice in writing to the person by whom it was requested, or notify that person in writing that he declines to furnish the advice.

(2) The Commissioner shall

(a) if requested to do so by a handicapped person

(i) inform and advise him of the benefits, assistance or support that may be available to him in respect of his physical impairment;

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

(iii) assist him, to the extent the Commissioner thinks desirable, to resolve any problem faced by him as a result of his physical impairment in relation to his participation, or attempts to participate, in the economic or social life of the community;

(b) publish advisory documents as to the benefits, assistance and support available to handicapped persons;

(c) institute, promote or assist in research and the collection of data relating to handicapped persons, the problems faced by such persons as a result of their impairments, and the ways in which those problems may be resolved,

and may do anything else necessary or expedient to assist handicapped persons to participate in the economic and social life of the community.

(3) For the purposes of subsection (2), a handicapped person is a person who has a physical impairment which in itself, or in conjunction with other factors such as the nature of his physical environment, the attitude of others towards him or his own psychological reaction to his impairment, substantially reduces his participation, or his capacity to participate, in the economic or social life of the community.

9.(1) The Commissioner may, by instrument in writing and with the approval of the Minister, delegate any of his powers, functions, duties or responsibilities under this Act to the holder of any office in the Public Service of the State specified in the instrument.

(2) A delegation under this section is revocable at will and does not derogate from the power of the Commissioner to act in any matter.

10. (1) The Commissioner shall, not later than the thirtieth day of September in each year, present to the Minister a report

(a) on the administration of this Act during the period of twelve months ending on the preceding thirtieth day of June; and

(b) stating any recommendations the Commissioner may have to reduce or eliminate any form of discrimination to which this Act relates.

(2) The Minister shall, as soon as practicable after his receipt of a report submitted to him under subsection (1), cause a copy of the report to be laid before each House of Parliament.

(3) The Commissioner shall report to the Minister on any matter referred to the Commissioner by the Minister.

DIVISION II-THE HANDICAPPED PERSONS DISCRIMINATION TRIBUNAL

11. (1) There shall be a tribunal entitled the "Handicapped Persons Discrimination Tribunal."

(2) The Tribunal shall consist of

(a) a chairman, appointed by the Governor, who shall be

(i) a Judge of the Supreme Court;

(ii) a Judge of the Industrial Court;

(iii) a person holding judicial office under the Local and District Criminal Courts Act, 1926-1980;or

(iv) a legal practitioner of not less than seven years standing;

and

(b) two other members appointed by the Governor.

(3) At least one member of the Tribunal must be a person who has a substantial physical impairment.

12. A member of the Tribunal (including the Chairman) shall be appointed for such term of office, not exceeding three years, as the Governor determines and specifies in the instrument of appointment, and, upon the expiration of his term of office, shall be eligible for re-appointment.

13. (1) The Governor may appoint

(a) a Judge of the Supreme Court;

(b) a Judge of the Industrial Court;

(c) a person holding judicial office under the Local and District Criminal Courts Act, 1926-1980;or

(d) a legal practitioner of not less than seven years standing,

to be the deputy of the Chairman, and such a person shall, while acting in the absence of the Chairman, have all the powers, authorities, duties and obligations appertaining to the office of Chairman.

(2) The Governor may appoint a suitable person to be the deputy of a member of the Tribunal (other than the Chairman) and such a person, while acting in the absence of that member, shall be deemed to be a member of the Tribunal, and shall have all the powers, authorities, duties and obligations of the member of whom he has been appointed the deputy.

14. (1) The Governor may remove a member of the Tribunal from office on the ground of-

(a) mental or physical incapacity to carry out satisfactorily the duties of his office;

(b) neglect of duty; or

(c) dishonourable conduct.

(2) The office of a member of the Tribunal shall become vacant if

(a) he dies;

(b) his term of office expires;

(c) he resigns by written notice addressed to the Minister;

or

(d) he is removed from office by the Governor under subsection (1).

(3) Upon the office of a member of the Tribunal becoming vacant, a person shall be appointed in accordance with this Act to that vacant office.

15. A member of the Tribunal is entitled to receive such allowances and expenses as the Governor may from time to time determine.

