



ANNO TRICESIMO NONO

ELIZABETHAE II REGINAE

A.D. 1990

No. 25 of 1990

An Act to amend the Equal Opportunity Act, 1984.

[Assented to 26 April 1990]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Equal Opportunity Act Amendment Act, 1990*.
- (2) The *Equal Opportunity Act, 1984*, is in this Act referred to as "the principal Act".

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Amendment of long title

3. The long title to the principal Act is amended—
 - (a) by striking out "or physical" and substituting ", physical";
 - and
 - (b) by inserting "or age" after "impairment".

Functions of the Commissioner

4. Section 11 of the principal Act is amended—
 - (a) by striking out from subsection (1) "race or" and substituting "race,";
 - (b) by inserting in subsection (1) "or age" after "impairment";
 - (c) by striking out from subsection (2) "race or" and substituting "race,";
 - and
 - (d) by inserting in subsection (2) "or age" after "impairment".

Discrimination by qualifying bodies

5. Section 58 of the principal Act is amended by inserting after its present contents (now to be designated as subsection (1)) the following subsection:

- (2) Without limiting the generality of subsection (1), an authority or body discriminates against a person on the ground of race if the authority or body—

(a) fails to take reasonable steps to inform itself sufficiently on the adequacy or appropriateness of qualifications or experience gained outside of Australia by the person;

and

(b) in consequence of that failure, refuses to confer on the person an authorization or qualification for which the person has applied.

Insertion of new Part

6. The following Part is inserted after section 85 of the principal Act:

PART VA

PROHIBITION OF DISCRIMINATION ON THE GROUND OF AGE

DIVISION I—DISCRIMINATION TO WHICH THIS PART APPLIES

Criteria for establishing discrimination on the ground of age

85a. For the purposes of this Act, a person discriminates on the ground of age—

(a) if he or she treats another person unfavourably because of the other's age;

(b) if he or she treats another person unfavourably because the other does not comply, or is not able to comply, with a particular requirement and—

(i) the nature of the requirement is such that a substantially higher proportion of persons of a different age or age group complies, or is able to comply, with the requirement than of those of the other's age or age group;

and

(ii) the requirement is not reasonable in the circumstances of the case;

or

(c) if he or she treats another person unfavourably on the basis of a characteristic that appertains generally to persons of the other's age or age group, or on the basis of a presumed characteristic that is generally imputed to persons of that age or age group.

DIVISION II—DISCRIMINATION IN EMPLOYMENT

Discrimination against applicants and employees

85b. (1) It is unlawful for an employer to discriminate against a person on the ground of age—

(a) in determining, or in the course of determining, who should be offered employment;

or

(b) in the terms or conditions on which employment is offered.

(2) It is unlawful for an employer to discriminate against an employee on the ground of age—

(a) in the terms or conditions of employment;

(b) by denying or limiting access to opportunities for promotion, transfer or training, or to any other benefits connected with employment;

(c) by dismissing the employee;

or

(d) by subjecting the employee to any other detriment.

Discrimination against agents

85c. (1) This section applies to a principal for whom work is done by agents remunerated by commission.

(2) It is unlawful for the principal to discriminate against a person on the ground of age—

(a) in determining, or in the course of determining, who should be engaged as an agent;

or

(b) in the terms or conditions on which such an engagement is offered.

(3) It is unlawful for the principal to discriminate against an agent on the ground of age—

(a) in the terms or conditions on which the agent is engaged;

(b) by denying or limiting access to opportunities for promotion, transfer or training or any other benefits connected with the agent's position;

(c) by terminating the engagement;

or

(d) by subjecting the agent to any other detriment.

Discrimination against contract workers

85d. (1) This section applies to a principal for whom work is done by contract workers in pursuance of a contract between the principal and the employer of those contract workers.

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

(3) It is unlawful for the principal to discriminate against a contract worker on the ground of age—

(a) in the terms or conditions on which the contract worker is allowed to work;

(b) by not allowing the contract worker to work;

(c) by denying or limiting access to any benefit connected with employment;

or

(d) by subjecting the contract worker to any other detriment.

