

**Reprint  
as at 26 November 2018**



## **Human Rights Act 1993**

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Date of assent      10 August 1993  
Commencement      see section 1(2)

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**Note**

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.  
Note 4 at the end of this reprint provides a list of the amendments incorporated.

**This Act is administered by the Ministry of Justice.**

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	<i>[Repealed]</i>	

**An Act to consolidate and amend the Race Relations Act 1971 and the Human Rights Commission Act 1977 and to provide better protection of human rights in New Zealand in general accordance with United Nations Covenants or Conventions on Human Rights**

**1 Short Title and commencement**

- (1) This Act may be cited as the Human Rights Act 1993.

- (2) This Act shall come into force on 1 February 1994.

## 2 Interpretation

- (1) In this Act, unless the context otherwise requires,—

**act** includes an activity, condition, enactment, policy, practice, or requirement

**actuary** means—

- (a) a person who is a Fellow of the New Zealand Society of Actuaries Incorporated; or
- (b) a person whom the Commission or the Complaints Division, as the case may be, considers to have an equivalent professional qualification

**Chief Commissioner** means the Commissioner appointed as the Chief Human Rights Commissioner

**Commission** means the Human Rights Commission continued by section 4 and includes the Office of Human Rights Proceedings

**Commissioner** means a member of the Commission

**Director of Human Rights Proceedings** or **Director** means the Director of Human Rights Proceedings or alternate Director of Human Rights Proceedings appointed under section 20A

**dispose**, in sections 53 and 54, includes sell, assign, lease, let, sublease, sublet, license, or mortgage, and agree to dispose

**dispute resolution meeting** means a meeting of the kind referred to in section 77(2)(c)

**dispute resolution services** includes the provision of answers to questions by members of the public about discrimination and compliance with this Act

**employer**, in Part 2, includes—

- (a) the employer of an independent contractor; and
- (b) the person for whom work is done by contract workers under a contract between that person and the person who supplies those contract workers; and
- (c) the person for whom work is done by an unpaid worker

**employment agreement** has the meaning given to that term by section 5 of the Employment Relations Act 2000

**employment contract** has the meaning given to that term by section 2 of the Employment Contracts Act 1991

**general manager** means the general manager of the Commission appointed by the Chief Commissioner under section 18; and includes any acting general manager of the Commission

**Human Rights Review Tribunal** or **Tribunal** means the Tribunal continued by section 93

**Minister** means the Minister of Justice

**Office of Human Rights Proceedings** or **Office** means the office referred to in section 20

**prohibited ground of discrimination** has the meaning given to it by section 21

**relative**, in relation to any person, means any other person who—

- (a) is related to the person by blood, marriage, civil union, de facto relationship, affinity, or adoption; or
- (b) is wholly or mainly dependent on the person; or
- (c) is a member of the person's household

**residential accommodation**, in sections 53 and 54, includes accommodation in a dwellinghouse, flat, hotel, motel, boardinghouse, or camping ground

**superannuation scheme** means any superannuation scheme, fund, or plan, or any provident fund, set up to confer, on its members or other persons, retirement or other benefits, such as accident, disability, sickness, or death benefits

**trustees**, in relation to a superannuation scheme, includes the person or persons appointed to administer a superannuation scheme constituted under an Act of Parliament of New Zealand.

- (2) Unless the context otherwise requires, every reference in this Act to a complaint alleging a breach of 1 or more Parts of this Act includes a complaint that appears to allege or concern such a breach (whether or not it refers to the relevant Part in question).
- (3) Unless the context otherwise requires, every reference in this Act to a person against whom a complaint is made includes a body of any kind against whom a complaint is made.

Compare: 1977 No 49 ss 2, 15(13), 25(5); 1983 No 56 s 4(4); 1992 No 16 s 2(3); 1993 No 35 s 3(3)

Section 2: substituted, on 1 January 2002, by section 3 of the Human Rights Amendment Act 2001 (2001 No 96).

Section 2(1) **actuary**: inserted, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 2(1) **Chief Commissioner**: amended, on 15 June 2016, by section 5(1) of the Human Rights Amendment Act 2016 (2016 No 28).

Section 2(1) **Commission**: amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 2(1) **Equal Employment Opportunities Commissioner**: repealed, on 15 June 2016, by section 5(2) of the Human Rights Amendment Act 2016 (2016 No 28).

Section 2(1) **Race Relations Commissioner**: repealed, on 15 June 2016, by section 5(2) of the Human Rights Amendment Act 2016 (2016 No 28).

Section 2(1) **relative** paragraph (a): amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

**2A Transitional, savings, and related provisions**

The transitional, savings, and related provisions set out in Schedule 1AA have effect according to their terms.

Section 2A: inserted, on 15 June 2016, by section 4 of the Human Rights Amendment Act 2016 (2016 No 28).

**3 Act to bind the Crown**

This Act shall bind the Crown.

Compare: 1971 No 150 s 2; 1977 No 49 s 3

## **Part 1**

### **Human Rights Commission**

**4 Continuation of Human Rights Commission**

- (1) There shall continue to be a Human Rights Commission, which shall be the same body as the Human Rights Commission established under section 4 of the Human Rights Commission Act 1977.
- (2) The Commission is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004.
- (3) The Crown Entities Act 2004 applies to the Commission except to the extent that this Act expressly provides otherwise.
- (4) Despite anything in any other Act, the powers of the Commission under sections 16 and 17 of the Crown Entities Act 2004 may be exercised only—
  - (a) by persons authorised by or under this Act or the Crown Entities Act 2004 to perform functions of the Commission, for the purposes of performing those functions; or
  - (b) by the Director of Human Rights Proceedings, his or her alternate, or the staff of the Office of Human Rights Proceedings (acting in accordance with directions issued by the Director or his or her alternate), for the purposes of exercising or performing a function, power, or duty of the Director under this Act.

Compare: 1977 No 49 s 4

Section 4(2): substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 4(3): substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 4(4): added, on 1 January 2002, by section 4 of the Human Rights Amendment Act 2001 (2001 No 96).

Section 4(4): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 4(4)(a): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

*Functions and powers of Commission*

Heading: substituted, on 1 January 2002, by section 5 of the Human Rights Amendment Act 2001 (2001 No 96).

**5 Functions of Commission**

- (1) The primary functions of the Commission are—
  - (a) to advocate and promote respect for, and an understanding and appreciation of, human rights in New Zealand society; and
  - (b) to encourage the maintenance and development of harmonious relations between individuals and among the diverse groups in New Zealand society; and
  - (c) to promote racial equality and cultural diversity; and
  - (d) to promote equal employment opportunities (including pay equity); and
  - (e) to promote and protect the full and equal enjoyment of human rights by persons with disabilities.
- (2) The Commission has, in order to carry out its primary functions under subsection (1), the following functions:
  - (a) to be an advocate for human rights and to promote and protect, by education and publicity, respect for, and observance of, human rights:
  - (b) to encourage and co-ordinate programmes and activities in the field of human rights:
  - (c) to make public statements in relation to any matter that may affect or infringe human rights (whether or not those human rights are affirmed in New Zealand domestic human rights law or international human rights law), including statements commenting on the position of the Government in relation to that matter:
  - (ca) to make public statements promoting an understanding of, and compliance with, this Act or the New Zealand Bill of Rights Act 1990 (for example, statements promoting understanding of measures to ensure equality, of indirect discrimination, or of institutions and procedures under this Act for dealing with complaints of unlawful discrimination):
  - (d) to promote by research, education, and discussion a better understanding of the human rights dimensions of the Treaty of Waitangi and their relationship with domestic and international human rights law:
  - (e) to prepare and publish, as the Commission considers appropriate, guidelines and voluntary codes of practice for the avoidance of acts or practices that may be inconsistent with, or contrary to, this Act:
  - (f) to receive and invite representations from members of the public on any matter affecting human rights:

- (g) to consult and co-operate with other persons and bodies concerned with the protection of human rights:
- (h) to inquire generally into any matter, including any enactment or law, or any practice, or any procedure, whether governmental or non-governmental, if it appears to the Commission that the matter involves, or may involve, the infringement of human rights:
- (i) to appear in or bring proceedings, in accordance with section 6 or section 92B or section 92E or section 92H or section 97:
- (j) to apply to a court or tribunal, under rules of court or regulations specifying the tribunal's procedure, to be appointed as intervener or as counsel assisting the court or tribunal, or to take part in proceedings before the court or tribunal in another way permitted by those rules or regulations, if, in the Commission's opinion, taking part in the proceedings in that way will facilitate the performance of its functions stated in paragraph (a):
- (k) to report to the Prime Minister on—
  - (i) any matter affecting human rights, including the desirability of legislative, administrative, or other action to give better protection to human rights and to ensure better compliance with standards laid down in international instruments on human rights:
  - (ii) the desirability of New Zealand becoming bound by any international instrument on human rights:
  - (iii) *[Repealed]*
- (ka) to report to either or both of the Prime Minister and the Minister responsible on any existing or proposed legislation (including subordinate legislation), administrative provision, or policy of the Government that the Commission considers may affect human rights:
- (kb) to promote the development of new international instruments on human rights:
- (kc) to promote and monitor compliance by New Zealand with, and the reporting by New Zealand on, the implementation of international instruments on human rights ratified by New Zealand:
- (l) to make public statements in relation to any group of persons in, or who may be coming to, New Zealand who are or may be subject to hostility, or who have been or may be brought into contempt, on the basis that that group consists of persons against whom discrimination is unlawful under this Act:
- (m) to develop a national plan of action, in consultation with interested parties, for the promotion and protection of human rights in New Zealand:
- (n) to exercise the following functions in relation to equal employment opportunities:

- (i) to evaluate, through the use of benchmarks developed by the Commission, the roles that legislation, guidelines, and voluntary codes of practice play in facilitating and promoting best practice in equal employment opportunities:
  - (ii) to lead the development of guidelines and voluntary codes of practice to facilitate and promote best practice in equal employment opportunities (including codes that identify related rights and obligations in legislation) in accordance with paragraph (e):
  - (iii) to monitor and analyse progress in improving equal employment opportunities in New Zealand and to report to the Minister on the results of that monitoring and analysis:
  - (iv) to liaise with, and complement the work of, any trust or body that has as one of its purposes the promotion of equal employment opportunities:
  - (o) to exercise or perform any other functions, powers, and duties conferred or imposed on it by or under this Act or any other enactment.
- (3) The Commission may, in the public interest or in the interests of a person, department, or organisation, publish reports relating generally to the exercise of its functions under this Act or to a particular inquiry by it under this Act, whether or not the matters to be dealt with in a report of that kind have been the subject of a report to the Minister or the Prime Minister.

Compare: 1977 No 49 ss 5(1), (3), (5), 6(1), (2), 28A, 78(1); 1977 No 49 ss 78(1), 86

Section 5: substituted, on 1 January 2002, by section 5 of the Human Rights Amendment Act 2001 (2001 No 96).

Section 5 heading: amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 5(1)(b): amended, on 15 June 2016, by section 6(1) of the Human Rights Amendment Act 2016 (2016 No 28).

Section 5(1)(c): inserted, on 15 June 2016, by section 6(2) of the Human Rights Amendment Act 2016 (2016 No 28).

Section 5(1)(d): inserted, on 15 June 2016, by section 6(2) of the Human Rights Amendment Act 2016 (2016 No 28).

Section 5(1)(e): inserted, on 15 June 2016, by section 6(2) of the Human Rights Amendment Act 2016 (2016 No 28).

Section 5(2)(c): replaced, on 15 June 2016, by section 6(3) of the Human Rights Amendment Act 2016 (2016 No 28).

Section 5(2)(ca): inserted, on 15 June 2016, by section 6(3) of the Human Rights Amendment Act 2016 (2016 No 28).

Section 5(2)(k)(iii): repealed, on 15 June 2016, by section 6(4) of the Human Rights Amendment Act 2016 (2016 No 28).

Section 5(2)(ka): inserted, on 15 June 2016, by section 6(5) of the Human Rights Amendment Act 2016 (2016 No 28).

Section 5(2)(kb): inserted, on 15 June 2016, by section 6(5) of the Human Rights Amendment Act 2016 (2016 No 28).

Section 5(2)(kc): inserted, on 15 June 2016, by section 6(5) of the Human Rights Amendment Act 2016 (2016 No 28).

Section 5(2)(n): inserted, on 15 June 2016, by section 6(6) of the Human Rights Amendment Act 2016 (2016 No 28).

## **6 Powers relating to declaratory judgments**

- (1) If at any time the Commission considers that it may be desirable to obtain a declaratory judgment or order of the High Court in accordance with the Declaratory Judgments Act 1908, the Commission may, despite anything to the contrary in that Act or any other enactment or rule of law, institute proceedings under that Act.
- (2) The Commission may exercise the right in subsection (1) only if it considers that the exercise of the right will facilitate the performance of its functions stated in section 5(2)(a).
- (3) Subsection (1) does not limit the ability of the Commission to appear in or bring proceedings under section 92B or section 92E or section 92H or section 97.

Compare: 1977 No 49 s 5A; 1983 No 56 s 3

Section 6: substituted, on 1 January 2002, by section 5 of the Human Rights Amendment Act 2001 (2001 No 96).

### *Activities in performance of Commission's functions*

Heading: substituted, on 1 January 2002, by section 5 of the Human Rights Amendment Act 2001 (2001 No 96).

## **7 Commission determines general nature of activities**

- (1) Subject to the role of the Minister in the process of setting and monitoring the strategic direction and targets of the Commission under Part 4 of the Crown Entities Act 2004, the members of the Commission acting together determine the strategic direction and the general nature of activities undertaken in the performance of the Commission's functions.
- (2) The Chief Commissioner is responsible to the Commission for ensuring that activities undertaken in the performance of the Commission's functions are not inconsistent with determinations of the Commission.

Section 7: substituted, on 1 January 2002, by section 5 of the Human Rights Amendment Act 2001 (2001 No 96).

Section 7(1): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

### *Membership of Commission*

Heading: inserted, on 1 January 2002, by section 5 of the Human Rights Amendment Act 2001 (2001 No 96).

## **8 Membership of Commission**

- (1) The Commission consists of the following Human Rights Commissioners:



- (a) the Chief Commissioner; and
  - (b) not less than 3 and not more than 4 other Commissioners.
- (1A) There must be a Commissioner, other than the Chief Commissioner, appointed to lead the work of the Commission in each of the following priority areas:
- (a) disability rights (the Disability Rights Commissioner);
  - (b) equal employment opportunities (including pay equity) (the Equal Employment Opportunities Commissioner);
  - (c) race relations (the Race Relations Commissioner).
- (1B) A Commissioner must lead the work of the Commission in any other priority area that is designated by the Chief Commissioner, and the Chief Commissioner may designate an area of work as a priority area only in accordance with the strategic direction and the general nature of activities determined by the Commission under section 7(1) and after consultation with the Minister and the other Commissioners.
- (2) The Commissioners are the board for the purposes of the Crown Entities Act 2004.
- (3) The Chief Commissioner holds office as chairperson of the board for the purposes of the Crown Entities Act 2004 for the same term as he or she is Chief Commissioner.
- (4) Clauses 1 to 5 of Schedule 5 of the Crown Entities Act 2004 do not apply to the Commission.

Compare: 1977 No 49 s 7(1)(a), (c), (ca), (d), (2); 1983 No 56 s 4(1), (2); 1991 No 132 s 3(1); 1993 No 35 s 2

Section 8: substituted, on 1 January 2002, by section 5 of the Human Rights Amendment Act 2001 (2001 No 96).

Section 8(1): replaced, on 15 June 2016, by section 7 of the Human Rights Amendment Act 2016 (2016 No 28).

Section 8(1A): inserted, on 15 June 2016, by section 7 of the Human Rights Amendment Act 2016 (2016 No 28).

Section 8(1B): inserted, on 15 June 2016, by section 7 of the Human Rights Amendment Act 2016 (2016 No 28).

Section 8(2): substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 8(3): substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 8(4): added, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **9 Alternate Commissioners**

- (1) The Governor-General may, on the recommendation of the Minister, appoint as alternate Commissioners persons who may be designated as the alternate of a Commissioner by either the Minister under subsection (2) or the Chief Commissioner under subsection (3).

- (2) The Minister may designate a Commissioner or an alternate Commissioner to act as the Chief Commissioner—
  - (a) during the period following the resignation of the Chief Commissioner and ending when the Chief Commissioner's successor comes into office; or
  - (b) during the Chief Commissioner's incapacity or in respect of a particular function or activity of the Commission, as the case may be, if—
    - (i) the Minister is satisfied that the Chief Commissioner is incapacitated by illness, absence, or other sufficient cause from performing the duties of his or her office; or
    - (ii) the Chief Commissioner considers it is not proper or desirable that he or she should participate in the function or activity.
- (3) The Chief Commissioner may designate an alternate Commissioner to act as a Commissioner during the period the Chief Commissioner is acting as Chief Commissioner, or during the period of the Commissioner's incapacity, or in respect of a particular function or activity of the Commission, as the case may be, if—
  - (a) the Chief Commissioner is a Commissioner acting as the Chief Commissioner under a designation under subsection (2); or
  - (b) the Chief Commissioner is satisfied that any other Commissioner is incapacitated by illness, absence, or other sufficient cause from performing the duties of his or her office; or
  - (c) a Judge who is for the time being holding office as a Commissioner declines to participate in, or withdraws from participation in, the particular function or activity of the Commission under section 20C(2); or
  - (d) any other Commissioner considers it is not proper or desirable that he or she should participate in the function or activity of the Commission.
- (4) An alternate Commissioner designated under subsection (2) or subsection (3) must, while the alternate Commissioner acts as Chief Commissioner or as a Commissioner, be taken to be the Chief Commissioner or the Commissioner in whose place the alternate Commissioner acts.
- (5) No designation of an alternate Commissioner, and no act done by an alternate Commissioner, and no act done by the Commission while any alternate Commissioner is acting, may in any proceedings be questioned on the ground that the occasion for the alternate Commissioner's designation had not arisen or had ceased.

Compare: 1977 No 49 s 7B; 1985 No 23 s 2

Section 9: substituted, on 1 January 2002, by section 5 of the Human Rights Amendment Act 2001 (2001 No 96).

## *Functions of Commissioners*

*[Repealed]*

Heading: repealed, on 1 January 2002, by section 5 of the Human Rights Amendment Act 2001 (2001 No 96).

### **10 Meetings of Commission**

- (1) *[Repealed]*
- (2) *[Repealed]*
- (3) *[Repealed]*
- (4) *[Repealed]*
- (5) *[Repealed]*
- (6) *[Repealed]*
- (7) *[Repealed]*
- (8) *[Repealed]*

Compare: 1977 No 49 s 10

Section 10: substituted, on 1 January 2002, by section 5 of the Human Rights Amendment Act 2001 (2001 No 96).

Section 10(1): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 10(2): repealed, on 15 June 2016, by section 8 of the Human Rights Amendment Act 2016 (2016 No 28).

Section 10(3): repealed, on 15 June 2016, by section 8 of the Human Rights Amendment Act 2016 (2016 No 28).

Section 10(4): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 10(5): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 10(6): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 10(7): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 10(8): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## *Criteria for appointment*

Heading: inserted, on 1 January 2002, by section 5 of the Human Rights Amendment Act 2001 (2001 No 96).

### **11 Criteria for appointment**

- (1) In recommending persons for appointment as Commissioners or alternate Commissioners, the Minister must have regard to the need for Commissioners and alternate Commissioners appointed to have among them—
  - (a) knowledge of, or experience in,—

- (i) different aspects of matters likely to come before the Commission:
  - (ii) New Zealand law, or the law of another country, or international law, on human rights:
  - (iii) the Treaty of Waitangi and rights of indigenous peoples:
  - (iv) current economic, employment, or social issues:
  - (v) cultural issues and the needs and aspirations (including life experiences) of different communities of interest and population groups in New Zealand society:
- (b) skills in, or experience in,—
- (i) advocacy or public education:
  - (ii) business, commerce, economics, industry, or financial or personnel management:
  - (iii) community affairs:
  - (iv) public administration, or the law relating to public administration.
- (1A) Subsection (1) does not limit section 29 of the Crown Entities Act 2004.
- (2) Nothing in this section limits section 12 or section 13.

Compare: 1977 No 49 s 7(3); 1985 No 23 s 3(1)

Section 11: substituted, on 1 January 2002, by section 5 of the Human Rights Amendment Act 2001 (2001 No 96).

Section 11(1A): inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 11(2): amended, on 15 June 2016, by section 9 of the Human Rights Amendment Act 2016 (2016 No 28).

Section 11(2): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

### *Complaints Division*

*[Repealed]*

Heading: repealed, on 1 January 2002, by section 5 of the Human Rights Amendment Act 2001 (2001 No 96).

## **12 Further criteria for appointment of Chief Commissioner**

In recommending a person for appointment as Chief Commissioner, the Minister must have regard not only to the criteria stated in section 11 but also to the person's—

- (a) ability to provide leadership in relation to the performance of the functions of the Commission (for example, being an advocate for, and promoting, by education and publicity, respect for and observance of human rights):
- (b) ability to represent the Commission, and to create and maintain effective relationships between it and other persons or bodies:

- (c) knowledge of New Zealand law, the law of other countries, and international law, on human rights, and of New Zealand's obligations under international instruments on human rights:
- (d) appreciation of issues or trends in human rights arising in other countries or internationally, and of the relevance of those issues or trends for New Zealand:
- (e) ability to perform the functions stated in section 15.

Section 12: substituted, on 1 January 2002, by section 5 of the Human Rights Amendment Act 2001 (2001 No 96).

**13 Further criteria for appointment of Commissioner appointed to lead Commission work in priority area**

In recommending a person for appointment as a Commissioner appointed to lead the work of the Commission in a priority area under section 8(1A), the Minister must have regard not only to the criteria stated in section 11 but also to the person's—

- (a) understanding of the principles and practice of the priority area in question, including its origin and development in New Zealand:
- (b) appreciation of issues, trends, and developments, in other countries and internationally, affecting the priority area in question, and the relevance of those issues, trends, or developments for New Zealand:
- (c) ability to perform the functions stated in section 16.

Section 13: replaced, on 15 June 2016, by section 10 of the Human Rights Amendment Act 2016 (2016 No 28).

*Further provisions on Commissioners and alternate Commissioners*

*[Repealed]*

Heading: repealed, on 1 January 2002, by section 5 of the Human Rights Amendment Act 2001 (2001 No 96).

**14 Further criteria for appointment of Equal Employment Opportunities Commissioner**

*[Repealed]*

Section 14: repealed, on 15 June 2016, by section 11 of the Human Rights Amendment Act 2016 (2016 No 28).

*Functions of Commissioners*

Heading: inserted, on 1 January 2002, by section 5 of the Human Rights Amendment Act 2001 (2001 No 96).

**15 Functions of Chief Commissioner**

The Chief Commissioner has the following functions:

- (a) to chair the Commission, and lead discussions of the Commission except when it is the function of a Commissioner to do so under section 16(1)(a):
- (b) to ensure that activities undertaken in the performance of the Commission's functions are consistent with the strategic direction and other determinations of the Commission under section 7:
- (c) to ensure that the Commission is effective and efficient in carrying out its functions:
- (d) to ensure that the Commission meets its obligations under the Crown Entities Act 2004, the Public Finance Act 1989, and the State Sector Act 1988:
- (e) to allocate spheres of responsibility (including responsibility for priority areas designated under section 8(1B)) among the Commissioners, and to determine the extent to which Commissioners engage in activities undertaken in the performance of the Commission's functions (except for those stated in section 76), but in each case only after consultation with the Minister:
- (f) to supervise and liaise with the general manager on matters of administration in relation to the Commission and on the activities undertaken in the performance of the Commission's functions:
- (g) any other functions, powers, or duties conferred or imposed on him or her by or under this Act or any other enactment.

Section 15: replaced, on 15 June 2016, by section 12 of the Human Rights Amendment Act 2016 (2016 No 28).

## **16 Additional functions of Commissioner appointed or designated to lead work of Commission in priority areas**

- (1) A Commissioner who is appointed or designated to lead the work of the Commission in a priority area under section 8(1A) or (1B) has the following additional functions:
  - (a) to lead discussions of the Commission in relation to that priority area of work:
  - (b) to provide advice and leadership on matters in that priority area of work that arise in the course of activities undertaken in the performance of the Commission's functions, both when engaging in those activities and when consulted:
  - (c) to contribute to the public debate on matters in that priority area of work:
  - (d) any other functions or duties conferred or imposed upon him or her by or under this Act or any other enactment.

- (2) However, the exercise by a Commissioner of the functions stated in subsection (1) is subject to directions given by the Chief Commissioner in the exercise of his or her responsibilities under section 15(b), (c), and (d).

Section 16: replaced, on 15 June 2016, by section 13 of the Human Rights Amendment Act 2016 (2016 No 28).

## **17 Functions of Equal Employment Opportunities Commissioner**

*[Repealed]*

Section 17: repealed, on 15 June 2016, by section 14 of the Human Rights Amendment Act 2016 (2016 No 28).

### *General manager and staff of Commission*

Heading: inserted, on 1 January 2002, by section 5 of the Human Rights Amendment Act 2001 (2001 No 96).

## **18 General manager and staff of Commission**

- (1) The general manager and staff of the Commission undertake activities required to perform the functions of the Commission in accordance with the strategic direction and other determinations of the Commission under section 7.
- (2) The general manager—
- (a) is responsible to the Chief Commissioner and reports to him or her; and
  - (b) is appointed by the Chief Commissioner, in accordance with clause 1 of Schedule 1; and
  - (c) is the chief executive of the Commission for the purposes of the Crown Entities Act 2004.
- (3) Employees of the Commission are responsible to the general manager and report to him or her.

Section 18: substituted, on 1 January 2002, by section 5 of the Human Rights Amendment Act 2001 (2001 No 96).

Section 18(2)(b): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 18(2)(c): added, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

### *Commissioners to act independently*

Heading: inserted, on 1 January 2002, by section 5 of the Human Rights Amendment Act 2001 (2001 No 96).

## **19 Duty to act independently**

Except as expressly provided otherwise in this or another Act, the Commission must act independently in performing its statutory functions and duties, and exercising its statutory powers, under—

- (a) this Act; and

- (b) any other Act that expressly provides for the functions, powers, or duties of the Commission (other than the Crown Entities Act 2004).

Section 19: substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

### *Office of Human Rights Proceedings*

Heading: inserted, on 1 January 2002, by section 5 of the Human Rights Amendment Act 2001 (2001 No 96).

## **20 Office of Human Rights Proceedings**

- (1) The Office of Human Rights Proceedings is part of the Commission and is headed by the Director of Human Rights Proceedings or his or her alternate.
- (2) The staff of the Office report to the Director or his or her alternate, and help him or her to exercise or perform the functions, powers, and duties of the Director under this Act.
- (3) In exercising or performing the functions, powers, and duties of the Director, the Director or his or her alternate and the staff of the Office must act independently from the Commission and Ministers of the Crown.
- (4) However, the Director or his or her alternate is responsible to the Chief Commissioner for the efficient, effective, and economical administration of the activities of the Office.

Section 20: substituted, on 1 January 2002, by section 5 of the Human Rights Amendment Act 2001 (2001 No 96).

### *Director of Human Rights Proceedings*

Heading: inserted, on 1 January 2002, by section 5 of the Human Rights Amendment Act 2001 (2001 No 96).

## **20A Director of Human Rights Proceedings**

- (1) The Director of Human Rights Proceedings is appointed by the Governor-General on the recommendation of the Minister.
- (2) The Governor-General may, on the recommendation of the Minister, appoint as alternate Director of Human Rights Proceedings a person designated for appointment as alternate Director by the Minister.
- (3) The Minister must not designate a person for appointment as alternate Director of Human Rights Proceedings unless—
  - (a) the Minister is satisfied that the Director is incapacitated by illness, absence, or other sufficient cause from performing the duties of his or her office; or
  - (b) the Director considers it is not proper or desirable that the Director should perform any particular duty of his or her office.

Compare: 1977 No 49 s 7B; 1985 No 23 s 2



Section 20A: inserted, on 1 January 2002, by section 5 of the Human Rights Amendment Act 2001 (2001 No 96).

## **20B Criteria and requirement for appointment**

- (1) In recommending a person for appointment as Director of Human Rights Proceedings or as his or her alternate, the Minister must have regard not only to the person's attributes but also to the person's—
  - (a) knowledge of, or experience in,—
    - (i) the different aspects of matters likely to come before the Human Rights Review Tribunal:
    - (ii) New Zealand law, or the law of another country, or international law, on human rights:
    - (iii) current economic, employment, or other social issues:
  - (b) skills in, or experience in, the practice of public law (including the conduct of litigation), and financial and personnel management:
  - (c) ability to exercise or perform, and to ensure the Office of Human Rights Proceedings helps the person to exercise or perform, efficiently and effectively, the functions, powers, and duties of the Director under this Act.
- (2) Every person appointed as Director of Human Rights Proceedings or as his or her alternate must be a barrister or solicitor of the High Court of not less than 5 years' legal experience.