16. (1) An act or proceeding of the Tribunal shall not be invalid by reason of any defect in the appointment of a person to the Tribunal or a vacancy in its membership.

(2) No liability shall attach to a member of the Tribunal for any act or omission by him, or the Tribunal, in good faith and in the exercise of his or its powers or functions, or in the discharge of his or its duties, under this Act.

(3) A liability that would, but for subsection (2), lie against a member of the Board shall lie against the Crown.

17. (1) The Chairman shall preside at any meeting of the Tribunal.

(2) A decision in which any two members of the Tribunal concur shall be a decision of the Tribunal.

18. (1) The Tribunal shall give to any person who is a party to proceedings before the Tribunal

(a) reasonable notice of the time and place at which it intends to hear those proceedings;

and

(b) reasonable opportunity to call or give evidence, examine or cross-examine witnesses, and make submissions to the Tribunal.

(2) If a person to whom a notice has been given under subsection (1) fails to attend at the time and place specified in the notice, the Tribunal may hear the proceedings in his absence.

(3) Where, in the opinion of the Tribunal, a person ought to be bound by, or have the benefit of, its determination, or is otherwise legitimately interested in proceedings before the Tribunal, it may

(a) direct that he be joined as a party to the proceedings;

or

(b) grant him leave to intervene in the proceedings.

(4) A person appearing in proceedings before the Tribunal

(a) shall be entitled to appear personally or by counsel;

or

(b) may, by leave of the Tribunal, be represented by a person other than a legal practitioner.

19. (1) In the exercise of its powers and functions under this Act, the Tribunal may

(a) by summons signed on behalf of the Tribunal by a member of the Tribunal or the Registrar, require the attendance before the Tribunal of any person;

(b) by summons signed on behalf of the Tribunal by a member of the Tribunal or the Registrar, require the production of any books, papers or documents;

(c) inspect any books, papers or documents produced before it, retain them for such reasonable period as it thinks fit and make copies of any of them, or of any of their contents;

(d) require any person to make oath or affirmation that he will truly answer all questions put to him by the Tribunal relating to any matter being inquired into by the Tribunal (which oath or affirmation may be administered by a member of the Tribunal);

or

(e) require any person appearing before the Tribunal, including the person whose conduct is subject to an inquiry (whether he has been summoned to appear or not) to answer any relevant questions put to him by any member of the Tribunal, or by any other person appearing before the Tribunal.

(2) Subject to subsection (3), if any person

(a) who has been served with a summons to attend before the Tribunal fails without reasonable excuse to attend in obedience to the summons;

(b) who has been served with summons to produce any books, papers or documents fails without reasonable excuse to comply with the summons;

(c) misbehaves before the Tribunal, wilfully insults the Tribunal or any member of the Tribunal, or interrupts the proceedings of the Tribunal;

or

(d) refuses to be sworn or to affirm, or to answer any question, when required to do so by the Tribunal,

he shall be guilty of an offence and liable to a penalty not exceeding two thousand dollars.

(3) A person shall not be obliged to answer a question put to him under this section if the answer to that question would tend to incriminate him, or to



produce any books, papers or documents if their contents would tend to incriminate him.

(4) In the course of any proceedings the Tribunal may

(a) receive in evidence the transcript of evidence in proceedings before a court or tribunal and draw any conclusions of fact from that evidence as it considers proper;

or

(b) adopt, as in its discretion it considers proper, any findings, decision of judgment of a court or tribunal that may be relevant to the proceedings.

(5) In any proceedings before the Tribunal

(a) the Tribunal shall not be bound by the rules of evidence and may inform itself upon any matter in any manner it thinks fit;

and

(b) the Tribunal shall act according to equity, good conscience and the substantial merits of the case, without regard to technicalities and legal forms.

20. (1) If before or during the bearing of any proceedings under this Act it appears to the Tribunal either from the nature of the case or from the attitude of the parties that there is a reasonable possibility of the matters in dispute between the parties being settled by conciliation, one or more members of the Tribunal may

(a) interview the parties (either with or without any person who may be representing any of them);

and

(b) endeavour to bring about a settlement of the proceedings on terms that are fair to all parties.

