

**ANTI-DISCRIMINATION (AMENDMENT) ACT,
1980, No. 67**

New South Wales



ANNO VICESIMO NONO

ELIZABETHÆ II REGINÆ

Act No. 67, 1980.

An Act to amend the Anti-Discrimination Act, 1977, to make provision with respect to equal opportunity in public employment. [Assented to, 28th April, 1980.]

See also Defamation (Anti-Discrimination) Amendment Act, 1980; Statutory and Other Offices Remuneration (Anti-Discrimination) Amendment Act, 1980; and Anti-Discrimination (Education Commission) Amendment Act, 1980.

Anti-Discrimination (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

Short title. **1.** This Act may be cited as the "Anti-Discrimination (Amendment) Act, 1980".

Amendment of Act No. 48, 1977. **2.** The Anti-Discrimination Act, 1977, is amended—

(a) (i) by omitting from section 3 from the matter relating to Part VI the words "PARTS II TO IV" and by inserting instead the words "THIS ACT";

Sec. 3. (Division of Act.) (ii) by inserting in section 3 after the matter relating to Part IX the following matter :—

PART IXA.—EQUAL OPPORTUNITY IN PUBLIC EMPLOYMENT—ss. 122A–122S.

DIVISION 1.—*General*—ss. 122A–122D.

DIVISION 2.—*The Director of Equal Opportunity in Public Employment*—ss. 122E–122I.

DIVISION 3.—*Equal Employment Opportunity Management Plans*—ss. 122J–122S.

Sec. 4. (Interpretation.) (b) by inserting after the definition of "Counsellor" in section 4 (1) the following definition :—

"Director" means the Director of Equal Opportunity in Public Employment;

Heading to Pt. VI. (c) by omitting from the heading to Part VI the words "PARTS II TO IV" and by inserting instead the words "THIS ACT";

Part IXA. (d) by inserting after Part IX the following Part :—

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PART IXA.

EQUAL OPPORTUNITY IN PUBLIC EMPLOYMENT.

DIVISION 1.—*General.*

122A. In this Part—

Interpre-
tation:
Pt. IXA.

“authority” means a person, group of persons or body specified in section 122B (1) (a), (b) or (c) or the subject of a proclamation pursuant to section 122B (1) (d);

“investigation” means an investigation under section 122N (1);

“management plan” means an equal employment opportunity management plan referred to in section 122J (1);

“race” has the same meaning in and for the purposes of this Part as, pursuant to section 6, it has in and for the purposes of Part II;

“reference” means a matter which has been referred to the Board by the Director under section 122M.

122B. (1) This Part applies to and in respect of :— Application of Pt. IXA—
authorities.

(a) each Department specified in Column 1 of Schedule 1 to the Public Service Act, 1979, including, in relation to the Department of Education, the Teaching Service within the meaning of the Teaching Service Act, 1970, and each Administrative Office within the meaning of the Public Service Act, 1979;

(b) each declared authority within the meaning of the Public Service Act, 1979;

(c) the police force of New South Wales within the meaning of the Police Regulation Act, 1899; and

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- (d) such persons, groups of persons or bodies as the Governor may, by proclamation published in the Gazette, declare to be authorities to which this Part applies.

(2) The Governor may, by proclamation published in the Gazette, declare that a proclamation made pursuant to subsection (1) (d) has ceased to have effect.

Objects.

122c. The objects of this Part are—

- (a) to eliminate and ensure the absence of discrimination in employment on the grounds of race, sex and marital status; and
- (b) to promote equal employment opportunity for women and members of racial minorities,

in the authorities to which this Part applies.

Exercise of functions of authorities under Pt. IXA.

122D. The functions of an authority to which this Part applies, being the functions conferred or imposed on the authority by or under this Part, shall be exercised—

- (a) in the case of an authority referred to in section 122B (1) (a)—by the Department Head within the meaning of the Public Service Act, 1979, including, in relation to the Teaching Service within the meaning of the Teaching Service Act, 1970, the Director-General of Education;
- (b) in the case of an authority referred to in section 122B (1) (b)—by the authority;
- (c) in the case of the authority referred to in section 122B (1) (c)—by the Commissioner of Police; and

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- (d) in the case of an authority the subject of a proclamation under section 122B (1) (d)—
- (i) except as provided by subparagraph (ii)—by the authority; or
 - (ii) where in the proclamation the Governor specifies a person as being the person by whom the functions conferred or imposed on the authority by or under this Part shall be exercised—by the person so specified.

DIVISION 2.—*The Director of Equal Opportunity in Public Employment.*

122E. There shall be a Director of Equal Opportunity in Public Employment. The Director.

122F. The Director shall be appointed by the Governor, on the recommendation of the Minister, on such terms and conditions as are specified in the instrument of appointment. Appointment of Director.

122G. Subject to this Act, the Director holds office for such period, not exceeding 4 years, as is specified in the instrument of his appointment and is eligible for re-appointment. Term of office.

122H. Sections 63–69 apply to and in respect of the appointment and office of the Director in the same way as they apply to and in respect of the appointment and office of the Counsellor. Other provisions relating to the Director.

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Functions.

122i. (1) The functions of the Director are—

- (a) to advise and assist authorities in relation to management plans;
- (b) to evaluate the effectiveness of management plans in achieving the objects of this Part; and
- (c) to make reports and recommendations, at least once in each year, to the Minister as to—
 - (i) the operation of management plans; and
 - (ii) such matters as the Director thinks appropriate relating to the objects of this Part.

(2) The Director may exercise such other functions as are conferred or imposed on him by or under this Part.