Compare: 1977 No 49 s 7(3); 1985 No 23 s 3(1)

Section 20B: inserted, on 1 January 2002, by section 5 of the Human Rights Amendment Act 2001 (2001 No 96).

### *Appointment of Judge as Human Rights Commissioner*

Heading: inserted, on 1 January 2002, by section 5 of the Human Rights Amendment Act 2001 (2001 No 96).

## **20C Appointment of Judge as Human Rights Commissioner**

- (1) The appointment of a Judge as a Commissioner or alternate Commissioner or service by a Judge as a Commissioner or alternate Commissioner does not affect his or her tenure of judicial office or his or her rank, title, status, precedence, salary, annual or other allowances, or other rights or privileges as a Judge (including those in relation to superannuation), and, for all purposes, his or her service as a Commissioner or alternate Commissioner must be taken to be service as a Judge.
- (2) A Judge who is for the time being holding office as a Commissioner may, at any time, decline to participate in, or withdraw from participation in, any particular function or activity of the Commission if the Judge considers it incompatible with his or her judicial office.

Compare: 1977 No 49 ss 7(5A), 7A; 1983 No 56 ss 4(3), 5; 1985 No 23 s 3(1)

Section 20C: inserted, on 1 January 2002, by section 5 of the Human Rights Amendment Act 2001 (2001 No 96).

### *Provisions relating to office holders*

Heading: inserted, on 1 January 2002, by section 5 of the Human Rights Amendment Act 2001 (2001 No 96).

#### **20D Office holders to whom sections 20E to 20G apply**

- (1) Sections 20F and 20G each applies to a person (the **office holder**) who holds one of the following offices (the **office**):
  - (a) *[Repealed]*
  - (b) *[Repealed]*
  - (c) Director of Human Rights Proceedings:
  - (d) alternate Director of Human Rights Proceedings.
- (2) *[Repealed]*
- (3) *[Repealed]*

Compare: 1983 No 56 s 6; 1985 No 23 s 3(1)

Section 20D: inserted, on 1 January 2002, by section 5 of the Human Rights Amendment Act 2001 (2001 No 96).

Section 20D(1): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 20D(1)(a): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 20D(1)(b): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 20D(2): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 20D(3): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

#### **20E Service in office**

*[Repealed]*

Section 20E: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

#### **20F Term of office**

The office holder—

- (a) holds the office for the term (not longer than 5 years) the Governor-General, on the recommendation of the Minister, specifies in the person's appointment; and
- (b) may, from time to time, be reappointed; and
- (c) unless he or she sooner vacates or no longer holds or is removed from the office under section 20G, continues in it until his or her successor

comes into it, even though the term for which he or she was appointed has expired.

Compare: 1971 No 150 s 12(1), (2); 1977 No 49 s 8; 1985 No 23 s 3(1)

Section 20F: inserted, on 1 January 2002, by section 5 of the Human Rights Amendment Act 2001 (2001 No 96).

## **20G Vacation of office**

The office holder—

- (a) may resign from the office by delivering to the Minister a notice in writing to that effect and stating when the resignation takes effect:
- (b) ceases to hold office if he or she dies:
- (c) ceases to hold office if he or she is, under the Insolvency Act 2006, adjudged bankrupt:
- (d) may, at any time, be removed from the office by the Governor-General for incapacity affecting performance of duty, neglect of duty, or misconduct, proved to the satisfaction of the Governor-General.

Compare: 1971 No 150 s 12(3); 1977 No 49 s 9; 1985 No 23 s 3(1)

Section 20G: inserted, on 1 January 2002, by section 5 of the Human Rights Amendment Act 2001 (2001 No 96).

Section 20G(c): amended, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

### *Administrative provisions relating to Human Rights Commission and Office of Human Rights Proceedings*

Heading: inserted, on 1 January 2002, by section 5 of the Human Rights Amendment Act 2001 (2001 No 96).

## **20H Administrative provisions set out in Schedules 1 and 2**

- (1) Schedule 1 applies in respect of the Commission.
- (2) Schedule 2 applies in respect of the Office.

Section 20H: inserted, on 1 January 2002, by section 5 of the Human Rights Amendment Act 2001 (2001 No 96).

## **Part 1A**

### **Discrimination by Government, related persons and bodies, or persons or bodies acting with legal authority**

Part 1A: inserted, on 1 January 2002, by section 6 of the Human Rights Amendment Act 2001 (2001 No 96).

## **20I Purpose of this Part**

The purpose of this Part is to provide that, in general, an act or omission that is inconsistent with the right to freedom from discrimination affirmed by section 19 of the New Zealand Bill of Rights Act 1990 is in breach of this Part if the

act or omission is that of a person or body referred to in section 3 of the New Zealand Bill of Rights Act 1990.

Section 20I: inserted, on 1 January 2002, by section 6 of the Human Rights Amendment Act 2001 (2001 No 96).

#### **20J Acts or omissions in relation to which this Part applies**

- (1) This Part applies only in relation to an act or omission of a person or body referred to in section 3 of the New Zealand Bill of Rights Act 1990, namely—
  - (a) the legislative, executive, or judicial branch of the Government of New Zealand; or
  - (b) a person or body in the performance of any public function, power, or duty conferred or imposed on that person or body by or pursuant to law.
- (2) Despite subsection (1), this Part does not apply in relation to an act or omission that is unlawful under any of sections 22, 23, 61 to 63, and 66.
- (3) If this Part applies in relation to an act or omission, Part 2 does not apply to that act or omission.
- (4) Nothing in this Part affects the New Zealand Bill of Rights Act 1990.

Section 20J: inserted, on 1 January 2002, by section 6 of the Human Rights Amendment Act 2001 (2001 No 96).

#### **20K Purposes for which section 20L applies**

Section 20L applies only for the purposes of—

- (a) any inquiry undertaken by the Commission under section 5(2)(h):
- (b) the assessment, consideration, mediation, or determination of a complaint under Part 3:
- (c) any determination made by the Director under Part 3 concerning the provision of representation in proceedings before the Human Rights Review Tribunal:
- (d) any determination made in proceedings before the Human Rights Review Tribunal or in any proceedings in any court on an appeal from a decision of that Tribunal:
- (e) any determination made by any court or tribunal in proceedings brought under this Act by the Commission:
- (f) any other process or proceedings commenced or conducted under Part 3:
- (g) any related matter.

Section 20K: inserted, on 1 January 2002, by section 6 of the Human Rights Amendment Act 2001 (2001 No 96).

**20L Acts or omissions in breach of this Part**

- (1) An act or omission in relation to which this Part applies (including an enactment) is in breach of this Part if it is inconsistent with section 19 of the New Zealand Bill of Rights Act 1990.
- (2) For the purposes of subsection (1), an act or omission is inconsistent with section 19 of the New Zealand Bill of Rights Act 1990 if the act or omission—
  - (a) limits the right to freedom from discrimination affirmed by that section; and
  - (b) is not, under section 5 of the New Zealand Bill of Rights Act 1990, a justified limitation on that right.
- (3) To avoid doubt, subsections (1) and (2) apply in relation to an act or omission even if it is authorised or required by an enactment.

Section 20L: inserted, on 1 January 2002, by section 6 of the Human Rights Amendment Act 2001 (2001 No 96).

**Part 2**  
**Unlawful discrimination**

*Application of Part to persons and bodies referred to in section 3 of New Zealand Bill of Rights Act 1990*

Heading: inserted, on 1 January 2002, by section 7 of the Human Rights Amendment Act 2001 (2001 No 96).

**21A Application of this Part limited if section 3 of New Zealand Bill of Rights Act 1990 applies**

- (1) The only provisions of this Part that apply to an act or omission of a person or body described in subsection (2) are—
  - (a) sections 21 to 35 (which relate to discrimination in employment matters), 61 to 64 (which relate to racial disharmony, and social and racial harassment) and 66 (which relates to victimisation); and
  - (b) sections 65 and 67 to 74, but only to the extent that those sections relate to conduct that is unlawful under any of the provisions referred to in paragraph (a).
- (2) The persons and bodies referred to in subsection (1) are the ones referred to in section 3 of the New Zealand Bill of Rights Act 1990, namely—
  - (a) the legislative, executive, and judicial branches of the Government of New Zealand; and
  - (b) every person or body in the performance of any public function, power, or duty conferred or imposed on that person or body by or pursuant to law.

Section 21A: inserted, on 1 January 2002, by section 7 of the Human Rights Amendment Act 2001 (2001 No 96).

*Acts or omissions authorised or required by law*

Heading: inserted, on 1 January 2002, by section 7 of the Human Rights Amendment Act 2001 (2001 No 96).

**21B Relationship between this Part and other law**

- (1) To avoid doubt, an act or omission of any person or body is not unlawful under this Part if that act or omission is authorised or required by an enactment or otherwise by law.
- (2) Nothing in this Part affects the New Zealand Bill of Rights Act 1990.

Section 21B: inserted, on 1 January 2002, by section 7 of the Human Rights Amendment Act 2001 (2001 No 96).

*Prohibited grounds of discrimination*

Heading: inserted, on 1 January 2002, by section 7 of the Human Rights Amendment Act 2001 (2001 No 96).

**21 Prohibited grounds of discrimination**

- (1) For the purposes of this Act, the **prohibited grounds of discrimination** are—
  - (a) sex, which includes pregnancy and childbirth:
  - (b) marital status, which means being—
    - (i) single; or
    - (ii) married, in a civil union, or in a de facto relationship; or
    - (iii) the surviving spouse of a marriage or the surviving partner of a civil union or de facto relationship; or
    - (iv) separated from a spouse or civil union partner; or
    - (v) a party to a marriage or civil union that is now dissolved, or to a de facto relationship that is now ended:
  - (c) religious belief:
  - (d) ethical belief, which means the lack of a religious belief, whether in respect of a particular religion or religions or all religions:
  - (e) colour:
  - (f) race:
  - (g) ethnic or national origins, which includes nationality or citizenship:
  - (h) disability, which means—
    - (i) physical disability or impairment:
    - (ii) physical illness:
    - (iii) psychiatric illness:

- (iv) intellectual or psychological disability or impairment:
- (v) any other loss or abnormality of psychological, physiological, or anatomical structure or function:
- (vi) reliance on a guide dog, wheelchair, or other remedial means:
- (vii) the presence in the body of organisms capable of causing illness:
- (i) age, which means,—
  - (i) for the purposes of sections 22 to 41 and section 70 and in relation to any different treatment based on age that occurs in the period beginning with 1 February 1994 and ending with the close of 31 January 1999, any age commencing with the age of 16 years and ending with the date on which persons of the age of the person whose age is in issue qualify for national superannuation under section 7 of the New Zealand Superannuation and Retirement Income Act 2001 (irrespective of whether or not the particular person qualifies for national superannuation at that age or any other age):
  - (ii) for the purposes of sections 22 to 41 and section 70 and in relation to any different treatment based on age that occurs on or after 1 February 1999, any age commencing with the age of 16 years:
  - (iii) for the purposes of any other provision of Part 2, any age commencing with the age of 16 years:
- (j) political opinion, which includes the lack of a particular political opinion or any political opinion:
- (k) employment status, which means—
  - (i) being unemployed; or
  - (ii) being a recipient of a benefit as defined in Schedule 2 of the Social Security Act 2018 or an entitlement under the Accident Compensation Act 2001:
- (l) family status, which means—
  - (i) having the responsibility for part-time care or full-time care of children or other dependants; or
  - (ii) having no responsibility for the care of children or other dependants; or
  - (iii) being married to, or being in a civil union or de facto relationship with, a particular person; or
  - (iv) being a relative of a particular person:
- (m) sexual orientation, which means a heterosexual, homosexual, lesbian, or bisexual orientation.

- (2) Each of the grounds specified in subsection (1) is a prohibited ground of discrimination, for the purposes of this Act, if—
- (a) it pertains to a person or to a relative or associate of a person; and
  - (b) it either—
    - (i) currently exists or has in the past existed; or
    - (ii) is suspected or assumed or believed to exist or to have existed by the person alleged to have discriminated.

Section 21(1)(b): substituted, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 21(1)(i)(i): amended, on 21 April 2005, by section 9(1) of the New Zealand Superannuation and Retirement Income Amendment Act 2005 (2005 No 42).

Section 21(1)(i)(i): amended, on 12 October 2001, by section 77 of the New Zealand Superannuation Act 2001 (2001 No 84).

Section 21(1)(k)(ii): substituted, on 1 July 1999, by section 415(1) of the Accident Insurance Act 1998 (1998 No 114).

Section 21(1)(k)(ii): amended, on 26 November 2018, by section 459 of the Social Security Act 2018 (2018 No 32).

Section 21(1)(k)(ii): amended, on 3 March 2010, pursuant to section 5(1)(b) of the Accident Compensation Amendment Act 2010 (2010 No 1).

Section 21(1)(l)(iii): amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

### *Discrimination in employment matters*

## **22 Employment**

- (1) Where an applicant for employment or an employee is qualified for work of any description, it shall be unlawful for an employer, or any person acting or purporting to act on behalf of an employer,—
- (a) to refuse or omit to employ the applicant on work of that description which is available; or
  - (b) to offer or afford the applicant or the employee less favourable terms of employment, conditions of work, superannuation or other fringe benefits, and opportunities for training, promotion, and transfer than are made available to applicants or employees of the same or substantially similar capabilities employed in the same or substantially similar circumstances on work of that description; or
  - (c) to terminate the employment of the employee, or subject the employee to any detriment, in circumstances in which the employment of other employees employed on work of that description would not be terminated, or in which other employees employed on work of that description would not be subjected to such detriment; or
  - (d) to retire the employee, or to require or cause the employee to retire or resign,—



by reason of any of the prohibited grounds of discrimination.

- (2) It shall be unlawful for any person concerned with procuring employment for other persons or procuring employees for any employer to treat any person seeking employment differently from other persons in the same or substantially similar circumstances by reason of any of the prohibited grounds of discrimination.

Compare: 1977 No 49 s 15(1), (2); 1992 No 16 s 3

### **23 Particulars of applicants for employment**

It shall be unlawful for any person to use or circulate any form of application for employment or to make any inquiry of or about any applicant for employment which indicates, or could reasonably be understood as indicating, an intention to commit a breach of section 22.

Compare: 1977 No 49 s 18; 1992 No 16 s 7

#### *Exceptions in relation to employment matters*

### **24 Exception in relation to crews of ships and aircraft**

Nothing in section 22 shall apply to the employment or an application for employment of a person on a ship or aircraft, not being a New Zealand ship or aircraft, if the person employed or seeking employment was engaged or applied for it outside New Zealand.

Compare: 1977 No 49 s 15(8)

### **25 Exception in relation to work involving national security**

- (1) Nothing in section 22 shall apply to any restrictions on the employment of any person on work involving the national security of New Zealand—

- (a) by reference to his or her—
- (i) religious or ethical belief; or
  - (ii) political opinion; or
  - (iii) disability, within the meaning of section 21(1)(h)(iii) or section 21(1)(h)(iv); or
  - (iv) family status, within the meaning of section 21(1)(l)(iii) or section 21(1)(l)(iv); or
  - (v) national origin; or
- (b) by reference to the national origin of any relative of that person.

- (2) It shall not be a breach of section 22 to decline to employ a person under the age of 20 years on work involving the national security of New Zealand where that work requires a secret or top secret security clearance.

Compare: 1977 No 49 s 15(10)

**26 Exception in relation to work performed outside New Zealand**

Nothing in section 22 shall prevent different treatment based on sex, religious or ethical belief, or age if the duties of the position in respect of which that treatment is accorded—

- (a) are to be performed wholly or mainly outside New Zealand; and
- (b) are such that, because of the laws, customs, or practices of the country in which those duties are to be performed, they are ordinarily carried out only by a person who is of a particular sex or religious or ethical belief, or who is in a particular age group.

Compare: 1977 No 49 ss 15(9), 15A(1)(b); 1992 No 16 s 4

**27 Exceptions in relation to authenticity and privacy**

- (1) Nothing in section 22 shall prevent different treatment based on sex or age where, for reasons of authenticity, being of a particular sex or age is a genuine occupational qualification for the position or employment.
- (2) Nothing in section 22 shall prevent different treatment based on sex, religious or ethical belief, disability, age, political opinion, or sexual orientation where the position is one of domestic employment in a private household.
- (3) Nothing in section 22 shall prevent different treatment based on sex where—
  - (a) the position needs to be held by one sex to preserve reasonable standards of privacy; or
  - (b) the nature or location of the employment makes it impracticable for the employee to live elsewhere than in premises provided by the employer, and—
    - (i) the only premises available (being premises in which more than 1 employee is required to sleep) are not equipped with separate sleeping accommodation for each sex; and
    - (ii) it is not reasonable to expect the employer to equip those premises with separate accommodation, or to provide separate premises, for each sex.
- (4) Nothing in section 22 shall prevent different treatment based on sex, race, ethnic or national origins, or sexual orientation where the position is that of a counsellor on highly personal matters such as sexual matters or the prevention of violence.
- (5) Where, as a term or condition of employment, a position ordinarily obliges or qualifies the holder of that position to live in premises provided by the employer, the employer does not commit a breach of section 22 by omitting to apply that term or condition in respect of employees of a particular sex or marital status if in all the circumstances it is not reasonably practicable for the employer to do so.

Compare: 1977 No 49 ss 15(3), 15A(1)(a); 1992 No 16 s 4

## **28 Exceptions for purposes of religion**

- (1) Nothing in section 22 shall prevent different treatment based on sex where the position is for the purposes of an organised religion and is limited to one sex so as to comply with the doctrines or rules or established customs of the religion.
- (2) Nothing in section 22 shall prevent different treatment based on religious or ethical belief where—
  - (a) that treatment is accorded under section 464 of the Education Act 1989; or
  - (b) the sole or principal duties of the position (not being a position to which section 464 of the Education Act 1989 applies)—
    - (i) are, or are substantially the same as, those of a clergyman, priest, pastor, official, or teacher among adherents of that belief or otherwise involve the propagation of that belief; or
    - (ii) are those of a teacher in a private school; or
    - (iii) consist of acting as a social worker on behalf of an organisation whose members comprise solely or principally adherents of that belief.
- (3) Where a religious or ethical belief requires its adherents to follow a particular practice, an employer must accommodate the practice so long as any adjustment of the employer's activities required to accommodate the practice does not unreasonably disrupt the employer's activities.

Compare: 1977 No 49 s 15(6), (7)

Section 28(2)(a): amended, on 19 May 2017, by section 161(1) of the Education (Update) Amendment Act 2017 (2017 No 20).

Section 28(2)(b): amended, on 19 May 2017, by section 161(1) of the Education (Update) Amendment Act 2017 (2017 No 20).

## **29 Further exceptions in relation to disability**

- (1) Nothing in section 22 shall prevent different treatment based on disability where—
  - (a) the position is such that the person could perform the duties of the position satisfactorily only with the aid of special services or facilities and it is not reasonable to expect the employer to provide those services or facilities; or
  - (b) the environment in which the duties of the position are to be performed or the nature of those duties, or of some of them, is such that the person could perform those duties only with a risk of harm to that person or to others, including the risk of infecting others with an illness, and it is not reasonable to take that risk.

- (2) Nothing in subsection (1)(b) shall apply if the employer could, without unreasonable disruption, take reasonable measures to reduce the risk to a normal level.
- (3) Nothing in section 22 shall apply to terms of employment or conditions of work that are set or varied after taking into account—
  - (a) any special limitations that the disability of a person imposes on his or her capacity to carry out the work; and
  - (b) any special services or facilities that are provided to enable or facilitate the carrying out of the work.

### **30 Further exceptions in relation to age**

- (1) Nothing in section 22(1)(a) or section 22(1)(d) shall apply in relation to any position or employment where being of a particular age or in a particular age group is a genuine occupational qualification for that position or employment, whether for reasons of safety or for any other reason.
- (2) Nothing in section 22(1)(b) shall prevent payment of a person at a lower rate than another person employed in the same or substantially similar circumstances where the lower rate is paid on the basis that the first-mentioned person has not attained a particular age, not exceeding 20 years of age.
- (3) Nothing in section 22(1)(a) shall prevent preferential treatment based on age accorded to persons who are to be paid in accordance with subsection (2).

Compare: 1977 No 49 s 15A(2)–(4); 1992 No 16 s 4

### **30A Exception in relation to employment-related retirement benefits**

- (1) Nothing in section 22(1)(b) prevents different treatment based on age with respect to, or in any way related to, the payment of a benefit to an employee on retirement if—
  - (a) the employee's entitlement to that benefit (**the retirement benefit**), or the calculation of that retirement benefit, is determined in whole or in part (and whether directly or indirectly) by the employee's age; and
  - (b) the retirement benefit is a term of a written employment contract that was in force on or before 1 February 1999; and
  - (c) the employee was, on or before 1 February 1999, a party to that employment contract.
- (2) If a retirement benefit was a term of an employee's written employment contract on 1 February 1999, subsection (1) continues to apply in relation to the payment of that retirement benefit even if either or both of the following things occur after that date:
  - (a) the employee and the employer enter into a new written employment contract or employment agreement under which the employee remains entitled to that retirement benefit:

- (b) a different person becomes the employee's employer as a result of a merger, takeover, restructuring, or reorganisation, but the employee remains entitled to that retirement benefit by virtue of any enactment or agreement.
- (3) This section does not limit section 149.

Section 30A: inserted, on 1 October 1999, by section 2 of the Human Rights Amendment Act 1999 (1999 No 100).

Section 30A(2)(a): amended, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

### 31 Exception in relation to employment of a political nature

Nothing in section 22 shall prevent different treatment based on political opinion where the position is one as—

- (a) a political adviser or secretary to a member of Parliament; or
- (b) a political adviser to a member of a local authority; or
- (c) a political adviser to a candidate seeking election to the House of Representatives or to a local authority within the meaning of the Local Electoral Act 2001; or
- (d) a member of the staff of a political party.

Section 31(c): amended, on 1 July 2001, by section 151 of the Local Electoral Act 2001 (2001 No 35).

### 32 Exception in relation to family status

Nothing in section 22 shall prevent restrictions imposed by an employer—

- (a) on the employment of any person who is married to, or in a civil union or in a de facto relationship with, or who is a relative of, another employee if—
  - (i) there would be a reporting relationship between them; or
  - (ii) there is a risk of collusion between them to the detriment of the employer; or
- (b) on the employment of any person who is married to, or in a civil union or in a de facto relationship with, or who is a relative of, an employee of another employer if there is a risk of collusion between them to the detriment of that person's employer.

Section 32(a): amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 32(b): amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

### 33 Armed forces

*[Repealed]*

Section 33: repealed, on 5 May 2007, by section 5 of the Human Rights (Women in Armed Forces) Amendment Act 2007 (2007 No 16).

**34 Regular forces**

(1) Nothing in section 22(1)(c) or section 22(1)(d) shall prevent the Chief of Defence Force from instituting, under section 57A of the Defence Act 1990, the discharge or release of a member of the regular forces.

(2) *[Repealed]*

Section 34 heading: amended, on 1 October 2008, by section 130(1) of the Policing Act 2008 (2008 No 72).

Section 34(2): repealed, on 1 October 2008, by section 130(1) of the Policing Act 2008 (2008 No 72).

**35 General qualification on exceptions**

No employer shall be entitled, by virtue of any of the exceptions in this Part, to accord to any person in respect of any position different treatment based on a prohibited ground of discrimination even though some of the duties of that position would fall within any of those exceptions if, with some adjustment of the activities of the employer (not being an adjustment involving unreasonable disruption of the activities of the employer), some other employee could carry out those particular duties.

Compare: 1977 No 49 s 15(4)

*Discrimination in partnerships***36 Partnerships**

(1) It shall be unlawful for a firm, or for persons jointly promoting the formation of a firm,—

(a) to refuse or to omit to offer a person admission to the firm as a partner; or

(b) to offer or afford a person less favourable terms and conditions as a partner than are made available to other members or prospective members of the firm,—

by reason of any of the prohibited grounds of discrimination.

(2) It shall be unlawful for a firm—

(a) to deny any partner increased status in the firm or an increased share in the capital or profits of the firm; or

(b) to expel any partner from the firm or to subject any partner to any other detriment,—

by reason of any of the prohibited grounds of discrimination.

(2A) It is unlawful for a firm, or for persons jointly promoting the formation of a firm, to fail to provide special services or facilities that could reasonably be provided by the firm, or those persons, in the circumstances and that, if provided, would enable a person with a disability—

(a) to be accepted as a partner and remain in partnership; or

- (b) to be offered the same terms and conditions as a partner (including terms and conditions as to status in the firm or entitlements to shares in capital or profits) that are made available to other members or prospective members of the firm.
- (3) Nothing in this section prevents the fixing of reasonable terms and conditions in relation to a partner or prospective partner, who by reason of disability or age—
  - (a) has a restricted capacity to participate or continue to participate in the partnership, that cannot be restored to normal by the provision of any special services or facilities required to be provided under subsection (2A); or
  - (b) requires special conditions if he or she is to participate or continue to participate in the partnership, even if any special services or facilities required to be provided under subsection (2A) are provided.
- (4) Nothing in this section applies in respect of a person with a disability, if the disability of the person is such that—
  - (a) there would be a risk of harm to that person or others, including the risk of infecting others with an illness if that person were to accept or remain in partnership or be given the same terms and conditions as a partner (including terms and conditions as to status in the firm or entitlement to shares in capital or profits) that were made available to other members or prospective members of the firm; and
  - (b) it is not reasonable to take that risk.
- (5) Subsection (4) does not apply if the firm, or persons jointly promoting the formation of a firm, could, without unreasonable disruption, take reasonable measures to reduce the risk to a normal level.

Compare: 1977 No 49 s 19; 1992 No 16 s 8

Section 36(2A): inserted, on 10 September 2008, by section 4(1) of the Human Rights Amendment Act 2008 (2008 No 65).

Section 36(3): substituted, on 10 September 2008, by section 4(2) of the Human Rights Amendment Act 2008 (2008 No 65).

Section 36(4): added, on 10 September 2008, by section 4(2) of the Human Rights Amendment Act 2008 (2008 No 65).

Section 36(5): added, on 10 September 2008, by section 4(2) of the Human Rights Amendment Act 2008 (2008 No 65).

*Discrimination by industrial and professional associations, qualifying bodies,  
and vocational training bodies*

**37 Organisations of employees or employers and professional and trade associations**

- (1) It shall be unlawful for an organisation to which this section applies, or for any person acting or purporting to act on behalf of any such organisation,—

- (a) to refuse or omit to accept any person for membership; or
  - (b) to offer any person less favourable terms of membership and less favourable access to any benefits, facilities, or services, including the right to stand for election and hold office in the organisation, than would otherwise be made available; or
  - (c) to deprive a person of membership, or suspend him or her, in circumstances in which other persons would not be deprived of membership or suspended,—
- by reason of any of the prohibited grounds of discrimination.
- (1A) It is unlawful for an organisation to which this section applies, or for any person acting or purporting to act on behalf of any such organisation, to fail to provide special services or facilities that could reasonably be provided by the organisation in the circumstances and that, if provided, would enable a person with a disability to—
- (a) be accepted and remain in membership; or
  - (b) be given equal access to benefits, facilities, or services provided by the organisation (including the right to stand for election and hold office).
- (2) Nothing in this section shall prevent an organisation to which this section applies from charging different fees to persons in different age groups.
- (2A) Nothing in this section applies in respect of a person with a disability, if the disability of the person is such that—
- (a) there would be a risk of harm to that person or others, including the risk of infecting others with an illness if that person were to accept or remain in membership or be given equal access to benefits, facilities, or services provided by the organisation (including the right to stand for election and hold office); and
  - (b) it is not reasonable to take that risk.
- (2B) Subsection (2A) does not apply if the organisation could, without unreasonable disruption, take reasonable measures to reduce the risk to a normal level.
- (3) This section applies to an organisation of employees, an organisation of employers, or any other organisation that exists for the purposes of members who carry on a particular profession, trade, or calling.

Compare: 1977 No 49 s 20; 1992 No 16 s 9

Section 37(1A): inserted, on 10 September 2008, by section 5(1) of the Human Rights Amendment Act 2008 (2008 No 65).

Section 37(2A): inserted, on 10 September 2008, by section 5(2) of the Human Rights Amendment Act 2008 (2008 No 65).

Section 37(2B): inserted, on 10 September 2008, by section 5(2) of the Human Rights Amendment Act 2008 (2008 No 65).