(2) Nothing said or done in the course of any attempt to settle proceedings under this section shall subsequently be given in evidence in any proceedings, nor shall a member of the Tribunal involved in the attempt be thereby disqualified from sitting to continue the bearing of the proceedings.

(3) Where proceedings are settled under this section, the Tribunal may embody the terms of the settlement in an order.

21. (1) There shall be a Registrar of the Tribunal.

(2) The Registrar shall be appointed, and shall hold office, subject to and in accordance with the Public Service Act, 1967-1978.

(3) The office of Registrar may be held in conjunction with any other office in the Public Service of the State.

### **PART III- DISCRIMINATION TO WHICH ACT APPLIES**

22. (1) A person discriminates against another on the ground of his physical impairment if, on the ground of that impairment, he treats the other person less favourably than in identical or similar circumstances he treats or would treat a person who does not have such an impairment.

(2) A person discriminates against another on the ground of his physical impairment if he discriminates against him on the basis of a characteristic that appertains generally to persons who have such an impairment, or a presumed characteristic that is generally imputed to persons who have such an impairment.

(3) A person discriminates against another on the ground of his physical impairment if he discriminates against him by reason of the fact that he does not comply, or is not able to comply, with a requirement and

(a) the nature of the requirement is such that a substantially higher proportion of persons who do not have such an impairment complies, or is able to comply, with the requirement than of those persons who have such an impairment;

and

(b) the requirement is not reasonable in the circumstances of the case.

(4) A person discriminates against a person who is blind, or partially blind, on the ground of his physical impairment if he discriminates against him by reason of the fact that he possesses, or is accompanied by, a guide dog, or by reason of any matter related to that fact, whether or not it is the normal practice of that first mentioned person to discriminate against any person who possesses, or is accompanied by, a dog.

(5) A person does not discriminate against another on the ground of his physical impairment by reason of the fact

(a) that the premises, or any part of the premises, on or from which he conducts any business, performs any service or carries on any other

activity to which this Act relates is so constructed that it is inaccessible to that other person as a result of his impairment;

or

(b) that he fails to provide premises every part of which, or a particular part of which, is accessible to that other person.

23. (1) A person commits an act of victimization if he discriminates in any manner against another ("the person victimized") on the ground that he has

(a) brought proceedings against him under this Act;

(b) given evidence or information in connection with proceedings brought by any person against him under this Act;

(c) otherwise done anything under or by reference to this Act; or

(d) reasonably asserted his rights or the rights of some other person under this Act,

or by reason of the fact that he knows the person victimized intends to do any of those things, or suspects the person victimized has done, or intends to do, any of them.

(2) Discrimination against a person on the ground that

(a) he has made a false allegation;

or

(b) he has not acted in good faith, does not constitute an act or victimization.

#### **PART IV**

#### **DISCRIMINATION IN EMPLOYMENT**

#### **DIVISION I-DISCRIMINATION BY EMPLOYERS**

24. This Division does not prevent discrimination on the ground of physical impairment if the person suffering from the impairment is not, or would not be, able to

- a. perform adequately, and without endangering himself or other persons, the work genuinely and reasonably required for the employment or position in question;

or

- (b) respond adequately to situations of emergency that should reasonably be anticipated in connection with the employment or position in question.

25. (1) It is unlawful for an employer to discriminate against a person on the ground of his physical impairment

- a. in determining who should be offered employment;

or

- (b) in the terms on which he offers employment

(2) It is unlawful for an employer to discriminate against an employee on the ground of his physical impairment

- a. by denying him access, or limiting his access, to opportunities for promotion, transfer or training, or to any other benefits connected with employment;

or

- (b) by dismissing him, or subjecting him to any other detriment.

(3) This section does not apply to employment within a private household.

**26.** (1) This section applies to a person ("the principal") for whom work is done by agents remunerated by commission.

(2) It is unlawful for the principal to discriminate against a person on the ground of his physical impairment

- (a) in determining who should be engaged as an agent;

or

- (b) in the terms on which he engages him as an agent.

(3) It is unlawful for the principal to discriminate against an agent on the ground of his physical impairment

- a. by denying him access, or limiting his access, to opportunities for promotion, transfer or training or any other benefits connected to his position as an agent;

or

- (b) by terminating his engagement, or subjecting him to any other detriment.