(3) The Director may, in the exercise of his functions, consult, as he thinks fit, with persons or bodies, including the Ethnic Affairs Commission of New South Wales, who are concerned with the welfare of women or members of racial minorities.

(4) The Director may do all such supplemental, incidental and consequential acts as may be necessary or expedient for the exercise of his functions.

DIVISION 3.—*Equal Employment Opportunity Management Plans.*

Prepara-
tion and
implemen-
tation of
management
plans.

122j. (1) Each authority shall prepare and implement an equal employment opportunity management plan in order to achieve the objects of this Part.

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(2) The management plan of an authority shall include provisions relating to—

- (a) the devising of policies and programmes by which the objects of this Part are to be achieved;
- (b) the communication of those policies and programmes to persons within the authority;
- (c) the collection and recording of appropriate information;
- (d) the review of personnel practices within the authority (including recruitment techniques, selection criteria, training and staff development programmes, promotion and transfer policies and patterns, and conditions of service) with a view to the identification of any discriminatory practices;
- (e) the setting of goals or targets, where these may reasonably be determined, against which the success of the management plan in achieving the objects of this Part may be assessed;
- (f) the means, other than those referred to in paragraph (e), of evaluating the policies and programmes referred to in paragraph (a);
- (g) the revision and amendment of the management plan; and
- (h) the appointment of persons within the authority to implement the provisions referred to in paragraphs (a)–(g).

(3) The management plan of an authority may include provisions, other than those referred to in subsection (2), which are not inconsistent with the objects of this Part.

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(4) The preparation of a management plan shall take place and the implementation of the management plan shall commence—

- (a) in the case of an authority referred to in section 122B (1) (a)—on or before 1st September, 1981;
- (b) in the case of an authority referred to in section 122B (1) (b) or (c)—on or before 1st March, 1982; and
- (c) in the case of an authority the subject of a proclamation under section 122B (1) (d)—on or before such date as is specified in the proclamation.

(5) An authority may, from time to time, amend its management plan.

(6) Each authority shall send a copy of its management plan or any amendment thereto to the Director as soon as practicable after the management plan or the amendment, as the case may be, has been prepared.

Inconsistencies.

122k. (1) The provisions of a management plan shall, to the extent of any inconsistency between those provisions and the provisions of this Act, prevail.

(2) Subsection (1) does not apply to or in respect of the provisions of a management plan which are the subject of a reference.

Annual report to Director.

122L. (1) Each authority shall report to the Director at least once in each year after the date on which the implementation of its management plan commenced.

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(2) A report under subsection (1) shall specify—

(a) the activities and programmes undertaken—

(i) to eliminate and ensure the absence of discrimination in employment on the grounds of race, sex and marital status; and

(ii) to promote equal employment opportunity for women and members of racial minorities,

during the period to which the report relates;

(b) the results achieved by the activities and programmes referred to in paragraph (a), including redistributive effects in the workforce; and

(c) the proposed activities and specific aims set for the year following the period to which the report relates.

122M. Where the Director is dissatisfied with any matter relating to the preparation or implementation of a management plan by an authority or any failure or omission of an authority with respect to the preparation or implementation of a management plan, the Director may refer the matter to the Board. References.

122N. (1) The Board shall endeavour to determine a reference and may, for that purpose, hold an investigation into the reference. Investigation.

(2) Except as otherwise provided by this Part, an investigation shall be held in such manner as the Board determines.

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Represent-
tation.

122o. The Director or an authority in respect of which a reference is made is not entitled to be represented by counsel or a solicitor during the holding of an investigation into the reference.

Powers of
the Board
on an
investigation.

122p. (1) For the purposes of an investigation, the Board may require the Director and an authority—

- (a) to answer any question;
- (b) to give it a statement of information;
- (c) to produce to it any document or other thing;
or
- (d) to give it a copy of any document.

(2) A requirement under subsection (1)—

- (a) shall be in writing;
- (b) shall specify or describe the information, document or thing required; and
- (c) shall specify a time for compliance.

(3) The Director or an authority of whom a requirement under subsection (1) is made shall comply with the requirement notwithstanding—

- (a) any rule of law which, in proceedings in a court of law, might justify an objection to compliance with a like requirement on grounds of public interest;
- (b) any privilege of the Director or authority; or
- (c) any duty of secrecy or other restriction on disclosure applying to the Director or authority.

(4) Notwithstanding subsection (3), the Board shall set aside a requirement under subsection (1) if it appears to it that the Director or authority of whom the requirement is made has a ground of privilege

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whereby, in proceedings in a court of law, the Director or authority, as the case may be, might resist a like requirement and it does not appear to the Board that the Director or authority, as the case may be, consents to compliance with the requirement.

122Q. (1) Where, under section 122P, a person is required to give a statement that tends to incriminate that person, neither the requirement nor the statement may be used in any proceedings against that person except proceedings under section 124. Incrimina-
tory
statements.

(2) Subsection (1) applies whether the person required to give a statement objects to giving it or not.

122R. At the conclusion of an investigation in relation to a reference, the Board may do either or both of the following :— Conclusion
of investiga-
tion.

- (a) make recommendations to the Director or to the authority in respect of which the reference is made;
- (b) furnish a report, with or without recommendations, to the Minister in relation to the reference.

122s. (1) On receipt of a report from the Board under section 122R (b), the Minister may, by instrument in writing, direct an authority to amend its management plan in the manner specified in the instrument. Direction
to amend
management
plan.

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(2) An authority shall comply with a direction given to it by the Minister under subsection (1).

Sec. 124.
(Obstruction.)

- (e) by omitting from section 124 the words “or a member of the Board” and by inserting instead the words “, a member of the Board, the Director or an officer of the Director”.
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