### **38 Qualifying bodies**

- (1) It shall be unlawful for an authority or body empowered to confer an approval, authorisation, or qualification that is needed for, or facilitates, engagement in a profession, trade, or calling, or any person acting or purporting to act on behalf of any such authority or body,—
- (a) to refuse or omit to confer that approval, authorisation, or qualification on a person; or
  - (b) to confer that approval, authorisation, or qualification on less favourable terms and conditions than would otherwise be made available; or
  - (c) to withdraw that approval, authorisation, or qualification or vary the terms on which it is held, in circumstances in which it would not otherwise be withdrawn or varied,—
- by reason of any of the prohibited grounds of discrimination.
- (2) For the purposes of this section, **confer** includes renew or extend.

Compare: 1977 No 49 s 21(1), (3); 1992 No 16 s 10(1)

### **39 Exceptions in relation to qualifying bodies**

- (1) Nothing in section 38 shall apply where the authorisation or qualification is needed for, or facilitates engagement in, a profession or calling for the purposes of an organised religion and is limited to one sex or to persons of that religious belief so as to comply with the doctrines or rules or established customs of that religion.
- (2) Nothing in section 38 shall prevent different treatment based on disability where—
- (a) the person seeking or holding the approval, authorisation, or qualification is not, by reason of that person's disability, able to perform the duties required of a person who holds the approval, authorisation, or qualification; or
  - (b) the environment in which the duties required of a person who holds the approval, authorisation, or qualification are to be performed or the nature of those duties, or of some of them, are such that, if that approval, authorisation, or qualification were granted to or retained by the person with a disability, there would be a risk of harm to that person or others, including the risk of infecting others with an illness, and it is not reasonable to take that risk; or
  - (c) conditions placed on the granting of the approval, authorisation, or qualification to any person or on the retention of the approval, authorisation, or qualification by any person are reasonably related to the disability of that person.
- (2A) For the purposes of applying subsection (2)(a) and (b), an authority or body referred to in section 38 must,—

- (a) in the case of subsection (2)(a), take account of whether a disabled person could perform the required duties if he or she was provided with special services or facilities that could reasonably be provided by an employer or by any other relevant person;
  - (b) in the case of subsection (2)(b), take account of whether the risk of harm referred to in that paragraph could be reduced to a normal level, without unreasonable disruption to an employer or to any other relevant person.
- (3) Nothing in section 38 shall apply where—
- (a) the authority or body imposes a reasonable and appropriate minimum age under which the approval, authorisation, or qualification will not be conferred; or
  - (b) the authority or body imposes reasonable and appropriate terms and conditions on the grant or retention of the approval, authorisation, or qualification by reason of the age of the person seeking or holding it.

Compare: 1977 No 49 s 21(2), (2A); 1992 No 16 s 10(2)

Section 39(2A): inserted, on 10 September 2008, by section 6 of the Human Rights Amendment Act 2008 (2008 No 65).

#### **40 Vocational training bodies**

It shall be unlawful for any organisation or association which has as its function or one of its principal functions the provision of training, or facilities or opportunities for training (including facilities or opportunities by way of financial grants), that would help to fit a person for any employment, or for any person acting or purporting to act on behalf of any such organisation or association,—

- (a) to refuse or omit to provide training, or facilities or opportunities for training; or
- (b) to provide training, or facilities or opportunities for training, on less favourable terms and conditions than would otherwise be made available; or
- (c) to terminate training, or facilities or opportunities for training,—  
by reason of any of the prohibited grounds of discrimination.

Compare: 1977 No 49 s 22(1); 1992 No 16 s 11(1)

#### **41 Exceptions in relation to vocational training bodies**

- (1) Nothing in section 40 shall prevent an organisation or association from affording persons preferential access to facilities for training that would help to fit them for employment where it appears to that organisation or association that those persons are in special need of training by reason of the period for which they have not been engaged in regular full-time employment.
- (2) Subject to subsection (3), nothing in section 40 shall apply where a person's disability is such that there would be a risk of harm to that person or to others,

including the risk of infecting others with an illness, if that person were to be provided with training, or facilities or opportunities for training, and it is not reasonable to take that risk.

- (3) Nothing in subsection (2) shall apply if the organisation or association providing training, or facilities or opportunities for training, could, without unreasonable disruption, take reasonable measures to reduce the risk to a normal level.
- (4) Nothing in section 40 shall prevent an organisation or association from providing training, or facilities or opportunities for training (including facilities or opportunities by way of financial grants), only for persons above a particular age or in a particular age group.
- (5) Nothing in section 40 shall prevent the making of financial grants by an organisation or association only to persons above a particular age or in a particular age group.
- (6) Nothing in section 40 shall prevent an organisation or association from charging different fees to persons in different age groups.
- (7) Nothing in section 40 makes it unlawful to fail to provide special services or facilities designed for a specified purpose if those special services or facilities cannot reasonably be provided in the circumstances.
- (8) In subsection (7), a **specified purpose** means 1 or more of the following purposes:
  - (a) to enable a person with a disability to undergo and remain in training; or
  - (b) to provide a person with a disability with facilities or opportunities for training; or
  - (c) to provide a person with a disability with facilities or opportunities for training on no less favourable terms and conditions than would otherwise be made available.

Compare: 1977 No 49 s 22(3), (4), (5), (6); 1992 No 16 s 11(3)

Section 41(7): added, on 10 September 2008, by section 7 of the Human Rights Amendment Act 2008 (2008 No 65).

Section 41(8): added, on 10 September 2008, by section 7 of the Human Rights Amendment Act 2008 (2008 No 65).

### *Discrimination in access to places, vehicles, and facilities*

#### **42 Access by the public to places, vehicles, and facilities**

- (1) It shall be unlawful for any person—
  - (a) to refuse to allow any other person access to or use of any place or vehicle which members of the public are entitled or allowed to enter or use; or
  - (b) to refuse any other person the use of any facilities in that place or vehicle which are available to members of the public; or

(c) to require any other person to leave or cease to use that place or vehicle or those facilities,—

by reason of any of the prohibited grounds of discrimination.

(2) In this section, the term **vehicle** includes a vessel, an aircraft, or a hovercraft.

Compare: 1977 No 49 s 23(1), (3)

#### **43 Exceptions in relation to access by the public to places, vehicles, and facilities**

(1) Section 42 shall not prevent the maintenance of separate facilities for each sex on the ground of public decency or public safety.

(2) Nothing in section 42 requires any person to provide for any person, by reason of the disability of that person, special services or special facilities to enable any such person to gain access to or use any place or vehicle when it would not be reasonable to require the provision of such special services or facilities.

(3) Nothing in subsection (2) limits section 118 of the Building Act 2004.

(4) Subject to subsection (5), nothing in section 42 shall apply where the disability of a person is such that there would be a risk of harm to that person or to others, including the risk of infecting others with an illness, if that person were to have access to or use of any place or vehicle and it is not reasonable to take that risk.

(5) Subsection (4) shall not apply if the person in charge of the place, vehicle, or facility could, without unreasonable disruption, take reasonable measures to reduce the risk to a normal level.

Compare: 1977 No 49 s 23(2)

Section 43(3): substituted, on 1 January 2002, by section 8 of the Human Rights Amendment Act 2001 (2001 No 96).

Section 43(3): amended, on 31 March 2005, by section 414 of the Building Act 2004 (2004 No 72).

#### *Discrimination in provision of goods and services*

#### **44 Provision of goods and services**

(1) It shall be unlawful for any person who supplies goods, facilities, or services to the public or to any section of the public—

(a) to refuse or fail on demand to provide any other person with those goods, facilities, or services; or

(b) to treat any other person less favourably in connection with the provision of those goods, facilities, or services than would otherwise be the case,—

by reason of any of the prohibited grounds of discrimination.

(2) For the purposes of subsection (1), but without limiting the meaning of the terms goods, facilities, and services in that subsection, the term **facilities**

includes facilities by way of banking or insurance or for grants, loans, credit, or finance.

- (3) Where any club, or any branch or affiliate of any club, that grants privileges to members of any other club, branch, or affiliate refuses or fails on demand to provide those privileges to any of those members, or treats any of those members less favourably in connection with the provision of those privileges than would otherwise be the case, by reason of any of the prohibited grounds of discrimination, that club, branch, or affiliate shall be deemed to have committed a breach of this section.
- (4) Subject to subsection (3), nothing in this section shall apply to access to membership of a club or to the provision of services or facilities to members of a club.

Compare: 1977 No 49 s 24(1)–(3)

#### **45 Exception in relation to courses and counselling**

Nothing in section 44 shall prevent the holding of courses, or the provision of counselling, restricted to persons of a particular sex, race, ethnic or national origin, or sexual orientation where highly personal matters, such as sexual matters or the prevention of violence, are involved.

#### **46 Exception in relation to public decency or safety**

Section 44 shall not apply to the maintenance or provision of separate facilities or services for each sex on the ground of public decency or public safety.

Compare: 1977 No 49 s 24(4)

#### **47 Exception in relation to skill**

Where the nature of a skill varies according to whether it is exercised in relation to men or women, a person does not commit a breach of section 44 by exercising the skill in relation to one sex only, in accordance with that person's normal practice.

Compare: 1977 No 49 s 24(5)

#### **48 Exception in relation to insurance**

- (1) It shall not be a breach of section 44 to offer or provide annuities, life insurance policies, accident insurance policies, or other policies of insurance, whether for individual persons or groups of persons, on different terms or conditions for each sex or for persons with a disability or for persons of different ages if the different treatment—
- (a) is based on—
- (i) actuarial or statistical data, upon which it is reasonable to rely, relating to life-expectancy, accidents, or sickness; or
  - (ii) where no such data is available in respect of persons with a disability, reputable medical or actuarial advice or opinion, upon

which it is reasonable to rely, whether or not contained in an underwriting manual; and

- (b) is reasonable having regard to the applicability of the data or advice or opinion, and of any other relevant factors, to the particular circumstances.
- (2) In assessing, for the purposes of this section, whether it is reasonable to rely on any data or advice or opinion, and whether different treatment is reasonable, the Commission or the Complaints Division may—
- (a) require justification to be provided for reliance on the data or advice or opinion and for the different treatment; and
  - (b) request the views of an actuary on the justification for the reliance and for the different treatment.

Compare: 1977 No 49 s 24(6)

Section 48(2)(b): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

#### **49 Exception in relation to sport**

- (1) Subject to subsection (2), nothing in section 44 shall prevent the exclusion of persons of one sex from participation in any competitive sporting activity in which the strength, stamina, or physique of competitors is relevant.
- (2) Subsection (1) does not apply in relation to the exclusion of persons from participation in—
  - (a) the coaching of persons engaged in any sporting activity; or
  - (b) the umpiring or refereeing of any sporting activity; or
  - (c) the administration of any sporting activity; or
  - (d) sporting activities by persons who have not attained the age of 12 years.
- (3) It shall not be a breach of section 44 to exclude any person from any competitive sporting event or activity if that person's disability is such that there would be a risk of harm to that person or to others, including the risk of infecting others with an illness, if that person were to take part in that competitive sporting event or activity and it is not reasonable to take that risk.
- (4) It shall not be a breach of section 44 to conduct competitive sporting events or activities in which only persons with a particular disability or age qualification may take part.

#### **50 Exception in relation to travel services**

It shall not be a breach of section 44 to provide group travel services which are expressed to be solely for the benefit of persons in a particular age group.

**51 Exception in relation to reduced charges**

It shall not be a breach of section 44 to provide goods, services, or facilities at a reduced fee, charge, or rate on the ground of age, disability, or employment status, whether or not there are conditions applicable to the reduced fee, charge, or rate.

**52 Exception in relation to disability**

It shall not be a breach of section 44 for a person who supplies facilities or services—

- (a) to refuse to provide those facilities or services to any person if—
  - (i) that person's disability requires those facilities or services to be provided in a special manner; and
  - (ii) the person who supplies the facilities or services cannot reasonably be expected to provide them in that special manner; or
- (b) to provide those facilities or services to any person on terms that are more onerous than those on which they are made available to other persons, if—
  - (i) that person's disability requires those facilities or services to be provided in a special manner; and
  - (ii) the person who supplies the facilities or services cannot reasonably be expected to provide them without requiring more onerous terms.

Compare: Equal Opportunity Act 1984 s 29(2) (Vic)

*Discrimination in provision of land, housing, and other accommodation*

**53 Land, housing, and other accommodation**

- (1) It shall be unlawful for any person, on his or her own behalf or on behalf or purported behalf of any principal,—
  - (a) to refuse or fail to dispose of any estate or interest in land or any residential or business accommodation to any other person; or
  - (b) to dispose of such an estate or interest or such accommodation to any person on less favourable terms and conditions than are or would be offered to other persons; or
  - (c) to treat any person who is seeking to acquire or has acquired such an estate or interest or such accommodation differently from other persons in the same circumstances; or
  - (d) to deny any person, directly or indirectly, the right to occupy any land or any residential or business accommodation; or
  - (e) to terminate any estate or interest in land or the right of any person to occupy any land or any residential or business accommodation,—

by reason of any of the prohibited grounds of discrimination.

- (2) It shall be unlawful for any person, on his or her own behalf or on behalf or purported behalf of any principal, to impose or seek to impose on any other person any term or condition which limits, by reference to any of the prohibited grounds of discrimination, the persons or class of persons who may be the licensees or invitees of the occupier of any land or any residential or business accommodation.

Compare: 1977 No 49 s 25(1), (2)

**54 Exception in relation to shared residential accommodation**

Nothing in section 53 shall apply to residential accommodation which is to be shared with the person disposing of the accommodation, or on whose behalf it is disposed of.

Compare: 1977 No 49 s 25(4)

**55 Exception in relation to hostels, institutions, etc**

Nothing in section 53 shall apply to accommodation in any hostel or in any establishment (such as a hospital, club, school, university, religious institution, or retirement village), or in any part of a hostel or any such establishment, where accommodation is provided only for persons of the same sex, marital status, or religious or ethical belief, or for persons with a particular disability, or for persons in a particular age group.

Compare: 1977 No 49 s 25(3)

**56 Further exception in relation to disability**

- (1) Subject to subsection (2), nothing in section 53 shall apply, in relation to any accommodation, if the disability of the person is such that there would be a risk of harm to that person or others, including the risk of infecting others with an illness, if that person were to live in that accommodation and it is not reasonable to take that risk.
- (2) Subsection (1) shall not apply if the person in charge of the accommodation could, without unreasonable disruption, take reasonable measures to reduce the risk to a normal level.
- (3) Nothing in section 53 makes it unlawful to fail to provide special services or facilities designed to make accommodation suitable for occupation by a person with a disability, if those special services or facilities cannot reasonably be provided in the circumstances.

Section 56(3): added, on 10 September 2008, by section 8 of the Human Rights Amendment Act 2008 (2008 No 65).



*Discrimination in access to educational establishments*

**57 Educational establishments**

- (1) It shall be unlawful for an educational establishment, or the authority responsible for the control of an educational establishment, or any person concerned in the management of an educational establishment or in teaching at an educational establishment,—
- (a) to refuse or fail to admit a person as a pupil or student; or
  - (b) to admit a person as a pupil or a student on less favourable terms and conditions than would otherwise be made available; or
  - (c) to deny or restrict access to any benefits or services provided by the establishment; or
  - (d) to exclude a person as a pupil or a student or subject him or her to any other detriment,—
- by reason of any of the prohibited grounds of discrimination.
- (2) In this section, **educational establishment** includes an establishment offering any form of training or instruction and an educational establishment under the control of an organisation or association referred to in section 40.

Compare: 1977 No 49 s 26(1), (3)

**58 Exceptions in relation to establishments for particular groups**

- (1) An educational establishment maintained wholly or principally for students of one sex, race, or religious belief, or for students with a particular disability, or for students in a particular age group, or the authority responsible for the control of any such establishment, does not commit a breach of section 57 by refusing to admit students of a different sex, race, or religious belief, or students not having that disability or not being in that age group.
- (2) Nothing in section 57 shall prevent an organisation or association from affording persons preferential access to facilities for training that would help to fit them for employment where it appears to that organisation or association that those persons are in special need of training by reason of the period for which they have not been engaged in regular full-time employment.
- (3) Nothing in section 57 shall prevent an organisation or association from providing training, or facilities or opportunities for training (including facilities or opportunities by way of financial grants), only for persons above a particular age or in a particular age group.
- (4) Nothing in section 57 shall prevent the making of financial grants by an organisation or association only to persons above a particular age or in a particular age group.

- (5) Nothing in section 57 shall prevent an organisation or association from charging different fees to persons in different age groups.

Compare: 1977 No 49 s 26(2)

### **59 Exception in relation to courses and counselling**

Nothing in section 57 shall prevent the holding or provision, at any educational establishment, of courses or counselling restricted to persons of a particular sex, race, ethnic or national origin, or sexual orientation, where highly personal matters, such as sexual matters or the prevention of violence, are involved.

### **60 Further exceptions in relation to disability**

- (1) Nothing in section 57 applies to a person whose disability is such that that person requires special services or facilities that in the circumstances cannot reasonably be made available (being services or facilities that are required to enable the person to participate in the educational programme of an establishment referred to in that section or to enable the person to derive substantial benefits from that programme).
- (2) Subject to subsection (3), nothing in section 57 shall apply where the person's disability is such that there would be a risk of harm to that person or to others, including the risk of infecting others with an illness, if that person were to be admitted to an educational establishment and it is not reasonable to take that risk.
- (3) Nothing in subsection (2) shall apply if the person in charge of the educational establishment could, without unreasonable disruption, take reasonable measures to reduce the risk to a normal level.

Compare: Equal Opportunity Act 1984 s 28(5) (Vic)

Section 60(1): amended, on 10 September 2008, by section 9(a) of the Human Rights Amendment Act 2008 (2008 No 65).

Section 60(1): amended, on 10 September 2008, by section 9(b) of the Human Rights Amendment Act 2008 (2008 No 65).

### *Other forms of discrimination*

### **61 Racial disharmony**

- (1) It shall be unlawful for any person—
- (a) to publish or distribute written matter which is threatening, abusive, or insulting, or to broadcast by means of radio or television or other electronic communication words which are threatening, abusive, or insulting; or
- (b) to use in any public place as defined in section 2(1) of the Summary Offences Act 1981, or within the hearing of persons in any such public place, or at any meeting to which the public are invited or have access, words which are threatening, abusive, or insulting; or

- (c) to use in any place words which are threatening, abusive, or insulting if the person using the words knew or ought to have known that the words were reasonably likely to be published in a newspaper, magazine, or periodical or broadcast by means of radio or television,—

being matter or words likely to excite hostility against or bring into contempt any group of persons in or who may be coming to New Zealand on the ground of the colour, race, or ethnic or national origins of that group of persons.

- (2) It shall not be a breach of subsection (1) to publish in a newspaper, magazine, or periodical or broadcast by means of radio or television or other electronic communication a report relating to the publication or distribution of matter by any person or the broadcast or use of words by any person, if the report of the matter or words accurately conveys the intention of the person who published or distributed the matter or broadcast or used the words.

- (3) For the purposes of this section,—

**newspaper** means a paper containing public news or observations on public news, or consisting wholly or mainly of advertisements, being a newspaper that is published periodically at intervals not exceeding 3 months

**publishes** or **distributes** means publishes or distributes to the public at large or to any member or members of the public

**written matter** includes any writing, sign, visible representation, or sound recording.

Compare: 1971 No 150 s 9A; 1977 No 49 s 86; 1989 No 127 s 2

Section 61(1)(a): amended, on 3 July 2015, by section 36(1) of the Harmful Digital Communications Act 2015 (2015 No 63).

Section 61(2): amended, on 3 July 2015, by section 36(2) of the Harmful Digital Communications Act 2015 (2015 No 63).

## 62 Sexual harassment

- (1) It shall be unlawful for any person (in the course of that person's involvement in any of the areas to which this subsection is applied by subsection (3)) to make a request of any other person for sexual intercourse, sexual contact, or other form of sexual activity which contains an implied or overt promise of preferential treatment or an implied or overt threat of detrimental treatment.
- (2) It shall be unlawful for any person (in the course of that person's involvement in any of the areas to which this subsection is applied by subsection (3)) by the use of language (whether written or spoken) of a sexual nature, or of visual material of a sexual nature, or by physical behaviour of a sexual nature, to subject any other person to behaviour that—
- (a) is unwelcome or offensive to that person (whether or not that is conveyed to the first-mentioned person); and

- (b) is either repeated, or of such a significant nature, that it has a detrimental effect on that person in respect of any of the areas to which this subsection is applied by subsection (3).
- (3) The areas to which subsections (1) and (2) apply are—
  - (a) the making of an application for employment:
  - (b) employment, which term includes unpaid work:
  - (c) participation in, or the making of an application for participation in, a partnership:
  - (d) membership, or the making of an application for membership, of an industrial union or professional or trade association:
  - (e) access to any approval, authorisation, or qualification:
  - (f) vocational training, or the making of an application for vocational training:
  - (g) access to places, vehicles, and facilities:
  - (h) access to goods and services:
  - (i) access to land, housing, or other accommodation:
  - (j) education:
  - (k) participation in fora for the exchange of ideas and information.
- (4) Where a person complains of sexual harassment, no account shall be taken of any evidence of the person's sexual experience or reputation.

Section 62(3)(k): inserted, on 3 July 2015, by section 37 of the Harmful Digital Communications Act 2015 (2015 No 63).

### **63 Racial harassment**

- (1) It shall be unlawful for any person to use language (whether written or spoken), or visual material, or physical behaviour that—
  - (a) expresses hostility against, or brings into contempt or ridicule, any other person on the ground of the colour, race, or ethnic or national origins of that person; and
  - (b) is hurtful or offensive to that other person (whether or not that is conveyed to the first-mentioned person); and
  - (c) is either repeated, or of such a significant nature, that it has a detrimental effect on that other person in respect of any of the areas to which this subsection is applied by subsection (2).
- (2) The areas to which subsection (1) applies are—
  - (a) the making of an application for employment:
  - (b) employment, which term includes unpaid work:
  - (c) participation in, or the making of an application for participation in, a partnership:

- (d) membership, or the making of an application for membership, of an industrial union or professional or trade association:
- (e) access to any approval, authorisation, or qualification:
- (f) vocational training, or the making of an application for vocational training:
- (g) access to places, vehicles, and facilities:
- (h) access to goods and services:
- (i) access to land, housing, or other accommodation:
- (j) education:
- (k) participation in fora for the exchange of ideas and information.

Section 63(2)(k): inserted, on 3 July 2015, by section 38 of the Harmful Digital Communications Act 2015 (2015 No 63).

#### **64 Choice of procedures**

*[Repealed]*

Section 64: repealed, on 1 December 2004, by section 3 of the Human Rights Amendment Act 2004 (2004 No 88).

#### **65 Indirect discrimination**

Where any conduct, practice, requirement, or condition that is not apparently in contravention of any provision of this Part has the effect of treating a person or group of persons differently on 1 of the prohibited grounds of discrimination in a situation where such treatment would be unlawful under any provision of this Part other than this section, that conduct, practice, condition, or requirement shall be unlawful under that provision unless the person whose conduct or practice is in issue, or who imposes the condition or requirement, establishes good reason for it.

Compare: 1977 No 49 s 27; 1992 No 16 s 12

#### **66 Victimisation**

- (1) It shall be unlawful for any person to treat or to threaten to treat any other person less favourably than he or she would treat other persons in the same or substantially similar circumstances—
  - (a) on the ground that that person, or any relative or associate of that person,—
    - (i) intends to make use of his or her rights under this Act or to make a disclosure under the Protected Disclosures Act 2000; or
    - (ii) has made use of his or her rights, or promoted the rights of some other person, under this Act, or has made a disclosure, or has encouraged disclosure by some other person, under the Protected Disclosures Act 2000; or

- (iii) has given information or evidence in relation to any complaint, investigation, or proceeding under this Act or arising out of a disclosure under the Protected Disclosures Act 2000; or
  - (iv) has declined to do an act that would contravene this Act; or
  - (v) has otherwise done anything under or by reference to this Act; or
  - (b) on the ground that he or she knows that that person, or any relative or associate of that person, intends to do any of the things mentioned in subparagraphs (i) to (v) of paragraph (a) or that he or she suspects that that person, or any relative or associate of that person, has done, or intends to do, any of those things.
- (2) Subsection (1) shall not apply where a person is treated less favourably because he or she has knowingly made a false allegation or otherwise acted in bad faith.

Compare: 1977 No 49 s 31

Section 66(1)(a): substituted, on 1 January 2001, by section 25 of the Protected Disclosures Act 2000 (2000 No 7).

## **67 Advertisements**

- (1) It shall be unlawful for any person to publish or display, or to cause or allow to be published or displayed, any advertisement or notice which indicates, or could reasonably be understood as indicating, an intention to commit a breach of any of the provisions of this Part.
- (2) For the purposes of subsection (1), use of a job description with a gender connotation (such as postman or stewardess) shall be taken to indicate an intention to discriminate, unless the advertisement contains an indication to the contrary.

Compare: 1971 No 150 s 7; 1977 No 49 s 32

## **68 Liability of employer and principals**

- (1) Subject to subsection (3), anything done or omitted by a person as the employee of another person shall, for the purposes of this Part, be treated as done or omitted by that other person as well as by the first-mentioned person, whether or not it was done with that other person's knowledge or approval.
- (2) Anything done or omitted by a person as the agent of another person shall, for the purposes of this Part, be treated as done or omitted by that other person as well as by the first-mentioned person, unless it is done or omitted without that other person's express or implied authority, precedent or subsequent.
- (3) In proceedings under this Act against any person in respect of an act alleged to have been done by an employee of that person, it shall be a defence for that person to prove that he or she took such steps as were reasonably practicable to prevent the employee from doing that act, or from doing as an employee of that person acts of that description.

Compare: 1977 No 49 s 33

**69 Further provision in relation to sexual or racial harassment in employment**

- (1) Where—
- (a) a request of the kind described in section 62(1) is made to an employee; or
  - (b) an employee is subjected to behaviour of the kind described in section 62(2) or section 63—

by a person who is a customer or a client of the employee's employer, the employee may make a complaint in writing about that request or behaviour to the employee's employer.

- (2) The employer, on receiving a complaint under subsection (1),—
- (a) shall inquire into the facts; and
  - (b) if satisfied that such a request was made or that such behaviour took place,—

shall take whatever steps are practicable to prevent any repetition of such a request or of such behaviour.

- (3) Where any person, being a person in relation to whom an employee has made a complaint under subsection (1),—
- (a) either—
    - (i) makes to that employee after the complaint a request of the kind described in section 62(1); or
    - (ii) subjects that employee after the complaint to behaviour of the kind described in section 62(2) or section 63; and
  - (b) the employer of that employee has not taken whatever steps are practicable to prevent the repetition of such a request or such behaviour,—

that employer shall be deemed to have committed a breach of this Act and the provisions of this Act shall apply accordingly.

*Special provisions relating to superannuation schemes*

**70 Superannuation schemes**

- (1) Subject to subsection (3), nothing in section 22 or section 44 relating to different treatment on the ground of age or disability shall apply to any condition in, or requirement of, a superannuation scheme in existence at the commencement of this Act in relation to a person who was a member of the scheme at the commencement of this Act or who becomes a member of the scheme before 1 January 1996.
- (2) It shall continue to be lawful for the provisions of a superannuation scheme to provide—

- (a) different benefits for members of each sex on the basis of the same contributions; or
  - (b) the same benefits for members of each sex on the basis of different contributions,—  
if the different treatment—
    - (c) is based on actuarial or statistical data, upon which it is reasonable to rely, relating to life-expectancy, accidents, or sickness; and
    - (d) is reasonable having regard to the applicability of the data, and of any other relevant factors, to the particular circumstances.
- (3) It shall continue to be unlawful to require an applicant for membership of a superannuation scheme to have attained a minimum age.
- (4) Nothing in section 22 or section 44 shall prevent the provisions of a superannuation scheme from—
  - (a) providing or requiring different contributions for members; or
  - (b) providing benefits for members that differ in nature or amount,—  
by reason of the disability or age of those members, if the different treatment—
    - (c) is based on—
      - (i) actuarial or statistical data, upon which it is reasonable to rely, relating to life-expectancy, accidents, or sickness; or
      - (ii) where no such data is available in respect of persons with a disability, reputable medical or actuarial advice or opinion, upon which it is reasonable to rely, whether or not contained in an underwriting manual; and
    - (d) is reasonable having regard to the applicability of the data or advice or opinion, and of any other relevant factors, to the particular circumstances.
- (5) Nothing in section 22 or section 44 shall prevent the provisions of a superannuation scheme, or the trustees, the supervisor, or the manager of the scheme, from—
  - (a) requiring an applicant for membership of the scheme to be under a specified maximum age; or
  - (b) permitting a member of the scheme to elect to make increased or reduced contributions to the scheme either temporarily or indefinitely; or
  - (c) specifying an age of eligibility for each type of benefit provided for members of the scheme; or
  - (d) subject to section 183 of the Financial Markets Conduct Act 2013, requiring persons who become members of the scheme on or after 1 January 1995 to leave the scheme on reaching the age at which persons of that age ordinarily qualify for national superannuation under section 7



of the New Zealand Superannuation and Retirement Income Act 2001;  
or

- (e) providing benefits on the death or disability of members of the scheme that decrease in value as the age of members increases; or
  - (f) providing benefits for members of the scheme that differ in nature and amount according to the member's period of membership (including any period deemed by the trustees, the supervisor, or the manager of the scheme to be membership) of the scheme and of any scheme replaced by that scheme, and, in the case of a superannuation scheme provided by an employer, of any scheme to which the employer has paid contributions on behalf of the employee.
- (6) In assessing for the purposes of this section whether it is reasonable to rely on any data or advice or opinion and whether different treatment is reasonable, the Commission or the Complaints Division may—
- (a) require justification to be provided for reliance on the data or advice or opinion and for the different treatment; and
  - (b) request the views of an actuary on the justification for the reliance and for the different treatment.