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

(2) It is unlawful for a principal to enter into any contract or arrangement with an employer of contract workers under which the employer is to discriminate against a person on the ground of physical impairment.

(3) It is unlawful for the principal to discriminate against a contract worker on the ground of his physical impairment

- (a) by denying him access, or limiting his access, to any benefit connected with employment;

or

- (b) by subjecting him to any other detriment.

28. (1) It is unlawful for a firm consisting of one or more members, or for one or more persons promoting the formation of a firm, to discriminate against a person on the ground of his physical impairment

- (a) in determining who should be offered a position as partner in the firm;

or

- (b) in the terms on which that person is offered a position as partner in the firm.

(2) It is unlawful for a firm consisting of two or more partners to discriminate against a partner on the ground of his physical impairment

- (a) by denying him access, or limiting his access, to any benefit arising from membership of the firm;

or

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

#### **DIVISION II-DISCRIMINATION BY OTHERBODIES**

29. (1) This section applies to an association established for any purpose whatsoever.

(2) It is unlawful for an association to which this section applies to discriminate against a person who is not a member of the association on the ground of his physical impairment

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

or

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

(3) It is unlawful for an association to which this section applies to discriminate against a person who is a member of the association on the ground of his physical impairment

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

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

or

(c) by subjecting him to any other detriment.

30. (1) It is unlawful for an authority or body empowered to confer an authorization or qualification that is needed for, or facilitates, the practice of a profession, or the carrying on of a trade, to discriminate against a person on the ground of his physical impairment

a. by refusing, or failing, to confer that authorization or qualification;

b. in the terms on which it confers the authorization or qualification;

or

c. by withdrawing the authorization or qualification, or varying the terms upon which it is held.

(2) This section does not apply to discrimination on the ground of the physical impairment of a person where, in consequence of his impairment, he would not be able to practise the profession, or carry on the trade, adequately or safely.

31. It is unlawful for an employment agency to discriminate against a person on the ground of his physical impairment

(a) by denying him any of its services;

or

(b) in the terms on which it provides its services.

#### **PART V**

#### **DISCRIMINATION IN OTHER FIELDS**

#### **DIVISION I-EDUCATION**

32. (1) It is unlawful for an educational authority to discriminate against a person on the ground of his physical impairment

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

or

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

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

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

or

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

#### **DIVISION II-GOODS, SERVICES AND ACCOMMODATION**

33. (1) It is unlawful for a person who offers or provides

a. goods;

or

(b) services to which this section applies,

(whether for payment or not) to the public, or a section of the public, to discriminate against a person on the ground of his physical impairment

(c) by refusing or failing to supply the goods or perform the services;

or

(d) in the terms on which or the manner in which he supplies the goods or performs the services.

(2) The following are the services to which this section applies:

- a. access to and use of any place that members of the public are permitted to enter;
- b. banking, the provision of credit, or insurance;
- c. entertainment, recreation or refreshment;
- d. services connected with transportation or travel;
- e. services of any profession or trade;
- f. services provided by any public authority or municipal or district council.

(3) Where the nature of a skill varies according to whether it is exercised in relation to persons who have a particular physical impairment and those who do not have such an impairment, a person does not contravene subsection (1) by exercising the skill in relation to only those persons who have a particular physical impairment, or only those who do not have such an impairment, in accordance with his normal practice.

(4) This section does not apply to discrimination against a person on the ground of his physical impairment in relation to the performance of a service where, in consequence of his impairment, he requires the service to be performed in a special manner

- a. that cannot reasonably be provided by the person performing the service;

or

(b) that can, on reasonable grounds, only be provided by the person performing the service on more onerous terms.

34. (1) It is unlawful for a person to discriminate against a person on the ground of his physical impairment

(a) in the terms on which he offers him accommodation;

(b) by refusing his application for accommodation; or



(c) by deferring his application, or according him a lower order of precedence on any list of applicants for that accommodation.

(2) It is unlawful for a person to discriminate against a person for whom accommodation has been provided on the ground of his physical impairment

- a. by denying him access, or limiting his access, to any benefit connected with the accommodation; or
- b. by evicting him or subjecting him to any other detriment.

#### **PART VI**

#### **OTHER UNLAWFUL ACTS**

35. Subject to this Act

(a) it shall be unlawful to impose any condition or requirement that would result in a person who is blind, or partially blind, being separated from his guide dog;

and

(b) a person who imposes any such condition or requirement shall, in addition to any civil liability that he might incur by so doing, be guilty of an offence and liable to a penalty not exceeding one thousand dollars.

36. It is unlawful for a person to commit an act of victimization.

37. Where a person causes, instructs, induces or aids another to act in contravention of this Act, both shall be jointly and severally liable to any criminal or civil liability arising under this Act in respect of the contravention.

38. Where a person acts on behalf of another either as his agent or employee, the person on behalf of whom the act was committed shall, unless he took reasonable precautions to ensure that the agent or employee would not act in contravention of this Act, be jointly and severally liable with the agent or employee for any criminal or civil liability arising under this Act in respect of that discriminatory act.

#### **PART VII**

#### **GENERAL EXCEPTIONS**

39. This Act does not affect discriminatory rates of salary, wages, or other remuneration

40. This Act does not in any way prevent a person from doing any act for the purpose of assisting a person who has a physical impairment to participate in the economic or social life of the community.

41. This Act does not

(a) affect a provision in a charitable instrument for conferring benefits wholly or mainly on persons who have a particular physical impairment;

or

(b) render unlawful an act which is done in order to give effect to such a provision.

42. This Act does not render unlawful discrimination against a person on the ground of his physical impairment where the discriminatory act is done for the purpose of carrying out a scheme or undertaking for the benefit of persons who have a different physical impairment.

43. This Act does not render unlawful discrimination against a person on the ground of his physical impairment where the discriminatory act is based upon the fact that the person, in consequence of his impairment, requires special assistance or equipment that cannot reasonably be provided by the person acting discriminatorily.

44. This Act does not render unlawful discrimination on the ground of physical impairment in the terms on which an annuity, life assurance policy, accident insurance policy or other policy of insurance is offered or may be obtained, or in the terms or conditions appertaining to a superannuation or provident fund or scheme, where

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

or

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

45. Except as provided in section 58

(a) this Act does not derogate from the provisions of any other Act or of the regulations under any other Act;

and

(b) in case of conflict between the provisions of this Act and the provisions of any other Act or of regulations under any other Act, the latter shall prevail.

46. (1) The Tribunal may, by notice published in the *Gazette*, grant exemptions from any of the provisions of this Act in relation to

- a. a person, or class of persons;
- b. an activity, or class of activity;

or

(c) any circumstances of a specified nature.

(2) An exemption under this section shall remain in force for a period, not exceeding three years, specified in the notice but may be renewed from time to time by the Tribunal for a successive period not exceeding three years.

## **PART VIII**

### **ENFORCEMENT OF THIS ACT**

#### DIVISION I-NON-DISCRIMINATION ORDERS

47. (1) The Tribunal may, on the application of the Minister, hold an inquiry to determine whether a person has contravened or is contravening any provision of this Act.

(2) A single inquiry may be held under this section in relation to several allegations or matters of the same or a similar nature.

(3) The Tribunal may, for the purposes of an inquiry under this section

- a. instruct the Commissioner;

or

- b. engage some other suitable persons,

to conduct an investigation that will, in the opinion of the Tribunal, assist it to resolve the matters subject to the inquiry.

(4) Where, after holding an inquiry under this section, the Tribunal is satisfied that a person has in fact contravened a provision of this Act, it may

- (a) make an order requiring him to refrain from acting in contravention of this Act;

or

(b) make an order that he perform any acts specified in the order with a view to eliminating future contravention of this Act, or redressing circumstances that have arisen from contravention of this Act. .

(5) A person who contravenes, or fails to comply with, an order under this section, shall be guilty of an offence and liable to a penalty not exceeding two thousand dollars.

## DIVISION II-ENFORCEMENT OF PERSONAL REMEDIES

48. (1) A person who claims that some other person has acted in contravention of this Act in relation to him, may lodge with the Commissioner a written complaint setting out details of the alleged contravention.