Section 70(1): amended, on 9 December 1994, by section 6 of the Human Rights Amendment Act 1994 (1994 No 138).

Section 70(5): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 70(5)(d): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 70(5)(d): amended, on 21 April 2005, by section 9(1) of the New Zealand Superannuation and Retirement Income Amendment Act 2005 (2005 No 42).

Section 70(5)(d): amended, on 12 October 2001, by section 77 of the New Zealand Superannuation Act 2001 (2001 No 84).

Section 70(5)(f): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 70(6)(b): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

## **71 Reports on superannuation schemes**

The Commission shall from time to time, after consultation with the FMA, report to the Minister on whether discrimination on the prohibited grounds has been eliminated from superannuation schemes.

Compare: 1977 No 49 s 89

Section 71: amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

## **72 Power to vary trust deeds**

- (1) Notwithstanding any Act or rule of law or the provisions of the instrument or conditions governing any superannuation scheme, the trustees of the scheme,

or the manager of the scheme with the supervisor's consent, may make such amendments to that instrument or those conditions as are necessary or desirable to give effect to the provisions of sections 22, 44, and 70.

- (2) Every amendment to the provisions of an instrument or conditions governing any superannuation scheme made under subsection (1) on or after the commencement of the Human Rights Amendment Act 1994 must be made by deed.

Section 72: substituted, on 9 December 1994, by section 7 of the Human Rights Amendment Act 1994 (1994 No 138).

Section 72(1): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

### *Other matters*

#### **73 Measures to ensure equality**

- (1) Anything done or omitted which would otherwise constitute a breach of any of the provisions of this Part shall not constitute such a breach if—
- (a) it is done or omitted in good faith for the purpose of assisting or advancing persons or groups of persons, being in each case persons against whom discrimination is unlawful by virtue of this Part; and
  - (b) those persons or groups need or may reasonably be supposed to need assistance or advancement in order to achieve an equal place with other members of the community.
- (2) Nothing in this Part—
- (a) limits the power of the Crown to establish or arrange work or training schemes or employment assistance measures, eligibility for which may, in whole or in part, be determined by a person's age, employment status, or family status; or
  - (b) makes it unlawful for any person to recruit or refer any other person who is of a particular age or of a particular employment status or of a particular family status for any work or training scheme or employment assistance measure that is established or arranged by the Crown, the eligibility for which may, in whole or in part, be determined by a person's age, employment status, or family status.

Compare: 1977 No 49 s 29; 1992 No 16 s 13(1)

#### **74 Measures relating to pregnancy, childbirth, or family responsibilities**

For the avoidance of doubt it is hereby declared that preferential treatment granted by reason of—

- (a) a woman's pregnancy or childbirth; or
- (b) a person's responsibility for part-time care or full-time care of children or other dependants—

shall not constitute a breach of this Part.

Compare: 1977 No 49 s 30

### **Part 3**

#### **Resolution of disputes about compliance with Part 1A and Part 2**

Part 3: substituted, on 1 January 2002, by section 9 of the Human Rights Amendment Act 2001 (2001 No 96).

##### **75 Object of this Part**

The object of this Part is to establish procedures that—

- (a) facilitate the provision of information to members of the public who have questions about discrimination; and
- (b) recognise that disputes about compliance with Part 1A or Part 2 are more likely to be successfully resolved if those disputes can be resolved promptly by the parties themselves; and
- (c) recognise that, if disputes about compliance with Part 1A or Part 2 are to be resolved promptly, expert problem-solving support, information, and assistance needs to be available to the parties to those disputes; and
- (d) recognise that the procedures for dispute resolution under this Part need to be flexible; and
- (e) recognise that judicial intervention at the lowest level needs to be that of a specialist decision-making body that is not inhibited by strict procedural requirements; and
- (f) recognise that difficult issues of law may need to be determined by higher courts.

Section 75: substituted, on 1 January 2002, by section 9 of the Human Rights Amendment Act 2001 (2001 No 96).

##### **76 Functions of Commission under this Part**

- (1) The primary functions of the Commission under this Part are—
  - (a) to provide information to members of the public who have questions about discrimination; and
  - (b) to facilitate the resolution of disputes about compliance with Part 1A or Part 2, by the parties concerned, in the most efficient, informal, and cost-effective manner possible.
- (2) The Commission has, in order to carry out its function under subsection (1)(b), the following functions:
  - (a) to receive and assess a complaint alleging that there has been a breach of Part 1A or Part 2, or both:

- (b) to gather information in relation to a complaint of that kind (including one referred back to it by the Director under section 90(1)(b), or the Tribunal under section 92D) for the purposes of paragraphs (c) and (d):
- (c) to offer services designed to facilitate resolution of the complaint, including information, expert problem-solving support, mediation, and other assistance:
- (d) to take action or further action under this Part in relation to the complaint, if the complainant or aggrieved person wishes to proceed with it, unless section 80(2) or (3) applies:
- (e) to provide information gathered in relation to a complaint to the parties concerned.

Section 76: substituted, on 1 January 2002, by section 9 of the Human Rights Amendment Act 2001 (2001 No 96).

#### **77 Dispute resolution services**

- (1) The Commission must provide dispute resolution services for the purposes of carrying out its functions under section 76.
- (2) Services provided under this section may include—
  - (a) the provision of general information about discrimination and legal obligations in relation to discrimination:
  - (b) the provision of information about what services are available for persons who have disputes about compliance with Part 1A or Part 2:
  - (c) the provision of a venue for, and a mediator at, any dispute resolution meeting that—
    - (i) is designed to enable each party to discuss and seek to resolve any complaint, without prejudice to his or her position; and
    - (ii) is convened at the request, or with the agreement of, the parties or, if section 84(4) applies, by the Commission:
  - (d) other services (of a type that can address a variety of circumstances) that assist persons to resolve, promptly and effectively, their disputes about compliance with Part 1A or Part 2.

Section 77: substituted, on 1 January 2002, by section 9 of the Human Rights Amendment Act 2001 (2001 No 96).

#### **78 Method of providing services**

Services provided under section 77 may be provided in any manner, including—

- (a) by a telephone, facsimile, internet, or email service (whether as a means of explaining where information can be found or as a means of actually providing the information or of otherwise seeking to resolve the problem); or

- (b) by publishing pamphlets, brochures, booklets, or codes; or
- (c) by specialists who—
  - (i) respond to requests or themselves identify how, where, and when their services can best support the object of this Part; or
  - (ii) provide their services in the manner, and at the time and place that is, most likely to resolve the problem or dispute in question; or
  - (iii) provide their services in all of the ways described in this paragraph.

Section 78: substituted, on 1 January 2002, by section 9 of the Human Rights Amendment Act 2001 (2001 No 96).

### **79 How complaints received to be treated**

- (1) This section applies if the Commission receives, under section 76(2)(a), a complaint alleging that there has been a breach of Part 1A or Part 2 or both Parts.
- (2) If the complaint or part of it concerns an enactment, or an act or omission that is authorised or required by an enactment, the complaint or relevant part of it must be treated only as a complaint that the enactment is in breach of Part 1A.
- (3) Despite every other provision of this section, if the complaint or part of it concerns a judgment or other order of a court, or an act or omission of a court affecting the conduct of any proceedings, the Commission must take no further action in relation to the complaint or relevant part of it.
- (4) If the complaint or part of it concerns an act or omission by a person or body referred to in section 3 of the New Zealand Bill of Rights Act 1990, and neither subsection (2) nor subsection (3) applies, the complaint or relevant part of it—
  - (a) must be treated only as a complaint that there is a breach of Part 1A, unless the act or omission complained of involves conduct that—
    - (i) is unlawful under any of sections 22, 23, 61 to 63, and 66; or
    - (ii) is unlawful under any of sections 65 and 67 to 74, but only to the extent that those sections relate to conduct that is unlawful under any provision referred to in subparagraph (i):
  - (b) must be treated only as a complaint that there has been a breach of the relevant provision or provisions of Part 2 if the act or omission complained of involves conduct that is unlawful under any of sections 22, 23, 61 to 63, and 66.
- (5) If the complaint or relevant part of it concerns a breach of Part 2, and none of subsections (2) to (4) applies to the complaint or relevant part of it, the complaint or relevant part of it must be treated only as a complaint that there has been a breach of the relevant provision or provisions of Part 2.
- (6) Nothing in this section prevents the Commission from involving any person that it considers appropriate in information gathering and the resolution of disputes.

Section 79: substituted, on 1 January 2002, by section 9 of the Human Rights Amendment Act 2001 (2001 No 96).

### **79A Choice of procedures**

- (1) If the circumstances giving rise to a complaint under Part 2 are such that an employee would also be entitled to pursue a personal grievance under the Employment Relations Act 2000, the employee may take one, but not both, of the following steps:
  - (a) the employee may make in relation to those circumstances a complaint under this Act:
  - (b) the employee may, if the grievance is not otherwise resolved, apply to the Employment Relations Authority for the resolution of the grievance under the Employment Relations Act 2000.
- (2) To avoid doubt, a complaint referred to in subsection (1) includes, but is not limited to, a complaint about sexual harassment or racial harassment.
- (3) For the purposes of subsection (1)(a), an employee makes a complaint when proceedings about that complaint are commenced by the complainant or the Commission.
- (4) If an employee makes a complaint under subsection (1)(a), the employee may not exercise or continue to exercise any rights relating to the subject matter of the complaint that the employee may have under the Employment Relations Act 2000.
- (5) If an employee applies to the Employment Relations Authority for a resolution of the grievance under subsection (1)(b), the employee may not exercise or continue to exercise any rights relating to the subject matter of the grievance that the employee may have under this Act.

Section 79A: inserted, on 1 December 2004, by section 4 of the Human Rights Amendment Act 2004 (2004 No 88).

### **80 Taking action or further action in relation to complaint**

- (1) The Commission may only take action or further action under this Part in relation to a complaint if the complainant or person alleged to be aggrieved (if not the complainant) informs the Commission that he or she wishes to proceed with the complaint.
- (2) The Commission may decline to take action or further action under this Part in relation to a complaint if the complaint relates to a matter of which the complainant or the person alleged to be aggrieved (if not the complainant) has had knowledge for more than 12 months before the complaint is received by the Commission.
- (3) The Commission may also decline to take action or further action under this Part in relation to a complaint if, in the Commission's opinion,—
  - (a) the subject matter of the complaint is trivial; or

- (b) the complaint is frivolous or vexatious or is not made in good faith; or
  - (c) having regard to all the circumstances of the case, it is unnecessary to take further action in relation to the complaint; or
  - (d) there is in all the circumstances an adequate remedy or right of appeal, other than the right to petition Parliament or to make a complaint to the Ombudsman, that it would be reasonable for the complainant or the person alleged to be aggrieved (if not the complainant) to exercise.
- (4) If the Commission decides to take no action or no further action in relation to a complaint, it must inform the complainant or the person alleged to be aggrieved (if not the complainant) and the person against whom the complaint is made—
- (a) of that decision; and
  - (b) of the reasons for that decision; and
  - (c) of his or her right, under section 92B, to bring proceedings before the Human Rights Review Tribunal.

Compare: 1977 No 49 s 35; 1981 No 127 s 3

Section 80: substituted, on 1 January 2002, by section 9 of the Human Rights Amendment Act 2001 (2001 No 96).

### **81 Commission to inform parties of process**

- (1) Before gathering information about a complaint, the Commission must comply with subsections (2) and (4).
- (2) The Commission must inform the following persons of the Commission's intention to gather information under section 82, and provide them with general information about the matters stated in subsection (3):
- (a) the complainant (if any); and
  - (b) any person alleged to be aggrieved (if not the complainant); and
  - (c) the person against whom the complaint is made; and
  - (d) if the complaint alleges a breach of Part 1A, or alleges a breach of Part 2 by a person or body referred to in section 3 of the New Zealand Bill of Rights Act 1990, the Attorney-General;
  - (e) any other person or body that the Commission considers relevant.
- (3) The matters referred to in subsection (2) are—
- (a) rights and obligations under this Act; and
  - (b) processes that apply to complaints under this Act; and
  - (c) other services that may help the parties to a complaint secure a settlement of the matter.
- (4) The Commission must also inform the person against whom the complaint was made and, if subsection (2)(d) applies, the Attorney-General—

- (a) of the details of the complaint (if any); and
  - (b) of the right of that person and, if subsection (2)(d) applies, of the Attorney-General to submit to the Commission, within a reasonable time, information in response to the complaint.
- (5) A requirement under this section to inform a person is satisfied if all reasonable efforts have been made to inform the person.

Section 81: substituted, on 1 January 2002, by section 9 of the Human Rights Amendment Act 2001 (2001 No 96).

## **82 Information gathering and disclosure by Commission**

- (1) When the Commission gathers information about a complaint under section 76(2)(b) for the purposes of section 76(2)(c) or (d)—
- (a) that process must be conducted in private;
  - (b) the Commission may hear or obtain information from any persons it thinks fit;
  - (c) except as provided in section 81(4)(b), no person is entitled as of right to be heard by the Commission.
- (2) The Commission must make all reasonable efforts to give all parties concerned all relevant information gathered (if any) by it in relation to a complaint promptly after the information is gathered.

Section 82: substituted, on 1 January 2002, by section 9 of the Human Rights Amendment Act 2001 (2001 No 96).

## **83 Settlement**

- (1) This section applies if at any time it appears to the Commission from a complaint (including one referred back to the Commission by the Director, under section 90(1)(b), or the Tribunal, under section 92D), or from information gathered in relation to the complaint (including any response made under section 81(4)(b)), that it may be possible to reach a settlement.
- (2) The Commission must use its best endeavours to assist the parties to secure a settlement.
- (3) In this section, **settlement**—
- (a) means the agreement of the parties concerned on actions that settle the matter, which may include the payment of compensation or the tendering of an apology; and
  - (b) includes a satisfactory assurance by the person to whom the complaint relates against the repetition of the conduct that was the subject matter of the complaint or against further conduct of a similar kind.

Section 83: substituted, on 1 January 2002, by section 9 of the Human Rights Amendment Act 2001 (2001 No 96).



**84 Reference of complaint to Director or from Director or Tribunal**

- (1) The complainant, aggrieved person, or party seeking to enforce a settlement may refer a complaint to the Director so that he or she may decide, under section 90(1)(a) or (c), whether to represent that person in proceedings before the Human Rights Tribunal.
- (2) The Commission must promptly inform all parties concerned of every reference of a complaint back to the Commission, whether the reference back is one by the Director, under section 90(1)(b), or one by the Tribunal, under section 92D.
- (3) A requirement under this section to inform a person is satisfied if all reasonable efforts have been made to inform the person.
- (4) If a complaint is referred back to the Commission by the Director, under section 90(1)(b), or by the Tribunal, under section 92D, the Commission may, without limiting its other powers, require the parties to attend a dispute resolution meeting or other form of mediation designed to facilitate resolution of the complaint.

Section 84: substituted, on 1 January 2002, by section 9 of the Human Rights Amendment Act 2001 (2001 No 96).

**85 Confidentiality of information disclosed at dispute resolution meeting**

- (1) Except with the consent of the parties or the relevant party, persons referred to in subsection (2) must keep confidential—
  - (a) a statement, admission, or document created or made for the purposes of a dispute resolution meeting; and
  - (b) information that is disclosed orally for the purposes of, and in the course of, a dispute resolution meeting.
- (2) Subsection (1) applies to every person who—
  - (a) is a mediator for a dispute resolution meeting; or
  - (b) attends a dispute resolution meeting; or
  - (c) is a person employed or engaged by the Commission; or
  - (d) is a person who assists either a mediator at a dispute resolution meeting or a person who attends a dispute resolution meeting.

Section 85: substituted, on 1 January 2002, by section 9 of the Human Rights Amendment Act 2001 (2001 No 96).

**86 Evidence as to dispute resolution meeting**

- (1) No mediator at a dispute resolution meeting may give evidence in any proceedings, whether under this Act or any other Act, about—
  - (a) the meeting; or
  - (b) anything related to the meeting that comes to his or her knowledge for the purposes of, or in the course of, the meeting.

- (2) No evidence is admissible in any court, or before any person acting judicially, of any statement, admission, document, or information that, under section 85(1), is required to be kept confidential.

Section 86: substituted, on 1 January 2002, by section 9 of the Human Rights Amendment Act 2001 (2001 No 96).

**87 Certain information not to be made available**

Any statement, admission, document, or information disclosed or made to the mediator at a dispute resolution meeting for the purposes of the dispute resolution meeting must not be made available under the Official Information Act 1982 or the Local Government Official Information and Meetings Act 1987 by a person to whom section 85(1) applies, except with the consent of the parties or the relevant party.

Section 87: substituted, on 1 January 2002, by section 9 of the Human Rights Amendment Act 2001 (2001 No 96).

**88 Limits on effect of section 80(1) or sections 85 to 87**

Nothing in section 80(1) or sections 85 to 87—

- (a) prevents the discovery or affects the admissibility of any evidence (being evidence that is otherwise discoverable or admissible and that existed independently of the mediation process) just because the evidence was presented for the purposes of, or in the course of, a dispute resolution meeting; or
- (b) prevents the gathering of information by the Commission for research or educational purposes so long as the parties and the specific matters in issue between them are not identifiable; or
- (c) prevents the disclosure by any person employed or engaged by the Commission to any other person employed or engaged by the Commission of matters that need to be disclosed for the purposes of giving effect to this Act; or
- (d) prevents the disclosure of information by any person, if that person has reasonable grounds to believe that disclosure is necessary to prevent, or minimise the danger of, injury to any person or damage to any property.

Section 88: substituted, on 1 January 2002, by section 9 of the Human Rights Amendment Act 2001 (2001 No 96).

**89 Enforcement of terms of settlement agreed by parties**

A settlement between parties to a complaint may be enforced by proceedings before the Tribunal brought under section 92B(4)—

- (a) by the complainant (if any) or the aggrieved person (if not the complainant); or
- (b) by the person against whom the complaint was made.

Section 89: substituted, on 1 January 2002, by section 9 of the Human Rights Amendment Act 2001 (2001 No 96).

**90 Functions of Director of Human Rights Proceedings under this Part**

- (1) The Director's functions under this Part include, in relation to a complaint,—
  - (a) deciding, in accordance with sections 91(1) and 92, whether, and to what extent, to provide representation for a party who requests the Director to provide representation in proceedings before the Tribunal or in related proceedings seeking to enforce a settlement reached on a previous occasion (including a settlement secured at a dispute resolution meeting), and providing representation for the party accordingly;
  - (b) deciding, in accordance with section 91(2), whether to refer the complaint back to the Commission;
  - (c) deciding, in accordance with sections 91(3) and 92, whether, and to what extent, to provide representation for a complainant, aggrieved person (if not the complainant), or group of persons who requests, or who request, the Director to provide representation in proceedings before the Tribunal or in related proceedings against the person against whom the complaint was made or the Attorney-General, and providing representation for the complainant, aggrieved person, or group of persons, accordingly.
- (2) The Director's functions under this Part include, in relation to a request from the Commission to provide representation in proceedings brought under section 92B, section 92E, or section 97 or in proceedings in which the Commission is entitled to appear and be heard under section 92H, deciding, in accordance with sections 91(3) and 92, whether, and to what extent, to provide representation for the Commission in proceedings before the Tribunal or in related proceedings.
- (3) In this section and sections 92 and 92C, **related proceedings**, in relation to proceedings before the Tribunal, means proceedings of any of the following descriptions:
  - (a) an appeal to the High Court against a decision of the Tribunal;
  - (b) proceedings in the High Court arising out of—
    - (i) the statement of a case under section 122; or
    - (ii) the removal of proceedings or a matter at issue in them under section 122A;
  - (c) an appeal to the Court of Appeal against a decision of the High Court made in proceedings described in paragraph (a) or paragraph (b);
  - (d) an appeal to the Supreme Court against—
    - (i) a decision of the High Court made in proceedings described in paragraph (a) or paragraph (b); or

- (ii) a decision of the Court of Appeal made in proceedings described in paragraph (c).

Section 90: substituted, on 1 January 2002, by section 9 of the Human Rights Amendment Act 2001 (2001 No 96).

Section 90(3): substituted, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

## **91 Requirements for Director's decisions under section 90**

- (1) The Director may make a decision under section 90(1)(a) if it appears to him or her that a party has failed to observe the terms of a settlement reached on a previous occasion.
- (2) The Director may make a decision under section 90(1)(b) if—
  - (a) it appears to the Director that the complaint may yet be able to be resolved by the parties and the Commission (for example, by mediation); or
  - (b) it is unclear to the Director, from information available to him or her, in relation to the complaint, whether a party has failed to observe the terms of a settlement reached on a previous occasion.
- (3) The Director may make a decision under section 90(1)(c) or (2) if it appears to him or her that a settlement has not been reached and that no action or further action by the Commission is likely to facilitate a settlement.

Section 91: substituted, on 1 January 2002, by section 9 of the Human Rights Amendment Act 2001 (2001 No 96).

## **92 Matters Director to have regard to in deciding whether to provide representation in proceedings before Tribunal or in related proceedings**

- (1) In deciding under section 90(1)(a) or (c) or section 90(2) whether, and to what extent, to provide representation for a complainant, aggrieved person, group of persons, party to a settlement of a complaint, or the Commission, the Director—
  - (a) must have regard to the matters stated in subsection (2):
  - (b) may have regard to any other matter that the Director considers relevant.
- (2) The matters referred to in subsection (1)(a) are—
  - (a) whether the complaint raises a significant question of law:
  - (b) whether resolution of the complaint would affect a large number of people (for example, because the proceedings would be brought by or affect a large group of persons):
  - (c) the level of harm involved in the matters that are the subject of the complaint:
  - (d) whether the proceedings in question are likely to be successful:

- (e) whether the remedies available through proceedings of that kind are likely to suit the particular case:
- (f) whether there is likely to be any conflict of interest in the provision by the Director of representation to any person described in subsection (1):
- (g) whether the provision of representation is an effective use of resources:
- (h) whether or not it would be in the public interest to provide representation.

Section 92: substituted, on 1 January 2002, by section 9 of the Human Rights Amendment Act 2001 (2001 No 96).

#### **92A Director to notify and report on decisions on representation**

- (1) Promptly after making a decision under section 90(1)(a) or (c), the Director must notify the complainant, aggrieved person, group of persons, or party seeking to enforce a settlement reached on a previous occasion—
  - (a) of the terms of the decision; and
  - (b) if the Director has decided not to provide representation for the complainant, aggrieved person, class of persons, or party seeking to enforce a settlement, of the reasons for the decision.
- (2) Promptly after making a decision under section 90(2), the Director must notify the Commission—
  - (a) of the terms of the decision; and
  - (b) of the reasons for the decision.
- (3) If the Director decides to provide representation to the Commission in proceedings in which the Commission is entitled to be heard under section 92H, but subsequently concludes that there is, or may be, a conflict of interest in the provision, or continued provision, of legal representation by the Director to both the complainant and the Commission, the Director must—
  - (a) cease to provide representation to the Commission; and
  - (b) promptly advise the Commission of the Director's decision.
- (4) The Director must report to the Minister, at least once each year and without referring to identifiable individuals concerned, on the Director's decisions under section 90(1)(a) and (c), and, as soon as practicable, the Minister must present a copy of the report to the House of Representatives.

Section 92A: inserted, on 1 January 2002, by section 9 of the Human Rights Amendment Act 2001 (2001 No 96).

*Proceedings*

Heading: inserted, on 1 January 2002, by section 9 of the Human Rights Amendment Act 2001 (2001 No 96).

**92B Civil proceedings arising from complaints**

- (1) If a complaint referred to in section 76(2)(a) has been made, the complainant, the person aggrieved (if not the complainant), or the Commission may bring civil proceedings before the Human Rights Review Tribunal—
  - (a) for a breach of Part 1A (other than a breach of Part 1A that is an enactment, or an act or omission authorised or required by an enactment or otherwise by law), against the person or persons alleged to be responsible for the breach;
  - (b) for a breach of Part 1A that is an enactment, or an act or omission authorised or required by an enactment or otherwise by law, against the Attorney-General, or against a person or body referred to in section 3(b) of the New Zealand Bill of Rights Act 1990 alleged to be responsible for the breach;
  - (c) for a breach of Part 2, against the person or persons alleged to be responsible for the breach.
- (2) If a complaint under section 76(2)(a) relates to a discriminatory practice alleged to be in breach of Part 1A or Part 2 and to affect a class of persons, proceedings under subsection (1) may be brought by the Commission on behalf of the class of persons affected.
- (3) A person against whom a complaint referred to in section 76(2)(a) has been made may bring civil proceedings before the Tribunal in relation to the complaint if no proceedings in relation to the complaint have been brought under subsection (1) by, or on behalf of, the complainant or person aggrieved or a class of persons.
- (4) If parties to a complaint under section 76(2)(a) have reached a settlement of the complaint (whether through mediation or otherwise) but one of them is failing to observe a term of the settlement, another of them may bring proceedings before the Tribunal to enforce the settlement.
- (5) The rights given by subsections (1), (3), and (4) are not limited or affected just because the Commission or a mediator at a dispute resolution meeting or the Director is taking any action in relation to the complaint concerned.
- (6) Despite subsection (2), the Commission may bring proceedings under subsection (1) only if—
  - (a) the complainant or person aggrieved (if not the complainant) has not brought proceedings; and
  - (b) the Commission has obtained the agreement of that person before bringing the proceedings; and

- (c) it considers that bringing the proceedings will facilitate the performance of its functions stated in section 5(2)(a).
- (7) Despite subsections (1) to (6), no proceedings may be brought under this section in respect of a complaint or relevant part of a complaint to which section 79(3) applies.

Section 92B: inserted, on 1 January 2002, by section 9 of the Human Rights Amendment Act 2001 (2001 No 96).

### **92BA Lodging of applications**

Proceedings before the Tribunal are to be commenced by the lodging of an application in the prescribed form.

Section 92BA: inserted, on 1 December 2004, by section 5 of the Human Rights Amendment Act 2004 (2004 No 88).

### **92C Representation in civil proceedings arising from complaints**

- (1) A party to proceedings before the Tribunal or related proceedings may appear and be heard—
  - (a) in person, or by a barrister or solicitor provided by the person; or
  - (b) by a barrister or solicitor provided by the Director if, and to the extent that, the Director has decided, under section 90(1)(a) or (c) or (2), to provide representation for the party in the proceedings.
- (2) The Tribunal may, on an application for the purpose by any person, give directions as to the representation, in proceedings before it, of a plaintiff of a kind referred to in section 92N(1) to (3) or of any other party to the proceedings who may be able to bring, take part in, or defend the proceedings, only through a representative.
- (3) The Office of Human Rights Proceedings must pay all costs of representation provided—
  - (a) by the Director for a complainant, aggrieved person, group of persons, or party to a settlement of a complaint; and
  - (b) in accordance with a decision of the Director under section 90(1)(a) or (c).
- (4) The Office of Human Rights Proceedings must pay any award of costs made against a person in proceedings for which representation is provided for that person by the Director.
- (5) Any award of costs made in favour of a person in proceedings for which representation is provided for that person by the Director must be paid to the Office of Human Rights Proceedings.
- (6) Nothing in this Act limits or affects the entitlement to legal aid (if any) of a party in respect of proceedings or intended proceedings (whether or not representation for the party in the proceedings may, or is to be, is being, or has been,

provided in accordance with a decision of the Director under section 90(1)(a) or (c)).

Section 92C: inserted, on 1 January 2002, by section 9 of the Human Rights Amendment Act 2001 (2001 No 96).