(2) A complaint must be lodged within six months after the date on which the contravention the subject of the complaint is alleged to have been committed.

49. (1) Where in the opinion of the Commissioner a complaint that has been lodged with him is frivolous, vexatious, misconceived or lacking in substance, the Commissioner may, by notice in writing addressed to the complainant, decline to entertain the complaint.

(2) Where the Commissioner is of the opinion that the subject matter of the complaint (other than a complaint that he has declined to entertain) may be resolved by conciliation, he shall make all reasonable endeavours to resolve the matter by conciliation.

(3) The Commissioner may, by instrument in writing, require the person who is alleged to have contravened this Act to attend before him for the purpose of discussing the subject matter of the complaint.

(4) A person who refuses or fails to comply with a requirement of the Commissioner under this section shall be guilty of an offence and liable to a penalty not exceeding two thousand dollars.

(5) Where the Commissioner

- a. is of the opinion that the subject matter of a complaint cannot be resolved by conciliation;
- b. has attempted to resolve the matter by conciliation but has not been successful in that attempt;

or

(c) has declined to entertain a complaint and the complainant has, by notice in writing, required him to refer the complaint to the Tribunal,

he shall refer the complaint to the Tribunal.

(6) Where any complaint is referred to the Tribunal (other than a complaint so referred in pursuance of subsection (5) (c)) the Commissioner shall, if the complainant requests him to do so, either personally, or by counsel or representative, assist the complainant in the presentation of his case to the Tribunal.

(7) Evidence of anything said or done in the course of conciliation proceedings under this section shall not be admissible in subsequent proceedings under this Act relating to the complaint.

50. (1) Where a complaint has been referred by the Commissioner to the Tribunal, the Tribunal shall proceed to hear and determine the complaint.

(2) The Tribunal, after hearing any evidence and representations that the complainant and the respondent desire to adduce or make, may exercise any of the following powers:

- a. it may order the respondent to pay to the complainant such amount as the Tribunal thinks fit by way of compensation for the loss (if any) suffered by the complainant in consequence of the contravention of this Act;
- b. it may order the respondent to refrain from any further contravention of this Act in relation to the complainant;
- c. it may order the respondent to perform any acts specified in the order with a view to redressing any loss or damage suffered by the complainant as a result of the contravention;
- d. it may order that the complaint be dismissed.

(3) The Tribunal may, at any stage of proceedings under this section, make an interim order to prevent a party to the proceedings from acting in a manner prejudicial to any decision or order that the Tribunal might subsequently make.

(4) A person who contravenes or fails to comply with an order under this section shall be guilty of an offence and liable to a penalty not exceeding two thousand dollars.

(5) Where the Commissioner is required by a complainant to refer a complaint to the Tribunal, and the Tribunal after hearing the complaint considers that it is frivolous, vexatious, misconceived or lacking in substance, it may order the complainant to pay to the respondent a sum fixed by the Tribunal to compensate him for the cost, time and trouble expended by him in relation to the proceedings before the Tribunal.

(6) Any amount that a person is ordered to pay under this section may be recovered from him as a debt in a court of competent jurisdiction.

### **DIVISION III-APPEALS**

51. The Tribunal shall, if so required by any party to proceedings under this Part, state its reasons for any decision or order that it makes in those proceedings.

52. (1) A person who is aggrieved by a decision or order of the Tribunal made in relation to him in any proceedings under this Part may appeal to the Supreme Court against that decision or order.

(2) An appeal must be instituted within one month of the making of the decision or order appealed against.

(3) If the reasons of the Tribunal are not given in writing at the time of the making of a decision or order, and the appellant then requested the Tribunal to state its reasons in writing, the time for instituting the appeal shall run from the time when the appellant receives the written statement of those reasons.

(4) An appeal under this section shall not be conducted as a re-hearing of the matter that was before the Tribunal.

(5) The Supreme Court may, on the bearing of the appeal, exercise one or more of the following powers:

- a. affirm, vary or quash the decision or order appealed against, or substitute, or make in addition, any decision or order that should have been made in the first instance;
- b. remit the subject matter of the appeal to the Tribunal to further hearing or consideration or for re-hearing;
- c. make any order as to costs or any other matter that the justice of the case requires.