**92D Tribunal or Chairperson or Deputy Chairperson may refer complaint back to Commission, or adjourn proceedings to seek resolution by settlement**

- (1) When proceedings under section 92B are brought, the Tribunal or the Chairperson or a Deputy Chairperson—
  - (a) must (whether through a member or officer) first consider whether an attempt has been made to resolve the complaint (whether through mediation or otherwise); and
  - (b) must refer the complaint under section 76(2)(a) to which the proceedings relate back to the Commission unless the Tribunal or the Chairperson or a Deputy Chairperson is satisfied that attempts at resolution, or further attempts at resolution, of the complaint by the parties and the Commission—
    - (i) will not contribute constructively to resolving the complaint; or
    - (ii) will not, in the circumstances, be in the public interest; or
    - (iii) will undermine the urgent or interim nature of the proceedings.
- (2) The Tribunal or the Chairperson or a Deputy Chairperson may, at any time before, during, or after the hearing of proceedings, refer a complaint under section 76(2)(a) back to the Commission if it appears to the Tribunal or the Chairperson or a Deputy Chairperson, from what is known to it about the complaint, that the complaint may yet be able to be resolved by the parties and the Commission (for example, by mediation).
- (3) The Tribunal or the Chairperson or a Deputy Chairperson may, instead of exercising the power conferred by subsection (2), adjourn any proceedings relating to a complaint under section 76(2)(a) for a specified period if it appears to the Tribunal or the Chairperson or a Deputy Chairperson, from what is known about the complaint, that the complaint may yet be able to be resolved by the parties.

Section 92D: inserted, on 1 January 2002, by section 9 of the Human Rights Amendment Act 2001 (2001 No 96).

Section 92D heading: amended, on 14 November 2018, by section 78(1) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

Section 92D(1): amended, on 14 November 2018, by section 78(2) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

Section 92D(1)(b): amended, on 14 November 2018, by section 78(2) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

Section 92D(2): amended, on 14 November 2018, by section 78(3) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).



Section 92D(3): amended, on 14 November 2018, by section 78(4) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

### **92E Civil proceedings arising from inquiry by Commission**

- (1) If the Commission considers that an inquiry by it under section 5(2)(h) has disclosed or may have disclosed a breach of a kind referred to in any of paragraphs (a) to (c), it may bring civil proceedings before the Tribunal,—
  - (a) for a breach of Part 1A (other than a breach of Part 1A that is an enactment, or an act or omission authorised or required by an enactment or otherwise by law), against the person or persons alleged to be responsible for the breach;
  - (b) for a breach of Part 1A that is an enactment, or an act or omission authorised or required by an enactment or otherwise by law, against the Attorney-General, or against a person or body referred to in section 3(b) of the New Zealand Bill of Rights Act 1990 alleged to be responsible for the breach;
  - (c) for a breach of Part 2, against the person or persons alleged to be responsible for the breach.
- (2) The Commission may exercise the right in subsection (1) only if it considers that the exercise of the right will facilitate the performance of its functions stated in section 5(2)(a).
- (3) This section does not limit section 6 or section 92H or section 97.

Section 92E: inserted, on 1 January 2002, by section 9 of the Human Rights Amendment Act 2001 (2001 No 96).

### **92F Proof of justified limits and exceptions**

- (1) The onus of proving, in any proceedings under this Part, that an act or omission is, under section 5 of the New Zealand Bill of Rights Act 1990, a justified limit on the right to freedom from discrimination affirmed by section 19 of the New Zealand Bill of Rights Act 1990 lies on the defendant.
- (2) The onus of proving, in any proceedings under this Part, that conduct is, under any provision of Part 2, excepted from conduct that is unlawful under any provision of Part 2 lies on the defendant.

Compare: 1977 No 49 s 39

Section 92F: inserted, on 1 January 2002, by section 9 of the Human Rights Amendment Act 2001 (2001 No 96).

### **92G Right of Attorney-General to appear in civil proceedings**

- (1) The Attorney-General may appear and be heard, in person or by a barrister or solicitor,—
  - (a) in proceedings before the Human Rights Review Tribunal alleging a breach of Part 1A, or alleging a breach of Part 2 by a person or body referred to in section 3 of the New Zealand Bill of Rights Act 1990:

- (b) in proceedings in any of the following courts in relation to proceedings of a kind referred to in paragraph (a) that are or have been before the Human Rights Review Tribunal:
  - (i) the District Court:
  - (ii) the High Court:
  - (iii) the Court of Appeal:
  - (iv) the Supreme Court.
- (2) The right to appear and be heard given by subsection (1) may be exercised whether or not the Attorney-General is or was a party to the proceedings before the Human Rights Review Tribunal.
- (3) If, under subsection (1), the Attorney-General appears in any proceedings of a kind described in that subsection, he or she has, unless those proceedings are by way of appeal, the right to adduce evidence and the right to cross-examine witnesses.

Compare: 1977 No 49 s 38A; 1983 No 56 s 13; 1993 No 35 s 3(5)

Section 92G: inserted, on 1 January 2002, by section 9 of the Human Rights Amendment Act 2001 (2001 No 96).

Section 92G(1)(b)(i): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 92G(1)(b)(iv): added, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

## **92H Right of Commission to appear in civil proceedings**

- (1) The Commission may appear and be heard, in person or by a barrister or solicitor,—
  - (a) in proceedings before the Human Rights Review Tribunal; and
  - (b) in proceedings in any of the following courts in relation to proceedings that are or have been before the Human Rights Review Tribunal:
    - (i) the District Court:
    - (ii) the High Court:
    - (iii) the Court of Appeal:
    - (iv) the Supreme Court.
- (2) The right to appear and be heard given by subsection (1) may be exercised—
  - (a) whether or not the Commission is or was a party to the proceedings before the Human Rights Review Tribunal; but
  - (b) only if the Commission considers that the exercise of the right will facilitate the performance of its functions stated in section 5(2)(a).
- (3) If, under subsection (1), the Commission appears in any proceedings of a kind described in that subsection, it has, unless those proceedings are by way of appeal, the right to adduce evidence and the right to cross-examine witnesses.

- (4) This section is not limited by section 92B or section 92E or section 97.

Compare: 1977 No 49 s 38A; 1983 No 56 s 13; 1993 No 35 s 3(5)

Section 92H: inserted, on 1 January 2002, by section 9 of the Human Rights Amendment Act 2001 (2001 No 96).

Section 92H(1)(b)(i): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 92H(1)(b)(iv): added, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

### *Remedies*

Heading: inserted, on 1 January 2002, by section 9 of the Human Rights Amendment Act 2001 (2001 No 96).

## **92I Remedies**

- (1) This section is subject to sections 92J and 92K (which relate to the only remedy that may be granted by the Tribunal if it finds that an enactment is in breach of Part 1A).
- (2) In proceedings before the Human Rights Review Tribunal brought under section 92B(1) or (4) or section 92E, the plaintiff may seek any of the remedies described in subsection (3) that the plaintiff thinks fit.
- (3) If, in proceedings referred to in subsection (2), the Tribunal is satisfied on the balance of probabilities that the defendant has committed a breach of Part 1A or Part 2 or the terms of a settlement of a complaint, the Tribunal may grant 1 or more of the following remedies:
  - (a) a declaration that the defendant has committed a breach of Part 1A or Part 2 or the terms of a settlement of a complaint:
  - (b) an order restraining the defendant from continuing or repeating the breach, or from engaging in, or causing or permitting others to engage in, conduct of the same kind as that constituting the breach, or conduct of any similar kind specified in the order:
  - (c) damages in accordance with sections 92M to 92O:
  - (d) an order that the defendant perform any acts specified in the order with a view to redressing any loss or damage suffered by the complainant or, as the case may be, the aggrieved person as a result of the breach:
  - (e) a declaration that any contract entered into or performed in contravention of any provision of Part 1A or Part 2 is an illegal contract:
  - (f) an order that the defendant undertake any specified training or any other programme, or implement any specified policy or programme, in order to assist or enable the defendant to comply with the provisions of this Act:
  - (g) relief in accordance with subpart 5 of Part 2 of the Contract and Commercial Law Act 2017 in respect of any such contract to which the

defendant and the complainant or, as the case may be, the aggrieved person are parties:

- (h) any other relief the Tribunal thinks fit.
- (4) It is no defence to proceedings referred to in subsection (2) or subsection (5) that the breach was unintentional or without negligence on the part of the party against whom the complaint was made, but, subject to section 92P, the Tribunal must take the conduct of the parties into account in deciding what, if any, remedy to grant.
- (5) In proceedings before the Human Rights Review Tribunal brought, under section 92B(3), by the person against whom a complaint was made, that person may seek a declaration that he or she has not committed a breach of Part 1A or Part 2.

Compare: 1977 No 49 s 38(5), (6), (8); 1983 No 56 s 12(3)

Section 92I: inserted, on 1 January 2002, by section 9 of the Human Rights Amendment Act 2001 (2001 No 96).

Section 92I(3)(g): amended, on 1 September 2017, by section 347 of the Contract and Commercial Law Act 2017 (2017 No 5).

#### **92J Remedy for enactments in breach of Part 1A**

- (1) If, in proceedings before the Human Rights Review Tribunal, the Tribunal finds that an enactment is in breach of Part 1A, the only remedy that the Tribunal may grant is the declaration referred to in subsection (2).
- (2) The declaration that may be granted by the Tribunal, if subsection (1) applies, is a declaration that the enactment that is the subject of the finding is inconsistent with the right to freedom from discrimination affirmed by section 19 of the New Zealand Bill of Rights Act 1990.
- (3) The Tribunal may not grant a declaration under subsection (2) unless that decision has the support of all or a majority of the members of the Tribunal.
- (4) Nothing in this section affects the New Zealand Bill of Rights Act 1990.

Section 92J: inserted, on 1 January 2002, by section 9 of the Human Rights Amendment Act 2001 (2001 No 96).

#### **92K Effect of declaration**

- (1) A declaration under section 92J does not—
  - (a) affect the validity, application, or enforcement of the enactment in respect of which it is given; or
  - (b) prevent the continuation of the act, omission, policy, or activity that was the subject of the complaint.
- (2) If a declaration is made under section 92J and that declaration is not overturned on appeal or the time for lodging an appeal expires, the Minister for the time being responsible for the administration of the enactment must present to the House of Representatives—

- (a) a report bringing the declaration to the attention of the House of Representatives; and
  - (b) a report containing advice on the Government's response to the declaration.
- (3) The Minister referred to in subsection (2) must carry out the duties imposed on the Minister by that subsection within 120 days of the date of disposal of all appeals against the granting of the declaration or, if no appeal is lodged, the date when the time for lodging an appeal expires.

Section 92K: inserted, on 1 January 2002, by section 9 of the Human Rights Amendment Act 2001 (2001 No 96).

#### **92L Costs**

- (1) In any proceedings under section 92B or section 92E or section 97, the Tribunal may make any award as to costs that it thinks fit, whether or not it grants any other remedy.
- (2) Without limiting the matters that the Tribunal may consider in determining whether to make an award of costs under this section, the Tribunal may take into account whether, and to what extent, any party to the proceedings—
  - (a) has participated in good faith in the process of information gathering by the Commission:
  - (b) has facilitated or obstructed that information-gathering process:
  - (c) has acted in a manner that facilitated the resolution of the issues that were the subject of the proceedings.

Compare: 1977 No 49 s 38(7); 1983 No 56 s 12(4)

Section 92L: inserted, on 1 January 2002, by section 9 of the Human Rights Amendment Act 2001 (2001 No 96).

#### **92M Damages**

- (1) In any proceedings under section 92B(1) or (4) or section 92E, the Tribunal may award damages against the defendant for a breach of Part 1A or Part 2 or the terms of a settlement of a complaint in respect of any 1 or more of the following:
  - (a) pecuniary loss suffered as a result of, and expenses reasonably incurred by the complainant or, as the case may be, the aggrieved person for the purpose of, the transaction or activity out of which the breach arose:
  - (b) loss of any benefit, whether or not of a monetary kind, that the complainant or, as the case may be, the aggrieved person might reasonably have been expected to obtain but for the breach:
  - (c) humiliation, loss of dignity, and injury to the feelings of the complainant or, as the case may be, the aggrieved person.

- (2) This section applies subject to sections 92J, 92N, and 92O and to subpart 1 of Part 2 of the Prisoners' and Victims' Claims Act 2005.

Compare: 1977 No 49 s 40(1)

Section 92M: inserted, on 1 January 2002, by section 9 of the Human Rights Amendment Act 2001 (2001 No 96).

Section 92M(2): amended, on 4 June 2005, by section 65 of the Prisoners' and Victims' Claims Act 2005 (2005 No 74).

### **92N Directions as to payment of damages in certain cases**

- (1) If the plaintiff is a minor who is not married or in a civil union, the Tribunal may, in its discretion, direct the defendant to pay damages awarded under section 92M to Public Trust or to a person or trustee corporation acting as the manager of any property of the plaintiff.
- (2) If the plaintiff is a mentally disordered person within the meaning of section 2(1) of the Mental Health (Compulsory Assessment and Treatment) Act 1992 whose property is not being managed under the Protection of Personal and Property Rights Act 1988, but who lacks, in the opinion of the Tribunal, the mental capacity to manage his or her own affairs in relation to his or her own property, the Tribunal may, in its discretion, direct the defendant to pay damages awarded under section 92M to Public Trust.
- (3) If the plaintiff is a person whose property is being managed under the Protection of Personal and Property Rights Act 1988, the Tribunal must ascertain whether the terms of the property order cover management of money received as damages and,—
- (a) if damages fall within the terms of the property order, the Tribunal must direct the defendant to pay damages awarded under section 92M to the person or trustee corporation acting as the property manager; or
  - (b) if damages do not fall within the terms of the property order, the Tribunal may, in its discretion, direct the defendant to pay damages awarded under section 92M to Public Trust.
- (4) If money is paid to Public Trust under any of subsections (1) to (3),—
- (a) sections 103 to 110 of the Contract and Commercial Law Act 2017 applies in the case of a minor who is not married or in a civil union; and
  - (b) sections 108D, 108F, and 108G of the Protection of Personal and Property Rights Act 1988 apply, with any necessary modifications, in the case of a person referred to in subsection (2) or subsection (3)(b); and
  - (c) section 108E of the Protection of Personal and Property Rights Act 1988 applies, with any necessary modifications, in the case of a person referred to in subsection (3)(a).

Compare: 1977 No 49 s 40; 1983 No 56 s 14(2)

Section 92N: inserted, on 1 January 2002, by section 9 of the Human Rights Amendment Act 2001 (2001 No 96).

Section 92N(1): amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 92N(1): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 92N(2): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 92N(3)(b): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 92N(4): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 92N(4)(a): amended, on 1 September 2017, by section 347 of the Contract and Commercial Law Act 2017 (2017 No 5).

Section 92N(4)(a): amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 92N(4)(b): substituted, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 92N(4)(c): added, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

**92O Tribunal may defer or modify remedies for breach of Part 1A or Part 2 or terms of settlement**

- (1) If, in any proceedings under this Part, the Tribunal determines that an act or omission is in breach of Part 1A or Part 2 or the terms of a settlement of a complaint, it may, on the application of any party to the proceedings, take 1 or more of the actions stated in subsection (2).
- (2) The actions are,—
  - (a) instead of, or as well as, awarding damages or granting any other remedy,—
    - (i) to specify a period during which the defendant must remedy the breach; and
    - (ii) to adjourn the proceedings to a specified date to enable further consideration of the remedies or further remedies (if any) to be granted:
  - (b) to refuse to grant any remedy that has retrospective effect:
  - (c) to refuse to grant any remedy in respect of an act or omission that occurred before the bringing of proceedings or the date of the determination of the Tribunal or any other date specified by the Tribunal:
  - (d) to provide that any remedy granted has effect only prospectively or only from a date specified by the Tribunal:
  - (e) to provide that the retrospective effect of any remedy is limited in a way specified by the Tribunal.

Section 92O: inserted, on 1 January 2002, by section 9 of the Human Rights Amendment Act 2001 (2001 No 96).

**92P Matters to be taken into account in exercising powers given by section 92O**

- (1) In determining whether to take 1 or more of the actions referred to in section 92O, the Tribunal must take account of the following matters:
  - (a) whether or not the defendant in the proceedings has acted in good faith:
  - (b) whether or not the interests of any person or body not represented in the proceedings would be adversely affected if 1 or more of the actions referred to in section 92O is, or is not, taken:
  - (c) whether or not the proceedings involve a significant issue that has not previously been considered by the Tribunal:
  - (d) the social and financial implications of granting any remedy sought by the plaintiff:
  - (e) the significance of the loss or harm suffered by any person as a result of the breach of Part 1A or Part 2 or the terms of a settlement of a complaint:
  - (f) the public interest generally:
  - (g) any other matter that the Tribunal considers relevant.
- (2) If the Tribunal finds that an act or omission is in breach of Part 1A or that an act or omission by a person or body referred to in section 3 of the New Zealand Bill of Rights Act 1990 is in breach of Part 2, in determining whether to take 1 or more of the actions referred to in section 92O, the Tribunal must, in addition to the matters specified in subsection (1), take account of—
  - (a) the requirements of fair public administration; and
  - (b) the obligation of the Government to balance competing demands for the expenditure of public money.

Section 92P: inserted, on 1 January 2002, by section 9 of the Human Rights Amendment Act 2001 (2001 No 96).

*Monetary limits on remedies Tribunal may grant*

Heading: inserted, on 1 January 2002, by section 9 of the Human Rights Amendment Act 2001 (2001 No 96).

**92Q Monetary limits on remedies Tribunal may grant**

- (1) Proceedings under section 92B or section 92E may be brought before the Human Rights Review Tribunal irrespective of the amount of damages claimed or the value of the property in respect of which any remedy is sought.
- (2) However, except as provided in sections 92R to 92V, the Tribunal must not award any damages or grant any remedy in any proceedings of that kind if the making of that award or the granting of that remedy would, because of the



monetary limits contained in sections 74 to 79 of the District Court Act 2016, be beyond the jurisdiction of the District Court.

- (3) For the purposes of subsection (2), if civil proceedings under section 92B are brought on behalf of more than 1 complainant or, as the case may be, more than 1 aggrieved person, those proceedings must, for the purpose of applying any monetary limit under subsection (2), be treated as if each complainant or, as the case may be, each aggrieved person on whose behalf those proceedings are brought, were the plaintiff in a separate action against the defendant.

Compare: 1977 No 49 s 41; 1983 No 56 s 15; 1993 No 5 s 3(6)

Section 92Q: inserted, on 1 January 2002, by section 9 of the Human Rights Amendment Act 2001 (2001 No 96).

Section 92Q(2): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

#### *Granting of remedies by High Court on reference from Tribunal*

Heading: inserted, on 1 January 2002, by section 9 of the Human Rights Amendment Act 2001 (2001 No 96).

### **92R Tribunal to refer granting of remedies to High Court**

The Human Rights Review Tribunal must refer the granting of a remedy in any proceedings under section 92B or section 92E to the High Court if the Tribunal is satisfied on the balance of probabilities that a defendant in the proceedings has committed a breach of Part 1A or Part 2 or the terms of a settlement of a complaint, but that—

- (a) the granting of the appropriate remedy under section 92I would be outside the limits imposed by section 92Q; or
- (b) that the granting of a remedy in those proceedings would be better dealt with by the High Court.

Compare: 1977 No 49 s 42(1)

Section 92R: inserted, on 1 January 2002, by section 9 of the Human Rights Amendment Act 2001 (2001 No 96).

### **92S Further provisions on reference to High Court**

- (1) A reference under section 92R is made by sending, to the Registrar of the High Court nearest to where the proceedings were commenced, a report on the proceedings that—
- (a) sets out the Tribunal's finding with regard to the breach of Part 1A or Part 2 or the terms of a settlement of a complaint; and
- (b) includes, or is accompanied by, a statement of the considerations to which the Tribunal has had regard in making the reference to that court.
- (2) A copy of the report must be given or sent promptly to every party to the proceedings.

- (3) Except as provided in this Act, the procedure for a reference under section 92R is the same as the procedure prescribed by rules of court in respect of appeals, and those rules apply with all necessary modifications.

Compare: 1977 No 49 s 42(4)–(6), (8)

Section 92S: inserted, on 1 January 2002, by section 9 of the Human Rights Amendment Act 2001 (2001 No 96).

**92T High Court decides remedies on reference from Tribunal**

- (1) This section applies where the granting of a remedy in any proceedings under section 92B or section 92E is referred to the High Court under section 92R.
- (2) The High Court may direct the Tribunal to amplify any report made under section 92S(1).
- (3) Every person who, under section 92S(2), is given or sent a copy of a report under section 92S(1) is entitled to be heard and to tender in the High Court evidence as to the remedy (if any) to be granted on the basis of the Tribunal's finding that the defendant has committed a breach of Part 1A or Part 2 or the terms of a settlement of a complaint.
- (4) However, no person referred to in subsection (3) may, on the reference under section 92R, challenge the finding of the Tribunal referred to in subsection (3).
- (5) The High Court must decide, on the basis of the Tribunal's finding that the defendant has committed a breach of Part 1A or Part 2, whether 1 or more of the remedies set out in section 92I or the remedy set out in section 92J is to be granted.

Compare: 1977 No 49 s 42(2), (5), (6)

Section 92T: inserted, on 1 January 2002, by section 9 of the Human Rights Amendment Act 2001 (2001 No 96).

**92U High Court's decision on remedies to be included in, and given effect to as part of, Tribunal's determination**

- (1) Every decision of the High Court under section 92T(5)—
- (a) must be remitted to the Tribunal for inclusion in its determination with regard to the proceedings; and
  - (b) has effect as part of that determination despite the limits imposed by section 92Q.
- (2) Nothing in subsection (1)—
- (a) limits sections 123 to 125; or
  - (b) prevents the making of an appeal in accordance with section 123 in respect of a determination of the Tribunal in which a decision of the High Court is included in accordance with subsection (1)(a).

Compare: 1977 No 49 s 42(3), (9)

Section 92U: inserted, on 1 January 2002, by section 9 of the Human Rights Amendment Act 2001 (2001 No 96).

*Abandonment or agreement to bring claim within Tribunal's jurisdiction*

Heading: inserted, on 1 January 2002, by section 9 of the Human Rights Amendment Act 2001 (2001 No 96).

**92V Abandonment to enable Tribunal to make award of damages**

- (1) This section applies where the Tribunal would have jurisdiction in any proceedings under section 92B or section 92E to make an award of damages in accordance with section 92M if the amount of the award were within the limit for the time being fixed by section 74(1) of the District Court Act 2016 (as applied by section 92Q(2)).
- (2) The Tribunal may make an award within that limit if the plaintiff abandons the excess.
- (3) An award of damages in those proceedings in accordance with section 92M operates to discharge from liability in respect of the amount abandoned in that way any person against whom the proceedings are brought and the subsequent award is made.
- (4) This section overrides sections 92Q to 92U.

Compare: 1977 No 49 s 43

Section 92V: inserted, on 1 January 2002, by section 9 of the Human Rights Amendment Act 2001 (2001 No 96).

Section 92V(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

**92W Extension of jurisdiction by agreement between parties**

- (1) If, in any proceedings under section 92B or section 92E, only section 92Q prevents the Tribunal from granting any 1 or more of the remedies stated in section 92I, and the parties to the proceedings, by memorandum signed by them or their respective solicitors or agents, agree that the Tribunal is to have jurisdiction to grant any 1 or more of those remedies irrespective of section 92Q, the Tribunal has jurisdiction to grant 1 or more of those remedies accordingly.
- (2) This section overrides sections 92Q to 92U.

Compare: 1977 No 49 s 44(1)

Section 92W: inserted, on 1 January 2002, by section 9 of the Human Rights Amendment Act 2001 (2001 No 96).

**Part 4**

**Human Rights Review Tribunal**

Part 4 heading: substituted, on 1 January 2002, by section 10 of the Human Rights Amendment Act 2001 (2001 No 96).

**93 Human Rights Review Tribunal**

The Tribunal constituted by section 45 of the Human Rights Commission Act 1977 and, immediately before 1 January 2002 (being the date of the com-

mencement of the Human Rights Amendment Act 2001), known as the Complaints Review Tribunal shall continue in being, and, on and after 1 January 2002, is called the Human Rights Review Tribunal.

Compare: 1977 No 49 s 45; 1993 No 35 s 3(1)

Section 93 heading: amended, on 1 January 2002, by section 11(a) of the Human Rights Amendment Act 2001 (2001 No 96).

Section 93: amended, on 1 January 2002, by section 11(b) of the Human Rights Amendment Act 2001 (2001 No 96).

Section 93: amended, on 1 January 2002, by section 11(c) of the Human Rights Amendment Act 2001 (2001 No 96).

### *Functions and powers of Tribunal*

#### **94 Functions of Tribunal**

The functions of the Tribunal shall be—

- (a) to consider and adjudicate upon proceedings brought pursuant to sections 92B, 92E, 95, and 97:
- (b) to exercise and perform such other functions, powers, and duties as are conferred or imposed on it by or under this Act or any other enactment.

Compare: 1977 No 49 s 46; 1993 No 35 s 4(2)

Section 94(a): amended, on 1 January 2002, by section 12 of the Human Rights Amendment Act 2001 (2001 No 96).

#### **95 Power to make interim order**

- (1) In respect of any matter in which the Tribunal has jurisdiction under this Act to make any final determination, the Chairperson or a Deputy Chairperson of the Tribunal shall have power to make an interim order if he or she is satisfied that it is necessary in the interests of justice to make the order to preserve the position of the parties pending a final determination of the proceedings.
- (2) An application for an interim order may be made,—
  - (a) in the case of proceedings under section 92B(1), (2), (3), or (4), by the person or body bringing the proceedings; and
  - (b) in the case of proceedings under section 92E, by the Commission.
- (3) A copy of the application shall be served on the defendant who shall be entitled to be heard before a decision on the application is made.

Compare: 1977 No 49 s 46A; 1993 No 35 s 4(1)

Section 95(1): amended, on 14 November 2018, by section 79 of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

Section 95(2): substituted, on 1 January 2002, by section 13 of the Human Rights Amendment Act 2001 (2001 No 96).

#### **96 Review of interim orders**

Where an interim order has been made, the defendant may, with the leave of the Tribunal and instead of appealing against the order, apply to the High Court

to vary or rescind the order unless that order was made with the defendant's consent.

Compare: 1977 No 49 s 46B; 1993 No 35 s 4(1)

**97 Power in respect of exception for genuine occupational qualification or genuine justification**

- (1) The Tribunal may exercise the power referred to in subsection (2), but only—
  - (a) in respect of a matter in which it has jurisdiction under this Act to make a final determination; and
  - (b) on an application by the Commission, a person or persons against whom a complaint under section 76(2)(a) has been made, or a person who is the subject of an inquiry under section 5(2)(h).
- (2) The power is to declare that an act, omission, practice, requirement, or condition that would otherwise be unlawful under Part 2 is not unlawful because it constitutes either or both—
  - (a) a genuine occupational qualification, in respect of sections 22 to 41:
  - (b) a genuine justification, in respect of sections 42 to 60.

Section 97: substituted, on 1 January 2002, by section 14 of the Human Rights Amendment Act 2001 (2001 No 96).

*Constitution of Tribunal*

**98 Membership of Tribunal**

The Tribunal shall consist of—

- (a) the Chairperson or a Deputy Chairperson or, if section 103B applies, the Chairperson and a Deputy Chairperson; and
- (b) 2 other persons appointed by the Chairperson for the purposes of each hearing from a panel maintained by the Minister under section 101.

Compare: 1977 No 49 s 47; 1993 No 35 s 5(1)

Section 98(a): replaced, on 14 November 2018, by section 80 of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

**99 Chairperson of Tribunal**

The Chairperson of the Tribunal must be appointed by the Governor-General, on the recommendation of the Minister.

Section 99: replaced, on 14 November 2018, by section 81 of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

**99AA Deputy Chairpersons of Tribunal**

One or more Deputy Chairpersons of the Tribunal may be appointed by the Governor-General, on the recommendation of the Minister.

Section 99AA: inserted, on 14 November 2018, by section 81 of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

**99A Criteria and requirement for appointment of Chairperson and Deputy Chairperson**

- (1) In recommending a person for appointment as the Chairperson or a Deputy Chairperson of the Tribunal, the Minister must have regard not only to the matters stated in section 101(2) but also to the person's—
  - (a) experience in dispute resolution:
  - (b) experience as a Chairperson or a Deputy Chairperson and in other leadership roles:
  - (c) ability to perform the functions of the Chairperson or a Deputy Chairperson of the Tribunal.
- (2) Every person appointed as the Chairperson or a Deputy Chairperson of the Tribunal must be a barrister or solicitor of the High Court of not less than 5 years' practice.

Section 99A: inserted, on 1 January 2002, by section 15 of the Human Rights Amendment Act 2001 (2001 No 96).

Section 99A heading: amended, on 14 November 2018, by section 82(1) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

Section 99A(1): amended, on 14 November 2018, by section 82(2) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

Section 99A(1)(b): amended, on 14 November 2018, by section 82(3) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

Section 99A(1)(c): amended, on 14 November 2018, by section 82(4) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

Section 99A(2): amended, on 14 November 2018, by section 82(5) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

**100 Appointment and term of office**

- (1) *[Repealed]*
- (2) Except as otherwise provided in section 103, every person appointed as the Chairperson or a Deputy Chairperson of the Tribunal shall hold office for such term, not exceeding 5 years, as the Governor-General on the recommendation of the Minister shall specify in the instrument appointing the Chairperson or Deputy Chairperson.
- (3) Any person appointed as the Chairperson or a Deputy Chairperson may hold that office concurrently with any other office held by him or her and may from time to time be reappointed.
- (4) Where the term for which the Chairperson or a Deputy Chairperson expires, the Chairperson or that Deputy Chairperson, unless sooner vacating or removed from office under section 103, continues to hold office, by virtue of the appointment for the term that has expired until—
  - (a) the Chairperson or that Deputy Chairperson is reappointed; or

- (b) a successor to the Chairperson or that Deputy Chairperson is appointed;  
or
  - (c) in the case of a Deputy Chairperson, that Deputy Chairperson is informed in writing by the Minister that the Deputy Chairperson is not to be reappointed and that a successor to that Deputy Chairperson is not to be appointed.
- (5) The Chairperson or a Deputy Chairperson who continues in office for any period under subsection (4) may act as the Chairperson or a Deputy Chairperson during and after that period for the purpose of—
- (a) completing any proceedings partly or wholly heard by the Tribunal before the Chairperson or the Deputy Chairperson ceased to hold office under subsection (4):
  - (b) hearing any other proceedings commenced before the Chairperson or the Deputy Chairperson ceased to hold office under subsection (4).
- (6) The Chairperson or a Deputy Chairperson who has resigned, or whose successor is appointed or who will not be replaced (unless he or she was removed from office), may continue in office for the purpose of completing any proceedings that are partly or wholly heard.

Compare: 1977 No 49 s 47B; 1993 No 35 s 5(1)

Section 100(1): repealed, on 1 January 2002, by section 16 of the Human Rights Amendment Act 2001 (2001 No 96).

Section 100(2): amended, on 14 November 2018, by section 83(1) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

Section 100(2): amended, on 14 November 2018, by section 83(2) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

Section 100(3): amended, on 14 November 2018, by section 83(3) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

Section 100(4): replaced, on 14 November 2018, by section 83(4) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

Section 100(5): inserted, on 14 November 2018, by section 83(5) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

Section 100(6): inserted, on 14 November 2018, by section 83(5) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

## **101 Panel**

- (1) The Minister must maintain a panel of any number of persons that may be required to ensure—
- (a) the efficient and expeditious exercise of the jurisdiction of the Tribunal throughout New Zealand; and
  - (b) the performance of other functions under this Act or any other enactment requiring the participation of members of the panel.
- (1A) The Minister must specify a period of up to 5 years for which a person is approved as a member of the panel.

- (1B) The Minister may approve the inclusion of a person on the panel for further periods of up to 5 years.
- (2) In considering the suitability of persons for inclusion on the panel, the Minister must have regard to the need for persons included on the panel to have between them knowledge of, or experience in,—
- (a) different aspects of matters likely to come before the Tribunal:
  - (b) New Zealand law, or the law of another country, or international law, on human rights:
  - (c) public administration, or the law relating to public administration:
  - (d) current economic, employment, or social issues:
  - (e) cultural issues and the needs and aspirations (including life experiences) of different communities of interest and population groups in New Zealand society.
- (2A) At least 3 members of the panel must be barristers or solicitors of the High Court of not less than 5 years' practice.
- (3) The name of a person shall be removed from the panel if—
- (a) the person dies or is, under the Insolvency Act 2006, adjudged bankrupt; or
  - (b) the Minister directs that the name of the person be removed from the panel for disability affecting performance of duty, neglect of duty, or misconduct, proved to the satisfaction of the Minister; or
  - (c) a period of up to 5 years has elapsed since the date on which the Minister last approved the entry of the person's name; or
  - (d) the person requests by writing addressed to the Minister that his or her name be removed.
- (4) If subsection (3)(c) or (d) applies, or the period for which a person is approved as a member of the panel expires, the person may continue in office for the purpose of completing any proceedings that are partly or wholly heard.

Compare: 1977 No 49 s 47C; 1993 No 35 s 5(1)

Section 101(1): replaced, on 14 November 2018, by section 84(1) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

Section 101(1A): inserted, on 14 November 2018, by section 84(1) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

Section 101(1B): inserted, on 14 November 2018, by section 84(1) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

Section 101(2): substituted, on 1 January 2002, by section 17 of the Human Rights Amendment Act 2001 (2001 No 96).

Section 101(2A): inserted, on 1 January 2002, by section 17 of the Human Rights Amendment Act 2001 (2001 No 96).

Section 101(3)(a): amended, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).



Section 101(3)(c): amended, on 14 November 2018, by section 84(2) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

Section 101(4): replaced, on 14 November 2018, by section 84(3) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

### **101A Functions, duties, and powers of Deputy Chairpersons**

Subject to any directions issued by the Chairperson, a Deputy Chairperson of the Tribunal has all the functions, duties, and powers of the Chairperson.

Section 101A: inserted, on 14 November 2018, by section 85 of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

### **101B Delegation by Chairperson of Tribunal**

- (1) The Chairperson of the Tribunal may delegate any of the Chairperson's functions, duties, and powers to a member of the panel who—
  - (a) the Chairperson is satisfied has the necessary capability, skills, and experience to perform or exercise those functions, duties, and powers; and
  - (b) satisfies the criteria set out in section 99A for appointment as the Chairperson.
- (2) A delegation—
  - (a) must be in writing; and
  - (b) must be to a named person; and
  - (c) is revocable at any time, in writing; and
  - (d) does not prevent the performance or exercise of a function, duty, or power by the Chairperson.
- (3) A person to whom any functions, duties, or powers are delegated may perform or exercise them in the same manner and with the same effect as if they had been conferred directly by this Act and not by delegation.
- (4) A person who appears to act under a delegation is presumed to be acting in accordance with its terms in the absence of evidence to the contrary.
- (5) A person to whom any functions, duties, or powers are delegated must be paid remuneration and expenses (if any) determined in accordance with section 119 for work undertaken in that capacity.

Section 101B: inserted, on 14 November 2018, by section 85 of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

### **101C References to Chairpersons include deputies and delegates and temporary acting Chairperson**

Unless the context otherwise requires, a reference in this Act or regulations made under this Act to the Chairperson includes—

- (a) a Deputy Chairperson appointed under section 99AA; or

- (b) a person to whom the functions, powers, and duties of the Chairperson are delegated under section 101B; or
- (c) a temporary acting Chairperson appointed under section 102.

Section 101C: inserted, on 14 November 2018, by section 85 of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

### **102 Appointment of temporary acting Chairperson**

- (1) If the Chairperson of the Tribunal becomes incapable of acting by reason of illness, absence, or other sufficient cause, or if the Chairperson considers it is not proper or not desirable that he or she should adjudicate on a specified matter, the Governor-General, on the recommendation of the Minister, may appoint a suitable person as the acting Chairperson for the period or purpose stated in the appointment.
- (2) No person may be appointed as the acting Chairperson unless he or she is eligible for appointment as the Chairperson.
- (3) The acting Chairperson is, while acting in the position, to be treated as the Chairperson of the Tribunal.
- (4) No appointment of the acting Chairperson, no act done by the acting Chairperson, and no act done by the Tribunal may be questioned in any proceedings on the ground that the occasion for the appointment had not arisen or had ceased.

Section 102: replaced, on 14 November 2018, by section 86 of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

### **103 Vacation of office by Chairperson, temporary acting Chairperson, and Deputy Chairperson**

- (1) The Chairperson, a temporary acting Chairperson, and any Deputy Chairperson of the Tribunal may at any time resign his or her office by delivering a notice in writing to that effect to the Minister.
- (2) The Chairperson, a temporary acting Chairperson, and any Deputy Chairperson of the Tribunal shall be deemed to have vacated his or her office if he or she dies or is, under the Insolvency Act 2006, adjudged bankrupt.
- (3) The Chairperson, a temporary acting Chairperson, and any Deputy Chairperson of the Tribunal may at any time be removed from office by the Governor-General for disability affecting performance of duty, neglect of duty, or misconduct, proved to the satisfaction of the Governor-General.

Compare: 1977 No 49 s 49; 1993 No 35 s 5(1)

Section 103 heading: amended, on 14 November 2018, by section 87(1) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

Section 103(1): amended, on 14 November 2018, by section 87(2) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

Section 103(2): amended, on 14 November 2018, by section 87(2) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

Section 103(2): amended, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

Section 103(3): amended, on 14 November 2018, by section 87(2) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

### **103A Orderly and efficient operation**

The Chairperson of the Tribunal is responsible for making such arrangements as are practicable to ensure that, in relation to the work of the Tribunal, the Chairperson, each Deputy Chairperson and each member of the panel performs their functions—

- (a) in an orderly and efficient manner; and
- (b) in a way that achieves the purposes of this Act or any other enactment.

Section 103A: inserted, on 14 November 2018, by section 88 of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

### **103B Powers of Chairperson to direct constitution of Tribunal**

- (1) The Chairperson of the Tribunal may direct, for the purposes of any particular proceedings, that the Tribunal be constituted by—
  - (a) the Chairperson; and
  - (b) a Deputy Chairperson; and
  - (c) two panel members.
- (2) The Chairperson of the Tribunal may give a direction under subsection (1) if he or she is satisfied that—
  - (a) the proceedings are unusually complex or difficult; or
  - (b) it is desirable for training purposes that the Tribunal be constituted in this way.

Section 103B: inserted, on 14 November 2018, by section 88 of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

### *Procedure of Tribunal*

### **104 Sittings of Tribunal**

- (1) Sittings of the Tribunal shall be held at such times and places as the Tribunal, the Chairperson, or a Deputy Chairperson from time to time appoints.
- (2) Any sitting may be adjourned from time to time and from place to place by the Tribunal or the Chairperson or a Deputy Chairperson or by the Secretary to the Tribunal.
- (3) No sitting of the Tribunal shall take place unless all the members are present, but the decision of a majority of the members shall be the decision of the Tribunal.
- (4) The Chairperson or a Deputy Chairperson shall preside at all sittings of the Tribunal.

- (4A) Despite anything in this Act to the contrary, the Tribunal or the Chairperson or a Deputy Chairperson may determine a proceeding on the papers if the Tribunal or the Chairperson or a Deputy Chairperson considers it appropriate.
- (4B) Before doing so, the Tribunal or the Chairperson or a Deputy Chairperson must give the parties a reasonable opportunity to comment on whether the proceeding should be dealt with in that manner.
- (4C) The hearing of a matter or any part of it may be conducted by telephone, audio-visual link, or other remote access facility if the Tribunal or the Chairperson or a Deputy Chairperson considers it appropriate and the necessary facilities are available.
- (5) The Tribunal may regulate its procedure as it thinks fit, subject to this Act and any regulations made under it, and any practice notes issued under section 121A.

Compare: 1977 No 49 s 50; 1993 No 35 s 5(2)

Section 104(1): amended, on 14 November 2018, by section 89(1) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

Section 104(2): amended, on 14 November 2018, by section 89(2) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

Section 104(4): amended, on 14 November 2018, by section 89(3) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

Section 104(4A): inserted, on 14 November 2018, by section 89(4) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

Section 104(4B): inserted, on 14 November 2018, by section 89(4) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

Section 104(4C): inserted, on 14 November 2018, by section 89(4) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

Section 104(5): replaced, on 14 November 2018, by section 89(5) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

## **105 Substantial merits**

- (1) The Tribunal must act according to the substantial merits of the case, without regard to technicalities.
- (2) In exercising its powers and functions, the Tribunal must act—
  - (a) in accordance with the principles of natural justice; and
  - (b) in a manner that is fair and reasonable; and
  - (c) according to equity and good conscience.

Section 105: substituted, on 1 January 2002, by section 18 of the Human Rights Amendment Act 2001 (2001 No 96).

## **106 Evidence in proceedings before Tribunal**

- (1) The Tribunal may—
  - (a) call for evidence and information from the parties or any other person:

- (b) request or require the parties or any other person to attend the proceedings to give evidence:
  - (c) fully examine any witness:
  - (d) receive as evidence any statement, document, information, or matter that may, in its opinion, assist to deal effectively with the matter before it, whether or not it would be admissible in a court of law.
- (2) The Tribunal may take evidence on oath, and for that purpose any member or officer of the Tribunal may administer an oath.
  - (3) The Tribunal may permit a person appearing as a witness before it to give evidence by tendering a written statement and, if the Tribunal thinks fit, verifying it by oath.
  - (4) Subject to subsections (1) to (3), the Evidence Act 2006 shall apply to the Tribunal in the same manner as if the Tribunal were a court within the meaning of that Act.

Compare: 1977 No 49 s 52

Section 106(1): substituted, on 1 January 2002, by section 19 of the Human Rights Amendment Act 2001 (2001 No 96).

Section 106(4): amended, on 1 August 2007, by section 216 of the Evidence Act 2006 (2006 No 69).

#### **107 Sittings to be held in public except in special circumstances**

- (1) Except as provided by subsections (2) and (3), every hearing of the Tribunal shall be held in public.
- (2) The Tribunal may deliberate in private as to its decision in any matter or as to any question arising in the course of any proceedings before it.
- (3) Where the Tribunal is satisfied that it is desirable to do so, the Tribunal may, of its own motion or on the application of any party to the proceedings,—
  - (a) order that any hearing held by it be heard in private, either as to the whole or any portion thereof:
  - (b) make an order prohibiting the publication of any report or account of the evidence or other proceedings in any proceedings before it (whether heard in public or in private) either as to the whole or any portion thereof:
  - (c) make an order prohibiting the publication of the whole or part of any books or documents produced at any hearing of the Tribunal.
- (4) Every person commits an offence and is liable on conviction to a fine not exceeding \$3,000 who acts in contravention of any order made by the Tribunal under subsection (3)(b) or subsection (3)(c).

Compare: 1977 No 49 s 54

Section 107(4): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

**108 Persons entitled to be heard**

- (1) Any person who is a party to the proceedings before the Tribunal, and any person who satisfies the Tribunal that he or she has an interest in the proceedings greater than the public generally, may appear and may call evidence on any matter that should be taken into account in determining the proceedings.
- (2) If any person who is not a party to the proceedings before the Tribunal wishes to appear, the person must give notice to the Tribunal and to every party before appearing.
- (3) A person who has a right to appear or is allowed to appear before the Tribunal may appear in person or be represented by his or her counsel or agent.

Section 108(2): substituted, on 1 January 2002, by section 20 of the Human Rights Amendment Act 2001 (2001 No 96).

**108A Tribunal to give notice of proceedings**

The Tribunal must notify the Attorney-General promptly of the bringing of proceedings before the Tribunal alleging a breach of Part 1A, or alleging a breach of Part 2 by a person or body referred to in section 3 of the New Zealand Bill of Rights Act 1990, if the Attorney-General is not a party to the proceedings.

Section 108A: inserted, on 1 January 2002, by section 21 of the Human Rights Amendment Act 2001 (2001 No 96).

**108B Submissions in relation to remedies**

- (1) Before the Tribunal grants any remedy under Part 3, it must give the parties to the proceedings and, if the remedy under consideration is a declaration under section 92J, the Attorney-General, an opportunity to make submissions on—
  - (a) the implications of granting that remedy; and
  - (b) the appropriateness of that remedy.
- (2) Subsection (1) does not limit any provision in Part 3 or section 108.

Section 108B: inserted, on 1 January 2002, by section 21 of the Human Rights Amendment Act 2001 (2001 No 96).

**109 Witness summons**

- (1) The Tribunal may, if it considers it necessary, of its own motion, or on the application of any party to the proceedings, issue a witness summons to any person requiring that person to attend before the Tribunal to give evidence at the hearing of the proceedings.
- (2) The witness summons shall state—
  - (a) the place where the person is to attend; and
  - (b) the date and time when the person is to attend; and
  - (c) the papers, documents, records, or things which that person is required to bring and produce to the Tribunal; and

- (d) the entitlement to be tendered or paid a sum in respect of allowances and travelling expenses; and
  - (e) the penalty for failing to attend.
- (3) The power to issue a witness summons may be exercised by the Tribunal or the Chairperson or a Deputy Chairperson, or by any officer of the Tribunal purporting to act by the direction or with the authority of the Tribunal or the Chairperson or a Deputy Chairperson.

Section 109(1): amended, on 1 January 2002, by section 22 of the Human Rights Amendment Act 2001 (2001 No 96).

Section 109(3): amended, on 14 November 2018, by section 90 of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

### **110 Service of summons**

- (1) A witness summons may be served by—
- (a) delivering the summons personally to the witness or, if he or she refuses to accept it, bringing it to his or her attention; or
  - (b) delivering the summons to the witness at his or her usual place of residence by any form of prepaid delivery service that requires an acknowledgement of receipt of delivery from the witness.
- (2) The summons shall,—
- (a) where it is served under subsection (1)(a), be served at least 24 hours before the attendance of the witness is required; or
  - (b) where it is served under subsection (1)(b), be served at least 8 working days before the date on which the attendance of the witness is required.

(3) *[Repealed]*

Section 110(1): replaced, on 14 November 2018, by section 91(1) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

Section 110(2)(b): amended, on 14 November 2018, by section 91(2) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

Section 110(3): repealed, on 14 November 2018, by section 91(3) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

### **111 Witnesses' allowances**

- (1) Every witness attending before the Tribunal to give evidence pursuant to a summons shall be entitled to be paid witnesses' fees, allowances, and travelling expenses according to the scales for the time being prescribed by regulations made under the Criminal Procedure Act 2011, and those regulations shall apply accordingly.
- (2) On each occasion on which the Tribunal issues a summons under section 109(1), the Tribunal, or the person exercising the power of the Tribunal under subsection (3) of that section, shall fix an amount which, on the service of the summons, or at some other reasonable time before the date on which the witness is required to attend, shall be paid or tendered to the witness.

- (3) The amount fixed under subsection (2) shall be the estimated amount of the allowances and travelling expenses to which, in the opinion of the Tribunal or person, the witness will be entitled according to the prescribed scales if the witness attends at the time and place specified in the summons.
- (4) Where a party to the proceedings has requested the issue of the witness summons, the fees, allowances, and travelling expenses payable to the witness shall be paid by that party.
- (5) Where the Tribunal has of its own motion issued the witness summons, the Tribunal may direct that the amount of those fees, allowances, and travelling expenses—
  - (a) form part of the costs of the proceedings; or
  - (b) be paid from money appropriated by Parliament for the purpose.

Section 111(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

## **112 Privileges and immunities**

Witnesses and counsel appearing before the Tribunal shall have the same privileges and immunities as witnesses and counsel have in proceedings in the District Court.

Section 112: amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

## **113 Non-attendance or refusal to co-operate**

- (1) Every person commits an offence who, after being summoned to attend to give evidence before the Tribunal or to produce to the Tribunal any papers, documents, records, or things, without sufficient cause,—
  - (a) fails to attend in accordance with the summons; or
  - (b) refuses to be sworn or to give evidence, or, having been sworn, refuses to answer any question that the person is lawfully required by the Tribunal or any member of it to answer concerning the proceedings; or
  - (c) fails to produce any such paper, document, record, or thing.
- (2) Every person who commits an offence against subsection (1) is liable on conviction to a fine not exceeding \$1,500.
- (3) No person summoned to attend before a Tribunal shall be convicted of an offence against subsection (1) unless there was tendered or paid to that person travelling expenses in accordance with section 111.

Section 113(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

## **114 Power to commit for contempt**

- (1) If any person—



- (a) threatens, or intimidates, or intentionally insults, the Tribunal or any member of it or any special adviser to or officer of the Tribunal, during a sitting of the Tribunal, or in going to, or returning from, any sitting; or
- (b) intentionally interrupts the proceedings of the Tribunal or otherwise misbehaves while the Tribunal is sitting; or
- (c) intentionally and without lawful excuse disobeys an order or direction of a member of the Tribunal in the course of any proceedings before the Tribunal,—

any officer of the Tribunal, with or without the assistance of any constable or other person, may, in accordance with any order given by a member of the Tribunal, take the person into custody and detain him or her for a period expiring not later than 1 hour following the rising of the Tribunal, and the Chairperson or a Deputy Chairperson may, if he or she thinks fit, by warrant under his or her hand, commit the person to prison for any period not exceeding 10 days or impose a fine not exceeding \$1,500.

- (2) A warrant under subsection (1) may be filed in the District Court and shall then be enforceable as an order made by that court.

Section 114(1): amended, on 14 November 2018, by section 92(2) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

Section 114(1)(a): amended, on 14 November 2018, by section 92(1) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

Section 114(1)(c): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 114(2): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

### **115 Tribunal may dismiss trivial, etc, proceedings**

The Tribunal may at any time dismiss any proceedings brought under section 92B or section 92E if it is satisfied that they are trivial, frivolous, or vexatious or are not brought in good faith.

Compare: 1977 No 49 s 55

Section 115: amended, on 1 January 2002, by section 23 of the Human Rights Amendment Act 2001 (2001 No 96).

### **115A Tribunal may strike out, determine, or adjourn proceedings**

- (1) The Tribunal may strike out, in whole or in part, a proceeding if satisfied that it—
  - (a) discloses no reasonable cause of action; or
  - (b) is likely to cause prejudice or delay; or
  - (c) is frivolous or vexatious; or
  - (d) is otherwise an abuse of process.

- (2) If a party is neither present nor represented at the hearing of a proceeding, the Tribunal may,—
- (a) if the party is required to be present, strike out the proceeding; or
  - (b) determine the proceeding in the absence of the party; or
  - (c) adjourn the hearing.

Section 115A: inserted, on 14 November 2018, by section 93 of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

### **116 Reasons to be given**

- (1) This section applies to the following decisions of the Tribunal:
- (a) a decision to grant 1 or more of the remedies described in section 92I or the remedy described in section 92J or an order under section 95;
  - (b) a decision to make a declaration under section 97;
  - (c) a decision to dismiss proceedings brought under section 92B or section 92E or section 95 or section 97.
- (2) Every decision to which this section applies must be in writing and must show the Tribunal's reasons for the decision, including—
- (a) relevant findings of fact; and
  - (b) explanations and findings on relevant issues of law; and
  - (c) conclusions on matters or issues it considers require determination in order to dispose of the matter.
- (3) The Tribunal must notify the parties, the Attorney-General, and the Human Rights Commission of every decision of the Tribunal.

Section 116: substituted, on 1 January 2002, by section 24 of the Human Rights Amendment Act 2001 (2001 No 96).

### **117 Seal of Tribunal**

The Tribunal shall have a seal, which shall be judicially noticed in all courts and for all purposes.

Compare: 1977 No 49 s 57

### **118 Members of Tribunal not personally liable**

No member of the Tribunal shall be personally liable for any act done or omitted to be done by the Tribunal or any member thereof in good faith in pursuance or intended pursuance of the functions, duties, powers, or authorities of the Tribunal.

Compare: 1977 No 49 s 58

### **119 Fees of members of Tribunal**

- (1) A member of the Tribunal is entitled—

- (a) to receive remuneration not within paragraph (b) for services as a member at a rate and of a kind determined by the Minister in accordance with the fees framework; and
  - (b) in accordance with the fees framework, to be reimbursed for actual and reasonable travelling and other expenses incurred in carrying out his or her office as a member.
- (2) For the purposes of subsection (1), **fees framework** means the framework determined by the Government from time to time for the classification and remuneration of statutory and other bodies in which the Crown has an interest.
- Section 119: substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## 120 Services for Tribunal

- (1) The Ministry of Justice shall furnish such secretarial, recording, and clerical services as may be necessary to enable the Tribunal to discharge its functions.
- (2) The cost of any services provided by the Ministry of Justice pursuant to this section shall be paid from public money appropriated by Parliament for the purpose.

Compare: 1977 No 49 s 60

Section 120(1): amended, on 1 October 2003, pursuant to section 14(1) of the State Sector Amendment Act 2003 (2003 No 41).

Section 120(2): amended, on 1 October 2003, pursuant to section 14(1) of the State Sector Amendment Act 2003 (2003 No 41).

## 121 Enforcement

- (1) The following orders made by the Tribunal may, on registration of a certified copy in the District Court, be enforced in all respects as if they were an order of that court:
- (a) an order for the award of costs under section 92L; and
  - (b) an order for the award of damages under section 92M; and
  - (c) an interim order under section 95.
- (2) Every person commits an offence and is liable on conviction to a fine not exceeding \$5,000 who contravenes or refuses to comply with any other order of the Tribunal made under section 92I or an interim order of the Tribunal made under section 95.

Compare: 1977 No 49 s 61

Section 121(1): substituted, on 1 January 2002, by section 25(1) of the Human Rights Amendment Act 2001 (2001 No 96).

Section 121(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 121(2): amended, on 1 January 2002, by section 25(2) of the Human Rights Amendment Act 2001 (2001 No 96).

**121A Practice notes**

- (1) The Chairperson of the Tribunal may issue practice notes as he or she considers appropriate.
- (2) The practice notes must not be inconsistent with this Act or any regulations made under it, and are for the guidance of the other members of the Tribunal, officers of the Tribunal, and parties before the Tribunal.

Section 121A: inserted, on 14 November 2018, by section 94 of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

**122 Stating case for High Court**

- (1) The Tribunal may, at any time, before or during the hearing or before delivering its decision, on the application of any party to the proceedings or of its own motion, state a case for the opinion of the High Court on any question of law arising in any proceedings before the Tribunal.
- (1A) If, in any proceedings before the Tribunal, the validity of any regulation is questioned, the Tribunal must, unless it considers that there is no arguable case in support of the contention that the regulation is invalid, either—
  - (a) state a case for the opinion of the High Court on the relevant question or questions of law; or
  - (b) if the leave of the High Court is obtained, order, under section 122A(1), that the proceedings before it or the relevant matter or matters at issue be removed to the High Court for determination.
- (2) The Tribunal shall give notice to the parties to the proceedings of the Tribunal's intention to state a case under this section, specifying the registry of the High Court in which the case is to be filed.
- (3) Except where the Tribunal intends to state the case of its own motion, the question shall be in the form of a special case drawn up by the parties to the proceedings, and, if the parties do not agree, to be settled by the Tribunal.
- (4) Where the Tribunal intends to state the case of its own motion, it shall itself state and sign a case setting forth the facts and questions of law arising for the determination of the High Court.
- (5) The High Court shall hear and determine any question submitted to it under this section, and shall remit the case with its opinion to the Tribunal.

Compare: 1977 No 49 s 62

Section 122(1A): inserted, on 1 January 2002, by section 26 of the Human Rights Amendment Act 2001 (2001 No 96).

**122A Removal to High Court of proceedings or issue**

- (1) The Tribunal may, with the leave of the High Court, order that proceedings before it under this Act, or a matter at issue in them, be removed to the High Court for determination.

- (2) The Tribunal may make an order under this section, with the leave of the High Court, before or during the hearing, and either on the application of a party to the proceedings or on its own initiative, but only if—
  - (a) an important question of law is likely to arise in the proceedings or matter other than incidentally; or
  - (b) the validity of any regulation is questioned in proceedings before the Tribunal (whether on the ground that it authorises or requires unjustifiable discrimination in circumstances where the statutory provision purportedly empowering the making of the regulation does not authorise the making of a regulation authorising or requiring unjustified discrimination, or otherwise); or
  - (c) the nature and the urgency of the proceedings or matter mean that it is in the public interest that they or it be removed immediately to the High Court; or
  - (d) the High Court already has before it other proceedings, or other matters, that are between the same parties and involve issues that are the same as, or similar or related to, those raised by the proceedings or matter; or
  - (e) the Tribunal is of the opinion that, in all the circumstances, the High Court should determine the proceedings or matter.
- (3) Despite subsection (2), if the validity of any regulation is questioned in proceedings before the Tribunal and the leave of the High Court is obtained for the making of an order under this section, the Tribunal must make an order under this section.
- (4) If the Tribunal declines to remove proceedings, or a matter at issue in them, to the High Court (whether as a result of the refusal of the High Court to grant leave or otherwise), the party applying for the removal may seek the special leave of the High Court for an order of the High Court that the proceedings or matter be removed to the High Court and, in determining whether to grant an order of that kind, the High Court must apply the criteria stated in subsection (2)(a) to (d).
- (5) An order for removal to the High Court under this section may be made subject to any conditions the Tribunal or the High Court, as the case may be, thinks fit.
- (6) Nothing in this section limits section 122.

Section 122A: inserted, on 1 January 2002, by section 27 of the Human Rights Amendment Act 2001 (2001 No 96).