### **PART IX**

#### **MISCELLANEOUS**

53. A contravention of this Act shall attract no sanction or consequence whether criminal or civil) except to the extent expressly provided by this Act..

54. (1) A person shall not publish or cause to be published an advertisement that indicates an intention to do any act that is unlawful by virtue of this Act.

Penalty: One thousand dollars.

(2) In any proceedings for an offence against subsection (1), it shall be a defence for a person who published an advertisement in contravention of that subsection to prove that he believed on reasonable grounds that the publication of the advertisement would not contravene that subsection.

55. A person shall not molest, wilfully insult, hinder or obstruct the Commissioner, or any officer assisting the Commissioner, in the exercise or discharge by the Commissioner or the officer of his powers or duties under this Act.

Penalty: Two thousand dollars.

56. Proceedings for an offence against this Act shall be disposed of summarily.

57. (1) Subject to this section, it shall be a defence in any proceedings under this Act (whether of a civil or criminal nature) for the defendant to prove

- a. that the act or omission forming the subject matter of the charge, complaint, claim or inquiry was done, or made, in accordance with written advice furnished to the defendant by the Commissioner;

and

- (b) that the Commissioner had not, by notice in writing served personally or by post on the defendant, retracted that advice before the date of the act or omission in question.

(2) Where a person proposes to act upon the advice of the Commissioner to the detriment of another, he shall at least seven days before so doing

- a. notify that other person of the action that he proposes to take against him;

and

- (b) furnish him with a copy of the advice upon which he proposes to act together with a statement in the prescribed form, of his rights under subsection (3),

and if he fails to do so he shall not be entitled to rely on the defence provided by subsection (1).

(3) A person may, within seven days after receiving a notification under subsection (2), apply to the Tribunal for a declaration as to whether the advice of the Commissioner is correct.

(4) The period limited by subsection (3) for the making of an application for a declaration is not capable of extension under the provisions of any other Act.

(5) The Registrar shall cause a copy of an application under subsection (3) to be served personally or by post upon the Commissioner and the person to whom he furnished the advice.

(6) Where a person to whom advice is furnished by the Commissioner acts upon that advice before an application for a declaration under this section in relation to the advice is determined, the defence provided by subsection (1) shall be available to that person in any proceedings under this Act in respect of his action, if the Tribunal declares that the advice is correct or if the application is withdrawn or dismissed, but shall not be available in any such proceedings if the Tribunal declares that the advice is incorrect.

(7) Where in any proceedings under this section the Tribunal declares that advice furnished by the Commissioner is incorrect, the advice shall, for the purposes of subsection (1), be deemed to have been retracted on the date of the commencement of those proceedings.

58. (1) Nothing in this Act prevents a person who has been dismissed from his employment from bringing proceedings in respect of that dismissal under section 15 (1) (e) of the *Industrial Conciliation and Arbitration Act, 1972-1979*.

(2) Where a person brings proceedings under section 15 (1) (e) of the *Industrial Conciliation and Arbitration Act, 1972-1979*, in respect of dismissal from employment, and those proceedings are determined, he shall not institute or prosecute proceedings under this Act in respect of the dismissal.

(3) Subsection (2) does not apply where the proceedings under the *Industrial Conciliation and Arbitration Act, 1972-1979*, are dismissed on a ground that does not relate to the physical impairment of the person.

(4) Where a person brings proceedings under this Act in respect of dismissal from employment, and those proceedings are determined, he shall not institute or prosecute proceedings under section 15 (1) (e) of the *Industrial Conciliation and Arbitration Act, 1972-1979*, in respect of the dismissal.

(5) Subsection (4) does not apply where the proceedings under the *Industrial Conciliation and Arbitration Act, 1972-1979*, do not relate to the physical impairment of the person.

59. (1) The Governor may make such regulations as are necessary or expedient for the purposes of this Act.

(2) Without limiting the generality of subsection (1), those regulations may

- a. prescribe any form for the purposes of this Act;
- b. regulate the practice and procedure of the Tribunal;



- c. prescribe a penalty not exceeding two hundred dollars for breach of, or non-compliance with, any regulation.