### **122B Proceedings or issue removed to High Court**

- (1) If the Tribunal, acting under section 122A, orders the removal of proceedings, or a matter at issue in them, to the High Court, unless section 122A(2)(b) applies the High Court may, if it considers that the proceedings or matter ought instead to be determined by the Tribunal, order that the Tribunal determine the matter.

- (2) If the Tribunal, under section 122A, orders that proceedings, or a matter at issue in them, be removed to the High Court, and the High Court makes no order under subsection (1),—
- (a) the High Court must determine the proceedings or matter and may exercise any power that the Tribunal could have exercised in, or in relation to, the proceedings or matter; and
  - (b) a party to the proceedings may, under section 124, appeal to the Court of Appeal against the determination of the High Court on a question of law arising in the proceedings.

Section 122B: inserted, on 1 January 2002, by section 27 of the Human Rights Amendment Act 2001 (2001 No 96).

### **123 Appeals to High Court**

- (1) Where any party is dissatisfied with any interim order made by the Chairperson or a Deputy Chairperson under section 95, that party may appeal to the High Court against the whole or part of that order.
- (2) A party to a proceeding under section 92B or section 92E may appeal to the High Court against all or any part of a decision of the Tribunal—
  - (a) dismissing the proceeding; or
  - (b) granting 1 or more of the remedies described in section 92I; or
  - (c) granting the remedy described in section 92J; or
  - (d) refusing to grant the remedy described in section 92J; or
  - (e) constituting a final determination of the Tribunal in the proceeding.
- (2A) For the purposes of subsection (2)(d), the Tribunal does not in a proceeding refuse to grant the remedy described in section 92J unless—
  - (a) a party to the proceeding expressly applies to the Tribunal for the remedy in relation to a particular enactment; and
  - (b) the Tribunal does not grant the remedy in relation to that enactment.
- (3) Where any party is dissatisfied with any decision of the Tribunal making a declaration under section 97, that party may appeal to the High Court against the whole or any part of that decision.
- (4) Every appeal under this section shall be made by giving notice of appeal within 22 working days after the date of the giving by the Tribunal in writing of the decision to which the appeal relates.
- (5) In determining any appeal under this section the High Court shall have the powers conferred on the Tribunal by sections 105 and 106, and those sections shall apply accordingly with such modifications as are necessary.
- (6) In its determination of any appeal, the court may—
  - (a) confirm, modify, or reverse the order or decision appealed against, or any part of that order or decision:

- (b) exercise any of the powers that could have been exercised by the Tribunal in the proceedings to which the appeal relates.
- (7) Notwithstanding anything in subsection (6), the court may in any case, instead of determining any appeal, refer to the Tribunal, in accordance with the rules of court, for further consideration by the Tribunal, the whole or any part of the matter to which the appeal relates.
- (8) Subject to the provisions of this Act, the procedure in respect of any such appeal shall be in accordance with the rules of court.
- (9) Notice of appeal shall not operate as a stay of proceedings in respect of the decision to which the appeal relates unless the Tribunal or the High Court so orders.

Compare: 1977 No 49 s 63

Section 123(1): amended, on 14 November 2018, by section 96(1) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

Section 123(2): substituted, on 1 January 2004, by section 47 of the Supreme Court Act 2003 (2003 No 53).

Section 123(2A): inserted, on 1 January 2004, by section 47 of the Supreme Court Act 2003 (2003 No 53).

Section 123(4): amended, on 14 November 2018, by section 96(2) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

#### **124 Appeal to Court of Appeal on a question of law**

- (1) Any party to any proceedings before the High Court under this Act may, with the leave of the High Court, appeal to the Court of Appeal against any determination of the High Court on a question of law arising in those proceedings:  
provided that, if the High Court refuses to grant leave to appeal to the Court of Appeal, the Court of Appeal may grant special leave to appeal.
- (2) A party desiring to appeal to the Court of Appeal under this section shall, within 15 working days after the determination of the High Court, or within such further time as that court may allow, give notice of his or her application for leave to appeal in such manner as may be directed by the rules of that court, and the High Court may grant leave accordingly if in the opinion of that court the question of law involved in the appeal is one which, by reason of its general or public importance or for any other reason, ought to be submitted to the Court of Appeal for decision.
- (3) Where the High Court refuses leave to any party to appeal to the Court of Appeal under this section, that party may, within 15 working days after the refusal of the High Court or within such further time as the Court of Appeal may allow, apply to the Court of Appeal, in such manner as may be directed by the rules of that court, for special leave to appeal to that court, and the Court of Appeal may grant leave accordingly if, in the opinion of that court, the question of law involved in the appeal is one which, by reason of its general or pub-

lic importance or for any other reason, ought to be submitted to the Court of Appeal for decision.

- (4) On any appeal to the Court of Appeal under this section, the Court of Appeal shall have the same power to adjudicate on the proceedings as the High Court had.
- (5) The same judgment must be entered in the High Court, and the same execution and other consequences and proceedings must follow on it, as if the decision of the Court of Appeal on an appeal under this section had been given in the High Court.
- (6) The decision of the Court of Appeal on any application to that court for leave to appeal shall be final.

Compare: 1977 No 49 s 64

Section 124(2): amended, on 14 November 2018, by section 97(1) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

Section 124(3): amended, on 14 November 2018, by section 97(2) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

Section 124(5): substituted, on 1 January 2004, by section 47 of the Supreme Court Act 2003 (2003 No 53).

## **125 Costs of appeal**

The High Court shall have power to make such order as to the whole or any part of the costs of an appeal under section 123 as may seem just but every order for costs shall follow the outcome of the appeal unless the court otherwise orders.

Compare: 1977 No 49 s 65

## **126 Additional members of High Court for purposes of Act**

- (1) For the purpose of the exercise by the High Court of its jurisdiction and powers—
  - (a) under section 92T; or
  - (b) under section 123 in respect of any appeal under section 123(2) or section 123(3) in which a question of fact is involved,—
 there shall be 2 additional members of the court who shall be persons appointed by a Judge of the court for the purposes of the hearing or appeal from the panel maintained by the Minister under section 101.
- (2) Before entering upon the exercise of the duties of their office, the additional members shall take an oath before a Judge of the High Court that they will faithfully and impartially perform the duties of their office.
- (3) The presence of a Judge of the High Court and of at least 1 additional member shall be necessary to constitute a sitting of the court.
- (4) The decision of a majority (including the Judge, or, where more than 1 Judge sits, including a majority of the Judges) of the members present at a sitting of



the court shall be the decision of the court. If the members present are equally divided in opinion, the decision of the Judge, or of a majority of the Judges, shall be the decision of the court.

- (5) If any question before the court cannot be decided in accordance with subsection (4), the question shall be referred to the Court of Appeal for decision in accordance with the practice and procedure of that court, which for the purpose shall have all the powers of the court under this Act. The decision of the Court of Appeal in any proceedings under this subsection shall be final and shall take effect and be entered as if it were a decision of the court under this Act.
- (6) An additional member is entitled—
- (a) to receive remuneration not within paragraph (b) for services as a member at a rate and of a kind determined by the Minister in accordance with the fees framework; and
  - (b) in accordance with the fees framework, to be reimbursed for actual and reasonable travelling and other expenses incurred in carrying out his or her office as a member.
- (7) For the purposes of subsection (6), **fees framework** means the framework determined by the Government from time to time for the classification and remuneration of statutory and other bodies in which the Crown has an interest.

Compare: 1977 No 49 s 66; 1991 No 60 s 3(4)

Section 126(1)(a): amended, on 1 January 2002, by section 29(a) of the Human Rights Amendment Act 2001 (2001 No 96).

Section 126(1)(b): amended, on 1 January 2002, by section 29(b) of the Human Rights Amendment Act 2001 (2001 No 96).

Section 126(6): substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 126(7): added, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## Part 5

### Powers in relation to inquiries

Part 5 heading: amended, on 1 January 2002, by section 30 of the Human Rights Amendment Act 2001 (2001 No 96).

#### 126A Evidence order

- (1) Any District Court Judge who is satisfied, on an application made by the Commission in accordance with subsection (3), that any person can provide information, documents, or things, or give evidence, that will or may be relevant to a specified inquiry, may make an order—
- (a) requiring that person to produce to the Commission any information, or documents, or things specified in the order; or

- (b) requiring that person to give evidence to the Commission about matters that, in the opinion of the District Court Judge, are relevant to the inquiry.
- (2) If an order is made under subsection (1)(a), the District Court Judge may, as a condition of the order, require the Commission to reimburse the person who is the subject of the order for the actual and reasonable expenses incurred by that person in complying with the order or in producing any specified class of information, documents, or things.
- (3) An application by the Commission for an order under subsection (1) must be in writing and must—
  - (a) set out the reasons why the order is sought; and
  - (b) if an order is sought under subsection (1)(a), set out the information, documents, or things in respect of which the order is sought; and
  - (c) explain why the information, documents, things, or evidence in question will or may be relevant to the inquiry.
- (4) In this section, **specified inquiry** means an inquiry by the Commission under section 5(2)(h) into the contravention or possible contravention by any person of New Zealand law relating to human rights.
- (5) For the avoidance of doubt, nothing in this section requires the Commission in the exercise of its inquiry function under section 5(2)(h) to obtain an order under subsection (1).

Section 126A: inserted, on 1 January 2002, by section 31 of the Human Rights Amendment Act 2001 (2001 No 96).

Section 126A(5): inserted, on 15 June 2016, by section 15 of the Human Rights Amendment Act 2016 (2016 No 28).

## 127 Evidence

- (1) The Commission may, by notice in writing, require any person who is the subject of an order under section 126A(1)(a) to provide any information, and to produce any documents or things in the possession of or under the control of that person, that are specified in the order.
- (2) The Commission may summon before it, and examine on oath, any person who is subject to an order under section 126A(1)(b), in accordance with the terms of the order, and a Commissioner may for that purpose administer an oath to the person summoned.
- (3) Every such examination by a Commission shall be deemed to be a judicial proceeding within the meaning of section 108 of the Crimes Act 1961 (which relates to perjury).

Compare: 1977 No 49 s 73(1), (2)

Section 127(1): substituted, on 1 January 2002, by section 32 of the Human Rights Amendment Act 2001 (2001 No 96).

Section 127(2): substituted, on 1 January 2002, by section 32 of the Human Rights Amendment Act 2001 (2001 No 96).

Section 127(3): amended, on 1 January 2002, by section 32 of the Human Rights Amendment Act 2001 (2001 No 96).

## **128 Protection and privileges of witnesses, etc**

- (1) Every person shall have the same privileges in relation to the giving of information to, the answering of questions put by, and the production of documents and things to, a Commission as witnesses have in any court.
- (2) No person shall be required to supply any information to or to answer any question put by a Commission in relation to any matter, or to produce to a Commission any document or paper or thing relating to any matter, in any case where compliance with that requirement would be in breach of an obligation of secrecy or non-disclosure imposed on that person by the provisions of any Act or regulations, other than the Official Information Act 1982.
- (3) No person shall be liable to prosecution for an offence against any enactment, other than section 143, by reason of that person's compliance with any requirement of a Commission under section 127.
- (4) Where the attendance of any person is required by a Commission under section 127, the person shall be entitled to the same fees, allowances, and expenses as if the person were a witness in a court and, for the purpose,—
  - (a) the provisions of any regulations in that behalf under the Criminal Procedure Act 2011 shall apply accordingly; and
  - (b) the Commission shall have the powers of a court under any such regulations to fix or disallow, in whole or in part, or to increase, any amounts payable under the regulations.

Compare: 1977 No 49 s 73(3), (4), (6), (7)

Section 128(1): amended, on 1 January 2002, by section 33 of the Human Rights Amendment Act 2001 (2001 No 96).

Section 128(2): amended, on 1 January 2002, by section 33 of the Human Rights Amendment Act 2001 (2001 No 96).

Section 128(3): amended, on 1 January 2002, by section 33 of the Human Rights Amendment Act 2001 (2001 No 96).

Section 128(4): amended, on 1 January 2002, by section 33 of the Human Rights Amendment Act 2001 (2001 No 96).

Section 128(4)(a): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 128(4)(b): amended, on 1 January 2002, by section 33 of the Human Rights Amendment Act 2001 (2001 No 96).

## **129 Disclosure of certain matters not to be required**

- (1) Where—

- (a) the Prime Minister certifies that the giving of any information or the answering of any question or the production of any document or thing might prejudice the security, defence, or international relations of New Zealand (including New Zealand's relations with the government of any other country or with any international organisation); or
- (b) the Attorney-General certifies that the giving of any information or the answering of any question or the production of any document or thing—
  - (i) might prejudice the prevention, investigation, or detection of offences; or
  - (ii) might involve the disclosure of proceedings of Cabinet, or any committee of Cabinet, relating to matters of a secret or confidential nature, and such disclosure would be injurious to the public interest,—

the Commission shall not require the information to be given, or, as the case may be, the document or thing to be produced.

- (2) Subject to the provisions of subsection (1), the rule of law which authorises or requires the withholding of any document, or the refusal to answer any question, on the ground that the disclosure of the document or the answering of the question would be injurious to the public interest shall not apply in respect of any investigation by a Commission.

Compare: 1977 No 49 s 74

Section 129(1): amended, on 1 January 2002, by section 34 of the Human Rights Amendment Act 2001 (2001 No 96).

Section 129(2): amended, on 1 January 2002, by section 34 of the Human Rights Amendment Act 2001 (2001 No 96).

### 130 Proceedings privileged

- (1) Sections 120 to 126 of the Crown Entities Act 2004 apply except to the extent provided in subsections (2) and (2A) (which set out special rules relating to proceedings under section 131 (which relates to inciting racial disharmony)).
- (2) No proceedings under section 131 lie against any Commissioner or person engaged or employed in connection with the work of the Commission and the Director of Human Rights Proceedings (**relevant person**) for anything he or she may do or report or say in the course of the exercise or intended exercise of his or her duties under this Act, unless it is shown that he or she acted in bad faith.
- (2A) Sections 122 to 126 of the Crown Entities Act 2004 then apply as if the conduct for which a relevant person may be indemnified or insured under those sections included conduct that is covered by the immunity in subsection (2).
- (2B) No relevant person can be required to give evidence in any court, or in any proceedings of a judicial nature, in respect of anything coming to his or her knowledge in the exercise of his or her functions.

- (3) Nothing in subsection (2) applies in respect of proceedings for—
- (a) an offence against section 78, 78AA(1), 78A(1), 105, 105A, or 105B of the Crimes Act 1961; or
  - (b) the offence of attempting or conspiring to commit an offence against section 78, 78AA(1), 78A(1), 105, 105A, or 105B of the Crimes Act 1961.
- (4) Anything said or any information supplied or any document or thing produced by any person in the course of any inquiry by, or proceedings before, the Commission or a Commissioner under this Act shall be privileged in the same manner as if the inquiry or proceedings were proceedings in a court.
- (5) For the purposes of clause 3 of Part 2 of Schedule 1 of the Defamation Act 1992, any report made by the Commission or a Commissioner under this Act shall be deemed to be an official report made by a person holding an inquiry under the authority of the Parliament of New Zealand.

Compare: 1971 No 150 s 20; 1977 No 49 s 76; 1982 No 156 s 50; 1991 No 126 s 29; 1993 No 35 s 6

Section 130(1): substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 130(2): substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 130(2A): inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 130(2B): inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 130(3)(a): amended, on 28 September 2017, by section 335 of the Intelligence and Security Act 2017 (2017 No 10).

Section 130(3)(b): amended, on 28 September 2017, by section 335 of the Intelligence and Security Act 2017 (2017 No 10).

Section 130(4): amended, on 1 January 2002, by section 35(b) of the Human Rights Amendment Act 2001 (2001 No 96).

## Part 6

### Inciting racial disharmony

#### 131 Inciting racial disharmony

- (1) Every person commits an offence and is liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$7,000 who, with intent to excite hostility or ill-will against, or bring into contempt or ridicule, any group of persons in New Zealand on the ground of the colour, race, or ethnic or national origins of that group of persons,—
- (a) publishes or distributes written matter which is threatening, abusive, or insulting, or broadcasts by means of radio or television words which are threatening, abusive, or insulting; or

- (b) uses in any public place (as defined in section 2(1) of the Summary Offences Act 1981), or within the hearing of persons in any such public place, or at any meeting to which the public are invited or have access, words which are threatening, abusive, or insulting,—

being matter or words likely to excite hostility or ill-will against, or bring into contempt or ridicule, any such group of persons in New Zealand on the ground of the colour, race, or ethnic or national origins of that group of persons.

- (2) For the purposes of this section, **publishes** or **distributes** and **written matter** have the meaning given to them in section 61.

Compare: 1971 No 150 s 25; 1977 No 49 s 86

Section 131(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### 132 No prosecution without Attorney-General's consent

No prosecution for an offence against section 131 shall be instituted without the consent of the Attorney-General.

Compare: 1971 No 150 s 26

## Part 7

### Miscellaneous provisions

#### 133 Licences and registration

- (1) Where any person is licensed or registered under any enactment to carry on any occupation or activity or where any premises or vehicle are registered or licensed for any purpose under any enactment, and where the person or other authority authorised to renew, revoke, cancel, or review any such licence or registration is satisfied—

- (a) that in the carrying on of the occupation or activity; or  
(b) that in the use of the premises or vehicle,—

there has been a breach of any of the provisions of Part 2, the person or authority, in addition to any other powers which that person or authority has, but subject to subsection (2), may refuse to renew or may revoke or cancel any such licence or registration, as the case may require, or may impose any other penalty authorised by the enactment, whether by way of censure, fine, or otherwise.

- (2) Any procedural requirements of the enactment, including any whereby a complaint is a prerequisite to the exercise by the person or authority of its powers under the enactment, shall be observed.
- (3) In any case in which any of the powers conferred by subsection (1) are exercised,—
- (a) the person or authority shall in giving its decision state that the decision is being made pursuant to subsection (1); and

- (b) any person who would have been entitled to appeal against that decision if it had been made on other grounds shall be entitled to appeal against the decision made pursuant to subsection (1).
- (4) In this section, the term **enactment** means any provision of any Act, regulations, or bylaws.

Compare: 1971 No 150 s 23

### **134 Access by the public to places, vehicles, and facilities**

- (1) Every person commits an offence who—
  - (a) refuses to allow any other person access to or use of any place or vehicle which members of the public are entitled or allowed to enter or use; or
  - (b) refuses any other person the use of any facilities in that place or vehicle which are available to members of the public; or
  - (c) requires any other person to leave or to cease to use that place or vehicle or those facilities,—

when that refusal or requirement is in breach of any of the provisions of Part 2.

- (2) Every person who commits an offence against this section is liable on conviction to a fine not exceeding \$3,000.
- (3) In this section, the term **vehicle** includes a vessel, an aircraft, or a hovercraft.

Compare: 1971 No 150 s 24; 1977 No 49 s 86

Section 134(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### **135 No prosecution without Attorney-General's consent**

No prosecution for an offence against section 134 shall be instituted without the consent of the Attorney-General.

Compare: 1971 No 150 s 26

### **136 Condition in restraint of marriage, civil union, or de facto relationship**

A condition, whether oral or contained in a deed, will, or other instrument, which restrains or has the effect of restraining a person from marrying or entering into a civil union or de facto relationship shall be void if the person or class of person whom the person subject to the condition may or may not marry or enter into a civil union or de facto relationship with is identified or defined, expressly or by implication, by reference to the colour, race, or ethnic or national origins of the person or class of person.

Compare: 1971 No 150 s 27(1)

Section 136 heading: amended, on 20 September 2007, by section 4(1) of the Human Rights Amendment Act 2007 (2007 No 64).

Section 136: amended, on 20 September 2007, by section 4(2) of the Human Rights Amendment Act 2007 (2007 No 64).

Section 136: amended, on 20 September 2007, by section 4(3) of the Human Rights Amendment Act 2007 (2007 No 64).

**137 Advisors to be officials**

- (1) Every person engaged by the Commission in connection with its work is an official for the purposes of sections 105 and 105A of the Crimes Act 1961.
- (2) This section does not limit section 135 of the Crown Entities Act 2004.

Section 137: substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**138 No adverse statement**

The Commission must not, in any report or statement made pursuant to this Act, make any comment that is adverse to any person unless that person has been given an opportunity to be heard.

Compare: 1977 No 49 s 78(2); 1991 No 126 s 32

Section 138: amended, on 1 January 2002, by section 36 of the Human Rights Amendment Act 2001 (2001 No 96).

**139 Restriction on delegation**

- (1) The Commission may not delegate the powers or functions in section 7 or section 76.
- (2) In other respects, section 73 of the Crown Entities Act 2004 applies.

Section 139: substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**140 Delegation of powers by Chief Commissioner**

- (1) The Chief Human Rights Commissioner may, in writing signed by him or her, delegate to an officer or employee of the Commission any of the Chief Commissioner's functions or powers under this Act, except this power of delegation and the power to make a report under this Act.
- (2) A delegation under this section—
  - (a) may be made to a specified person or to the holder for the time being of a specified office or to the holders of offices of a specified class; and
  - (b) may be made subject to any restrictions or conditions the Chief Commissioner thinks fit; and
  - (c) may be made either generally or in relation to any particular case or class of cases; and
  - (d) is revocable at will and, until revoked, continues in force according to its tenor.
- (3) If a function or power is delegated under this section, the performance or exercise of the function or power must not be inconsistent with determinations of the Commission under section 7.
- (4) If a function or power is delegated under this section and the Chief Commissioner by whom it was made ceases to hold office, the delegation continues to have effect as if it were made by his or her successor.



- (5) A person purporting to exercise a function or power of the Chief Commissioner by virtue of a delegation under this section must, when required to do so, produce evidence of the person's authority to exercise the power.
- (6) Sections 62 to 72 of the Crown Entities Act 2004 apply to a delegate under this section as if the delegate were a member and as if the disclosure must be made to the Commission and with other necessary modifications.
- (7) Sections 74 to 76 of the Crown Entities Act 2004 do not apply to a delegation under this section.

Compare: 1977 No 49 s 80

Section 140: substituted, on 1 January 2002, by section 37 of the Human Rights Amendment Act 2001 (2001 No 96).

Section 140 heading: amended, on 15 June 2016, by section 16(1) of the Human Rights Amendment Act 2016 (2016 No 28).

Section 140(1): amended, on 15 June 2016, by section 16(2)(a) of the Human Rights Amendment Act 2016 (2016 No 28).

Section 140(1): amended, on 15 June 2016, by section 16(2)(b) of the Human Rights Amendment Act 2016 (2016 No 28).

Section 140(2)(b): amended, on 15 June 2016, by section 16(3) of the Human Rights Amendment Act 2016 (2016 No 28).

Section 140(4): amended, on 15 June 2016, by section 16(4) of the Human Rights Amendment Act 2016 (2016 No 28).

Section 140(5): amended, on 15 June 2016, by section 16(5) of the Human Rights Amendment Act 2016 (2016 No 28).

Section 140(6): added, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 140(7): added, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **141 Annual report**

*[Repealed]*

Section 141: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **141A Certain acts not to be questioned**

*[Repealed]*

Section 141A: repealed (but continuing to apply, as if had not been repealed, in relation to action undertaken before its repeal), on 15 June 2016, by section 17(1) of the Human Rights Amendment Act 2016 (2016 No 28).

## **142 Money to be appropriated by Parliament for purposes of this Act**

*[Repealed]*

Section 142: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**143 Offences**

Every person commits an offence against this Act and is liable on conviction to a fine not exceeding \$3,000 who—

- (a) without lawful justification or excuse, wilfully obstructs, hinders, or resists the Commission or a Commissioner or any other person in the exercise of its or his or her powers under this Act:
- (b) without lawful justification or excuse, refuses or wilfully fails to comply with any lawful requirement of the Commission or a Commissioner or any other person under this Act:
- (c) makes any false statement knowing it to be false or intentionally misleads or attempts to mislead the Commission or a Commissioner or any other person in the exercise of its or his or her powers under this Act.

Compare: 1971 No 150 s 29; 1977 No 49 s 84

Section 143: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

**144 Regulations**

- (1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:
  - (a) prescribing the procedure to be followed under this Act in respect of complaints to and proceedings before the Commission or in respect of proceedings before the Tribunal:
  - (b) prescribing forms for the purposes of this Act, and requiring the use of such forms:
  - (c) providing for such matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.
- (2) For the avoidance of doubt, it is hereby declared that the power conferred by subsection (1) to make regulations in respect of proceedings before the Tribunal includes power to make regulations in respect of proceedings in connection with the exercise or performance of any function, power, or duty conferred or imposed on the Tribunal by or under any other enactment.

Compare: 1977 No 49 s 85(1)

Section 144(1)(a): amended, on 1 January 2002, by section 39 of the Human Rights Amendment Act 2001 (2001 No 96).

Section 144(2): added, on 21 October 1994, by section 82 of the Health and Disability Commissioner Act 1994 (1994 No 88).

**145 Related amendments to other enactments**

*[Repealed]*

Section 145: repealed, on 1 January 2002, by section 40 of the Human Rights Amendment Act 2001 (2001 No 96).

## 146 Repeals

*[Repealed]*

Section 146: repealed, on 1 January 2002, by section 40 of the Human Rights Amendment Act 2001 (2001 No 96).

## 147 Revocation

*[Repealed]*

Section 147: repealed, on 1 January 2002, by section 40 of the Human Rights Amendment Act 2001 (2001 No 96).

### *Transitional provisions*

Heading: substituted, on 1 January 2002, by section 40 of the Human Rights Amendment Act 2001 (2001 No 96).

## 148 Former office of Commissioner abolished

- (1) The office of Commissioner under section 7(1) (as it read immediately before the commencement of this section) is abolished.
- (2) No person is entitled to compensation for loss of office as a Commissioner under subsection (1).

Section 148: substituted, on 1 January 2002, by section 40 of the Human Rights Amendment Act 2001 (2001 No 96).

## 148A Certain former Commissioners to be transitional members of Commission

- (1) The person who, immediately before the commencement of this section, held office as Chief Commissioner under section 7(1)(a) (as it read immediately before the commencement of this section) is taken to have been appointed to the office of Chief Commissioner under section 8(1)(a) (as substituted by section 5 of the Human Rights Amendment Act 2001).
- (2) The person who, immediately before the commencement of this section, held office as the Race Relations Conciliator is taken to have been appointed to the office of Race Relations Commissioner under section 8(1)(b) (as substituted by section 5 of the Human Rights Amendment Act 2001).
- (3) Every person who, immediately before the commencement of this section, held office as Commissioner under section 7(1)(e) (as it read immediately before the commencement of this section) is taken to have been appointed to the office of Commissioner under section 8(1)(d) (as substituted by section 5 of the Human Rights Amendment Act 2001).
- (4) The Privacy Commissioner appointed under the Privacy Act 1993 and the Commissioner appointed to be Proceedings Commissioner under section 7(1)(d) (as it read before the commencement of the Human Rights Amendment Act 2001) cease to be Human Rights Commissioners on the commencement of this section.

- (5) Every person who is taken to have been appointed to the office of Commissioner under this section is appointed on the same terms and conditions and for the remainder of the term for which the person was appointed under section 7(1) (as it read immediately before the commencement of this section).

Section 148A: inserted, on 1 January 2002, by section 40 of the Human Rights Amendment Act 2001 (2001 No 96).

### *Race Relations Conciliator*

Heading: inserted, on 1 January 2002, by section 40 of the Human Rights Amendment Act 2001 (2001 No 96).

#### **148B Assets and liabilities vest in Commission**

On the commencement of this section, the assets and liabilities of the Race Relations Conciliator vest in the Commission.

Section 148B: inserted, on 1 January 2002, by section 40 of the Human Rights Amendment Act 2001 (2001 No 96).

#### **148C References to Race Relations Conciliator**

- (1) From the commencement of this section, unless the context otherwise requires, every reference to the Race Relations Conciliator in any instrument, document, or notice is to be read as a reference to the Race Relations Commissioner.
- (2) Despite subsection (1), every reference to the Race Relations Conciliator in any contract or other instrument, document, or notice that creates, or is evidence of, an asset or liability, must be read as a reference to the Commission.

Section 148C: inserted, on 1 January 2002, by section 40 of the Human Rights Amendment Act 2001 (2001 No 96).

#### **148D Proceedings**

Any proceedings to which the Race Relations Conciliator was a party or that he or she was considering bringing, before the commencement of this section, may be brought, continued, completed, and enforced by or against the Commission.

Section 148D: inserted, on 1 January 2002, by section 40 of the Human Rights Amendment Act 2001 (2001 No 96).

#### **148E Commission to arrange final audited accounts**

The Commission must perform the duties that the Race Relations Conciliator would have had to perform under section 41 of the Public Finance Act 1989 if the Human Rights Amendment Act 2001 had not been enacted, for the period beginning on 1 July 2001 and ending with the close of 31 December 2001.

Section 148E: inserted, on 1 January 2002, by section 40 of the Human Rights Amendment Act 2001 (2001 No 96).

**148F All employees transferred to Commission**

- (1) Every person employed by the Race Relations Conciliator immediately before the commencement of this section is, on and from that date, an employee of the Commission on the same terms and conditions that applied to the employee immediately before that date.
- (2) For the purposes of every enactment, law, contract, and agreement relating to the employment of the employee,—
  - (a) the contract of employment of that employee is taken to be unbroken; and
  - (b) the employee's period of service with the Race Relations Conciliator and every other period of service of that employee that is recognised by the Race Relations Conciliator as continuous service is taken to have been a period of service with the Commission.
- (3) A person to whom subsection (1) applies is not entitled to any compensation just because the person has ceased to be an employee of the Race Relations Conciliator.

Section 148F: inserted, on 1 January 2002, by section 40 of the Human Rights Amendment Act 2001 (2001 No 96).

*Proceedings Commissioner*

Heading: inserted, on 1 January 2002, by section 40 of the Human Rights Amendment Act 2001 (2001 No 96).

**148G Proceedings Commissioner**

- (1) The person who, immediately before the commencement of this section, held office as the Proceedings Commissioner under section 7(1)(d) (as it read immediately before the commencement of this section) is taken to have been appointed to the office of Director of Human Rights Proceedings under section 20A (as substituted by section 5 of the Human Rights Amendment Act 2001).
- (2) The Director of Human Rights Proceedings is appointed on the same terms and conditions and for the remainder of the term for which he or she was appointed Proceedings Commissioner.

Section 148G: inserted, on 1 January 2002, by section 40 of the Human Rights Amendment Act 2001 (2001 No 96).

**148H References to Proceedings Commissioner**

From the commencement of this section, unless the context otherwise requires, every reference to the Proceedings Commissioner in any instrument, document, or notice is to be read as a reference to the Director.

Section 148H: inserted, on 1 January 2002, by section 40 of the Human Rights Amendment Act 2001 (2001 No 96).

**148I Proceedings to which Proceedings Commissioner party**

- (1) Proceedings to which the Proceedings Commissioner was a party or that he or she was considering bringing, before the commencement of this section—
  - (a) must be brought, continued, completed, and enforced by the Director; and
  - (b) may be brought, continued, completed, and enforced against the Director.
- (2) Sections 86 to 92, 95, and 97 (as they read immediately before the commencement of this section) apply (with any necessary modifications) to any proceedings to which the Proceedings Commissioner was a party before the commencement of this section as if—
  - (a) the Director were the Proceedings Commissioner; and
  - (b) the Office of Human Rights Proceedings were the Commission; and
  - (c) the Human Rights Review Tribunal were the Complaints Review Tribunal.

Section 148I: inserted, on 1 January 2002, by section 40 of the Human Rights Amendment Act 2001 (2001 No 96).

**148J Complaints referred to Proceedings Commissioner for decision as to proceedings**

- (1) Subsection (2) applies—
  - (a) if a complaint is referred to the Proceedings Commissioner under section 75(g) (as it read immediately before the commencement of this section), but no proceedings have been instituted by the Proceedings Commissioner; or
  - (b) if the Proceedings Commissioner was required to decide whether to institute proceedings against a party to a settlement under section 82(1)(c) (as it read immediately before the commencement of this section), but no proceedings were instituted by the Proceedings Commissioner before the commencement of this section.
- (2) If this subsection applies,—
  - (a) if the Commissioner has not made a decision on whether to institute proceedings, the Director must decide, under section 90(1)(c), whether to provide representation in relation to the complaint:
  - (b) if the Commissioner has made a decision to institute proceedings, the Director must provide representation for the complainant or aggrieved party (as the case may be) in the proceedings:
  - (c) if the Commissioner has made a decision not to institute proceedings, that decision is deemed to have been made by the Director.

Section 148J: inserted, on 1 January 2002, by section 40 of the Human Rights Amendment Act 2001 (2001 No 96).

**148K Transfer of employees from Commission to Office**

- (1) The Commission and the Office of Human Rights Proceedings may, after consulting the employee concerned, agree to the transfer of an employee from the Commission to the Office of Human Rights Proceedings on the same terms and conditions that applied to the employee immediately before the date of transfer.
- (2) For the purposes of every enactment, law, contract, and agreement relating to the employment of the employee,—
  - (a) the contract of employment of that employee is taken to have been unbroken; and
  - (b) the employee's period of service with the Commission, and every other period of service of that employee that is recognised by the Commission as continuous service, is taken to have been a period of service with the Office of Human Rights Proceedings.
- (3) An employee of the Commission who is transferred to the Office of Human Rights Proceedings under subsection (1) is not entitled to any compensation just because—
  - (a) the position held by the employee with the Commission has ceased to exist; or
  - (b) the person has ceased (as a result of the transfer) to be an employee of the Commission.

Section 148K: inserted, on 1 January 2002, by section 40 of the Human Rights Amendment Act 2001 (2001 No 96).

*Complaints Division*

Heading: inserted, on 1 January 2002, by section 40 of the Human Rights Amendment Act 2001 (2001 No 96).

**148L Complaints Division abolished**

The Complaints Division of the Commission is abolished.

Section 148L: inserted, on 1 January 2002, by section 40 of the Human Rights Amendment Act 2001 (2001 No 96).

**148M Outstanding complaints to be dealt with by Commission under new procedure**

- (1) A complaint lodged with the Complaints Division before the commencement of this Act must be dealt with by the Commission under Part 3 (as substituted by section 9 of the Human Rights Amendment Act 2001) as if the complaint were made to the Commission under section 76(2)(a).
- (2) For the purposes of subsection (1),—
  - (a) if the Complaints Division has called a conciliation conference under section 80(1) (as it read immediately before the commencement of this

- section) but the conference has not taken place, the Commission must instead offer to convene a dispute resolution meeting; and
- (b) if section 79(2) applies to the complaint, the Commission must inform the Attorney-General of the details of the complaint as soon as practicable.
- (3) Despite subsection (1), if, in relation to a complaint, the Complaints Division has decided not to investigate the complaint further under section 76(1) or section 77(1)(a) (as they read immediately before the commencement of this section), the Commission must take no action or further action in relation to the complaint.

Section 148M: inserted, on 1 January 2002, by section 40 of the Human Rights Amendment Act 2001 (2001 No 96).

#### **148N Breaches of Part 1A**

No act or omission that occurred before 1 January 2002 is capable of being in breach of Part 1A unless—

- (a) the act or omission continues on or after 1 January 2002; or
- (b) in the case of an enactment, the enactment is in force on or after 1 January 2002.

Section 148N: inserted, on 1 January 2002, by section 40 of the Human Rights Amendment Act 2001 (2001 No 96).

#### **148O Complaints about breaches of Part 1A**

- (1) Despite section 76, the Commission is not under a duty to receive or assess any complaint alleging a breach of Part 1A that is made to the Commission before 1 April 2002.
- (2) The Commission is not under a duty to receive or assess any complaint alleging that an act or omission that occurred before 1 January 2002 and that ceased to continue or to be in force before 1 January 2002 is in breach of Part 1A.

Section 148O: inserted, on 1 January 2002, by section 40 of the Human Rights Amendment Act 2001 (2001 No 96).

### *Savings*

#### **149 Special provisions in relation to written employment contracts in force on 1 April 1992**

- (1) This section applies to every employment contract (whether a collective employment contract or an individual employment contract) that—
- (a) is in writing; and
- (b) was in force on 1 April 1992; and
- (c) specifies an age at which an employee is required to retire.



- (2) Where the parties to an employment contract to which this section applies agree in writing, at any time on or after 1 April 1992, to confirm or vary the age specified in the employment contract, the age, as so confirmed or varied, shall have effect notwithstanding section 22.
- (3) Where the parties to an employment contract to which this section applies have not agreed in writing to confirm or vary the age specified in the employment contract, section 22 shall apply in relation to that employment contract.
- (4) Where, as at 1 April 1992, the age at which an employer is required to retire, under a term of that employee's employment contract, was specified only in a document that sets out the employer's policy on the retirement ages of the employer's employees or any of them, this section shall not apply in relation to that employee's employment contract.

Compare: 1977 No 49 s 15C; 1992 No 16 s 4

#### **150 Charitable instruments**

- (1) Nothing in this Act shall apply—
  - (a) to any provision in an existing or future will, deed, or other instrument where that provision confers charitable benefits, or enables charitable benefits to be conferred, on persons against whom discrimination is unlawful by virtue of Part 2; or
  - (b) to any act done in order to comply with any provision described in paragraph (a).
- (2) For the purposes of this section, **charitable benefits** means benefits for purposes that are charitable in accordance with the law of New Zealand.

Compare: 1971 No 150 s 36(1); 1977 No 49 s 91(1); 1983 No 56 s 18(1)

#### **151 Other enactments and actions not affected**

*[Repealed]*

Section 151: repealed, on 1 January 2002, by section 41 of the Human Rights Amendment Act 2001 (2001 No 96).

#### **152 Expiry of section 151**

*[Repealed]*

Section 152: repealed, on 1 January 2002, by section 41 of the Human Rights Amendment Act 2001 (2001 No 96).

#### **153 Savings**

- (1) Nothing in this Act affects the right to bring any proceedings, whether civil or criminal, that may be brought other than under this Act, but, in assessing any damages to be awarded to or on behalf of any person under this Act or otherwise, a court must take account of any damages already awarded to or on behalf of that person in respect of the same cause of action.

- (2) Subject to subpart 5 of Part 2 of the Contract and Commercial Law Act 2017, no proceedings, civil or criminal, shall lie against any person, except as provided by this Act, in respect of any act or omission which is unlawful by virtue only of any of the provisions of Part 2.
- (3) Nothing in this Act shall affect any enactment or rule of law, or any policy or administrative practice of the Government of New Zealand, that—
- (a) *[Repealed]*
- (b) distinguishes between New Zealand citizens and other persons, or between British subjects or Commonwealth citizens and aliens.
- (4) *[Repealed]*

Compare: 1971 No 150 s 37; 1977 No 49 ss 86, 93

Section 153(1): amended, on 1 January 2002, by section 42(1)(a) of the Human Rights Amendment Act 2001 (2001 No 96).

Section 153(1): amended, on 1 January 2002, by section 42(1)(b) of the Human Rights Amendment Act 2001 (2001 No 96).

Section 153(1): amended, on 1 January 2002, by section 42(1)(c) of the Human Rights Amendment Act 2001 (2001 No 96).

Section 153(2): amended, on 1 September 2017, by section 347 of the Contract and Commercial Law Act 2017 (2017 No 5).

Section 153(3)(a): repealed, on 1 January 2002, by section 42(2) of the Human Rights Amendment Act 2001 (2001 No 96).

Section 153(4): repealed, on 1 January 2002, by section 42(2) of the Human Rights Amendment Act 2001 (2001 No 96).

## Schedule 1AA

### Transitional, savings, and related provisions

s 2A

Schedule 1AA: inserted, on 15 June 2016, by section 18 of the Human Rights Amendment Act 2016 (2016 No 28).

#### Part 1

#### Provision relating to Human Rights Amendment Act 2016

Schedule 1AA Part 1 heading: replaced, on 14 November 2018, by section 98(1) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

#### 1 Human Rights Amendment Act 2016: transitional provisions

- (1) The provisions in subclauses (2) to (5) are transitional provisions for the Human Rights Amendment Act 2016 (the **Amendment Act**).
- (2) On the commencement of the Amendment Act (**commencement**),—
  - (a) the Commissioner who immediately before commencement was the Equal Employment Opportunities Commissioner is the Commissioner appointed, as required by section 8(1A)(b) of this Act, to lead the work of the Commission in the priority area of equal employment opportunities (including pay equity); and
  - (b) the Commissioner who immediately before commencement was the Race Relations Commissioner is the Commissioner appointed, as required by section 8(1A)(c) of this Act, to lead the work of the Commission in the priority area of race relations.
- (3) The requirement in section 8(1)(b) of this Act that there must not be more than 4 other Commissioners does not affect the appointment of Commissioners holding office on the commencement of the Amendment Act and any such Commissioner continues to hold office until the end of his or her term or until he or she ceases to hold office under section 45 of the Crown Entities Act 2004.
- (4) The requirement in section 8(1)(b) of this Act that there must not be more than 4 other Commissioners—
  - (a) does not apply to the exercise of the power to appoint the first person to lead the work of the Commission in the priority area of disability rights; but
  - (b) does apply to any reappointment of the first person appointed, or any extension of his or her appointment.
- (5) A reference in any instrument, document, or notice to the Equal Employment Opportunities Commissioner or the Race Relations Commissioner must be read as a reference, respectively, to the person leading the work of the Commission in the priority area of equal employment opportunities (including pay equity)

or the person leading the work of the Commission in the priority area of race relations, as the case may be.

## **Part 2**

### **Provision relating to Tribunals Powers and Procedures Legislation Act 2018**

Schedule 1AA Part 2: inserted, on 14 November 2018, by section 98(2) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

#### **2 Chairpersons of Human Rights Review Tribunal**

- (1) A person who holds the office of Chairperson immediately before the commencement date continues in office for the balance of his or her term, despite sections 81 and 83 of the Tribunals Powers and Procedures Legislation Act 2018, even if the consequence is that the Tribunal continues to have 2 Chairpersons until (at the latest) 31 December 2019.
- (2) Each of those Chairpersons may, in consultation with the other Chairperson, exercise the powers of the Chairperson of the Tribunal under the Human Rights Act 1993, as amended by subpart 7 of Part 1 of the Tribunals Powers and Procedures Legislation Act 2018.
- (3) While 2 Chairpersons are appointed, they must act together in issuing practice notes under section 121A.
- (4) For the purpose of this clause, **commencement date** means the date on which section 83 of the Tribunals Powers and Procedures Legislation Act 2018 comes into force.

## Schedule 1

### Administrative provisions applying in respect of Commission

s 20H(1)

Schedule 1: substituted, on 1 January 2002, by section 43 of the Human Rights Amendment Act 2001 (2001 No 96).

#### 1 General manager: appointment, term of office, and conditions

- (1) The general manager—
  - (a) is appointed by the Chief Human Rights Commissioner, after consultation with the Commission, under section 18, and his or her office is a full-time one; and
  - (b) holds the office for the term (not longer than 5 years) and under the conditions specified in his or her appointment; and
  - (c) may, from time to time, be reappointed; and
  - (d) unless he or she sooner vacates or no longer holds or is removed from the office, continues in it until his or her successor comes into it, even though the term for which he or she was appointed has expired.
- (2) Subclause (1) is subject to section 117 of the Crown Entities Act 2004.
- (3) In the case of absence from duty of the general manager (for any reason) or on the occurrence of a vacancy in that position (for any reason) and while the absence or vacancy continues, all or any of the powers and duties of the general manager may be exercised and performed by any other employee of the Commission for the time being directed by the Chief Commissioner (after consultation by the Chief Commissioner with the Commission) to exercise and perform them, whether the direction has been given before the absence or vacancy occurs or while it continues.
- (4) No direction given under subclause (3) and no acts done by any employee of the Commission acting under that direction may in any proceedings be questioned on the ground that—
  - (a) the occasion for the direction had not arisen or had ceased; or
  - (b) that the employee has not been appointed to the position of general manager.

Schedule 1 clause 1(2): substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

#### 2 Staff

*[Repealed]*

Schedule 1 clause 2: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

### 3 Employment principles

*[Repealed]*

Schedule 1 clause 3: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

### 4 Appointment of experts

*[Repealed]*

Schedule 1 clause 4: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

### 5 Salaries and allowances

*[Repealed]*

Schedule 1 clause 5: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

### 6 Superannuation or retiring allowances

- (1) For the purpose of providing superannuation or retiring allowances for the Commissioners, the Commission may, out of the funds of the Commission, make payments to or subsidise any retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013).
- (2) Despite anything in this Act, any person who, immediately before being appointed as a Commissioner or the general manager or, as the case may be, becoming an employee of the Commission, is a contributor to the Government Superannuation Fund under Part 2 or Part 2A of the Government Superannuation Fund Act 1956 is deemed to be, for the purposes of the Government Superannuation Fund Act 1956, employed in the Government service so long as that person continues to hold office as a Commissioner or the general manager or, as the case may be, to be an employee of the Commission, and that Act applies to that person in all respects as if that person's service as a Commissioner or the general manager or, as the case may be, as an employee of that kind were Government service.
- (3) For the purpose of applying the Government Superannuation Fund Act 1956, in accordance with subclause (2), to a person who holds office as a Commissioner or the general manager or, as the case may be, is in the service of the Commission as an employee and (in any such case) is a contributor to the Government Superannuation Fund, **controlling authority**, in relation to the person, means the Commission.

Schedule 1 clause 6(1): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Schedule 1 clause 6(1): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**7 Certain Acts do not apply to staff of Commission**

*[Repealed]*

Schedule 1 clause 7: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**8 Services for Commission**

*[Repealed]*

Schedule 1 clause 8: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**9 Funds of Commission**

*[Repealed]*

Schedule 1 clause 9: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**10 Bank accounts**

*[Repealed]*

Schedule 1 clause 10: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**11 Investment of money**

*[Repealed]*

Schedule 1 clause 11: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**12 Borrowing**

*[Repealed]*

Schedule 1 clause 12: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**13 Seal**

*[Repealed]*

Schedule 1 clause 13: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**14 Tax status**

*[Repealed]*

Schedule 1 clause 14: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**15 Crown entity**

*[Repealed]*

Schedule 1 clause 15: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**16 Auditor**

*[Repealed]*

Schedule 1 clause 16: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).



## Schedule 2

### Administrative provisions applying in respect of Office of Human Rights Proceedings

s 20H(2)

Schedule 2: substituted, on 1 January 2002, by section 43 of the Human Rights Amendment Act 2001 (2001 No 96).

#### 1 Interpretation

In this schedule, unless the context otherwise requires,—

**Director** means the Director of Human Rights Proceedings, or alternate Director of Human Rights Proceedings, appointed under section 20A

**functions** include powers or duties

**Office** means the Office of Human Rights Proceedings referred to in section 20.

#### 2 Staff

- (1) The Director may, in accordance with this clause, appoint any employees (including acting or temporary or casual employees) that he or she considers necessary for the efficient carrying out of the functions of the Director.
- (2) Employees appointed under this clause are employed on any terms and conditions of employment the Director determines.
- (3) Subclause (2) is subject to section 116 of the Crown Entities Act 2004, except that the reference in section 116(1) to agreement by a Crown entity must be read as a reference to agreement by the Director.

#### (4) *[Repealed]*

Schedule 2 clause 2(3): substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Schedule 2 clause 2(4): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

#### 3 Employment principles

*[Repealed]*

Schedule 2 clause 3: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

#### 4 Appointment of experts

- (1) The Director may, as and when the need arises, appoint any person (other than a Commissioner) who, in the Director's opinion, possesses expert knowledge or is otherwise able to assist in connection with the exercise or performance of the functions of the Director to make such inquiries or to conduct such research or to make such reports or to render such other services as may be necessary

for the efficient exercise or performance by the Office of the functions of the Director.

- (2) The Office must pay persons appointed under this clause, for services rendered by them, fees or commission or both at such rates as the Director thinks fit, and may separately reimburse them for expenses reasonably incurred in rendering services for the Office.

## **5 Application of Crown Entities Act 2004 to Director**

Sections 47 and 48 and 120 to 126 of the Crown Entities Act 2004 apply to the Director, with all necessary modifications, as if he or she were a member of the Commission.

Schedule 2 clause 5: substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **6 Superannuation or retiring allowances**

- (1) For the purpose of providing superannuation or retiring allowances for the Director, the Office may, out of the funds of the Office, make payments to or subsidise any retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013).
- (2) Despite anything in this Act, any person who, immediately before being appointed as the Director or, as the case may be, becoming an employee of the Office, is a contributor to the Government Superannuation Fund under Part 2 or Part 2A of the Government Superannuation Fund Act 1956 is deemed to be, for the purposes of the Government Superannuation Fund Act 1956, employed in the Government service so long as that person continues to hold office as the Director or, as the case may be, to be an employee of the Office, and that Act applies to that person in all respects as if that person's service as the Director or, as the case may be, as an employee of that kind were Government service.
- (3) For the purpose of applying the Government Superannuation Fund Act 1956, in accordance with subclause (2), to a person who holds office as the Director or, as the case may be, is in the service of the Office as an employee and (in any such case) is a contributor to the Government Superannuation Fund, **controlling authority**, in relation to the person, means the Office.

Schedule 2 clause 6(1): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Schedule 2 clause 6(1): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **7 Certain Acts do not apply to staff of Office**

*[Repealed]*

Schedule 2 clause 7: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**8 Services for Office**

*[Repealed]*

Schedule 2 clause 8: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**9 Funds of Office**

*[Repealed]*

Schedule 2 clause 9: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**10 Bank accounts**

*[Repealed]*

Schedule 2 clause 10: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**11 Investment of money**

*[Repealed]*

Schedule 2 clause 11: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**12 Address for service**

The address for service of the Director and of the Office is the address of the main premises of the Office.

**Schedule 3  
Enactments repealed**

*[Repealed]*

s 146

Schedule 3: repealed, on 1 January 2002, by section 43 of the Human Rights Amendment Act 2001 (2001 No 96).

## Human Rights Amendment Act 1994

Public Act	1994 No 138
Date of assent	9 December 1994
Commencement	9 December 1994

### 1 Short Title

This Act may be cited as the Human Rights Amendment Act 1994, and shall be read together with and deemed part of the Human Rights Act 1993 (hereinafter referred to as “the principal Act”).

### *Application of principal Act and Human Rights Commission Act 1977 to superannuation schemes*

### 2 Application of principal Act to superannuation schemes providing benefits on account of marital status

- (1) Notwithstanding any rule of law, nothing in section 22 or section 44 or section 70 of the principal Act shall prevent, or be taken ever to have prevented, the provisions of a superannuation scheme, or the trustees, the supervisor, or the manager of the scheme, from providing, on the death of a member of the scheme, a benefit for either—
  - (a) the spouse of that member; or
  - (b) the civil union partner or de facto partner of that member,—without providing a similar or corresponding or equivalent benefit on the death of other members of the scheme.
- (2) Subject to subsection (5), this section applies in respect of superannuation schemes established before or after the commencement of this Act.
- (3) This section applies notwithstanding any judgment, decision, or order of any court or tribunal given or made before or after the commencement of this Act in proceedings commenced before the commencement of this Act.
- (4) Nothing in section 153(1) of the principal Act limits or affects this section.
- (5) Nothing in this section applies to the provision of benefits under a superannuation scheme or by the trustees, the supervisor, or the manager of a scheme in respect of any person who, at any time on or after 1 January 1996, becomes a member of the scheme unless,—
  - (a) immediately before becoming a member, that person was a member of another superannuation scheme that provides or provided, or the trustees, the supervisor, or the manager of which provide or provided, benefits of a kind referred to in paragraph (a) or paragraph (b) of subsection (1); and

- (b) that person became a member of the first-mentioned scheme as a result of a requirement, or the exercise of a right, to leave that other scheme by reason of any merger, takeover, or restructuring of, or reorganisation of the business of, that person's employer.
- (6) Nothing in this section affects the validity of any amendment to the instrument or conditions governing a superannuation scheme made pursuant to section 72 of the principal Act before the commencement of this Act.

Section 2(1): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 2(1)(b): substituted, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 2(5): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 2(5)(a): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

### **3 Application of principal Act to superannuation schemes providing benefits for children and dependants**

- (1) For the avoidance of doubt, it is hereby declared that nothing in section 22 or section 44 or section 70 of the principal Act shall prevent, or be taken ever to have prevented, the provisions of a superannuation scheme, or the trustees of the scheme, from providing, on the death of a member of the scheme, a benefit for a child or dependant of that member's family, including a child or dependant belonging to a particular class determined by reference to age, disability, or employment status without providing a similar or corresponding or equivalent benefit on the death of other members of the scheme.
- (2) This section applies in respect of superannuation schemes established before or after the commencement of this Act.
- (3) This section applies notwithstanding any judgment, decision, or order of any court or tribunal given or made before or after the commencement of this Act in proceedings commenced before the commencement of this Act.

### **4 Savings in respect of certain superannuation schemes**

- (1) For the avoidance of doubt, it is hereby declared that nothing in section 22 or section 44 of the principal Act relating to different treatment on the ground of sex or marital status shall apply, or be taken ever to have applied, to—
  - (a) a superannuation scheme to which subsection (2) of section 88 of the Human Rights Commission Act 1977 applied, except in respect of a person who became a member of the scheme on or after 1 April 1980 or to whom amendments to the scheme were applied pursuant to subsection (4) of that section; or
  - (b) a superannuation scheme established as an alternative to making amendments of the kind referred to in subsection (4) of section 88 of the Human Rights Commission Act 1977 to an existing scheme, except in

respect of a person who became a member of the scheme by virtue of subsections (4) and (5) of that section.

- (2) For the avoidance of doubt, it is hereby further declared that where any superannuation scheme was amended for the purpose of ensuring that its operation did not involve a breach of section 15(1) or section 24(1) of the Human Rights Commission Act 1977, nothing in the principal Act, and nothing in those amendments, shall deprive, or be taken ever to have deprived, any person who joined the scheme before the date on which those amendments came into force of any right or option to retire at a particular age or on a particular date or to become entitled under the scheme to a pension or other benefit, unless that person relinquishes that right or option.

## **5 Application of Human Rights Commission Act 1977 to superannuation schemes**

- (1) Notwithstanding any rule of law, nothing in section 15(1) or section 24(1) or section 88 of the Human Rights Commission Act 1977 shall be taken ever to have prevented the provisions of a superannuation scheme, or the trustees of the scheme, from providing, on the death of a member of the scheme, a benefit for either—
  - (a) the spouse of that member; or
  - (b) the civil union partner or de facto partner of that member,—without providing a similar or corresponding or equivalent benefit on the death of other members of the scheme.
- (2) This section applies notwithstanding any judgment, decision, or order of any court or tribunal given or made before or after the commencement of this Act in proceedings commenced before the commencement of this Act.
- (3) Nothing in section 153(1) of the principal Act limits or affects this section.
- (4) Nothing in this section affects the validity of any amendment to the instrument or conditions governing a superannuation scheme made pursuant to section 90 of the Human Rights Commission Act 1977.

Section 5(1)(b): substituted, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

## Reprints notes

### 1 *General*

This is a reprint of the Human Rights Act 1993 that incorporates all the amendments to that Act as at the date of the last amendment to it.

### 2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### 3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### 4 *Amendments incorporated in this reprint*

Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51): Part 1 subpart 7

Social Security Act 2018 (2018 No 32): section 459

Education (Update) Amendment Act 2017 (2017 No 20): section 161(1)

Intelligence and Security Act 2017 (2017 No 10): section 335

Contract and Commercial Law Act 2017 (2017 No 5): section 347

District Court Act 2016 (2016 No 49): section 261

Human Rights Amendment Act 2016 (2016 No 28)

Harmful Digital Communications Act 2015 (2015 No 63): Part 2 subpart 3

Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70): section 150

Criminal Procedure Act 2011 (2011 No 81): section 413

Financial Markets Authority Act 2011 (2011 No 5): sections 82, 85(1)

Accident Compensation Amendment Act 2010 (2010 No 1): section 5(1)(b)

Policing Act 2008 (2008 No 72): sections 116(a)(ii), 130(1)

Human Rights Amendment Act 2008 (2008 No 65)

Human Rights Amendment Act 2007 (2007 No 64)

Human Rights (Women in Armed Forces) Amendment Act 2007 (2007 No 16)

Evidence Act 2006 (2006 No 69): section 216

Insolvency Act 2006 (2006 No 55): section 445

Prisoners' and Victims' Claims Act 2005 (2005 No 74): section 65

New Zealand Superannuation and Retirement Income Amendment Act 2005 (2005 No 42): section 9(1)

Relationships (Statutory References) Act 2005 (2005 No 3): section 7

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Crown Entities Act 2004 (2004 No 115): section 200  
Human Rights Amendment Act 2004 (2004 No 88)  
Building Act 2004 (2004 No 72): section 414  
Supreme Court Act 2003 (2003 No 53): sections 47, 48(1)  
State Sector Amendment Act 2003 (2003 No 41): section 14(1)  
Public Trust Act 2001 (2001 No 100): section 170(1)  
Human Rights Amendment Act 2001 (2001 No 96)  
New Zealand Superannuation Act 2001 (2001 No 84): section 77  
Local Electoral Act 2001 (2001 No 35): section 151  
Employment Relations Act 2000 (2000 No 24): section 240  
Protected Disclosures Act 2000 (2000 No 7): section 25  
Human Rights Amendment Act 1999 (1999 No 100)  
Accident Insurance Act 1998 (1998 No 114): section 415(1)  
Human Rights Amendment Act 1994 (1994 No 138)  
Health and Disability Commissioner Act 1994 (1994 No 88): section 82