Discrimination within partnerships

85e. (1) It is unlawful for a firm consisting of one or more members, or for one or more persons promoting the formation of a firm, to discriminate against a person on the ground of age—

(a) in determining, or in the course of determining, who should be offered a position as partner in the firm;

or

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

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

- (a) in the terms or conditions of membership of the firm;
- (b) by denying or limiting access to any benefit arising from membership of the firm;
- (c) by expelling the partner from the firm;
- or
- (d) by subjecting the partner to any other detriment.

Exemptions

85f. (1) This Division does not apply in relation to employment within a private household.

(2) This Division does not apply to discrimination on the ground of age in relation to employment for which there is a genuine occupational requirement that a person be of a particular age, or age group.

(3) This Division does not apply to discrimination on the ground of age in relation to the employment of a person if the person is not, or would not be, able—

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

or

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

(4) This Division does not render unlawful an act done in order to comply with the requirements of an award or industrial agreement made or approved under the *Industrial Conciliation and Arbitration Act, 1972*.

(5) This Division does not render unlawful the imposition by a particular employer of a standard retiring age in respect of employment of a particular kind.

(6) Subsection (5) expires on the second anniversary of the commencement of this Part.

DIVISION III—DISCRIMINATION BY OTHER BODIES

Discrimination by associations on ground of age

85g. (1) After the expiration of one year from the commencement of this Part, it will be unlawful for an association to discriminate—

- (a) against an applicant for membership on the ground of age—

- (i) by refusing or failing to admit the applicant to membership, or to a particular class of membership, of the association;

or

- (ii) in the terms on which the applicant is, or may be, admitted to membership, or a particular class of membership;

or

- (b) against a member of the association on the ground of age—

- (i) by refusing or failing to provide a particular service or benefit to that member;

- (ii) in the terms on which a particular service or benefit is provided to that member;

or

(iii) by expelling that member from the association or subjecting him or her to any other detriment.

(2) Subsection (1) (a) does not apply to discrimination on the ground of age where the association has, on a genuine and reasonable basis, established different classes of membership for persons of different ages, or age groups.

(3) Subsection (1) (b) (i) and (ii) does not apply to discrimination on the ground of age where it is reasonable that the association discriminate in relation to the provision of a particular service or benefit to members of a particular age, or age group.

(4) This section does not apply to an association established wholly or mainly for—

(a) the promotion of the interests of persons of a particular age group;

(b) the organization or provision of services for persons of a particular age group;

or

(c) the organization or provision of activities for persons of a particular age group.

Discrimination by qualifying bodies

85h. (1) It is unlawful for an authority or body empowered to confer an authorization or qualification that is needed for, or facilitates, the practice of a profession, or the carrying on or engaging in of a trade or occupation, to discriminate against a person on the ground of age—

(a) by refusing or failing to confer or renew that authorization or qualification;

or

(b) by withdrawing the authorization or qualification.

(2) This section does not apply to discrimination on the ground of age—

(a) by or on account of the imposition of a reasonable and appropriate minimum age under which an authorization or qualification will not be conferred;

or

(b) in respect of the terms or conditions on which an authority or body confers or renews an authorization or qualification.

(3) This section does not apply to discrimination against a person on the ground of age where, in consequence of his or her age, the person is not, or would not be, able to practise the profession, or carry on or engage in the trade or occupation, adequately or safely.

DIVISION IV—DISCRIMINATION IN EDUCATION

Discrimination by educational authorities

85i. (1) It is unlawful for an educational authority to discriminate against a person on the ground of age—

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

or

(b) in the terms or conditions on which it offers to admit the person as a student.

(2) It is unlawful for an educational authority to discriminate against a student on the ground of age—

(a) in the terms or conditions on which it provides the student with training or education;

(b) by denying or limiting access to any benefit provided by the authority;

(c) by expelling the student;

or

(d) by subjecting the student to any other detriment.

(3) This section does not apply to discrimination on the ground of age in respect of the admission of a person to a school, college or institution where the level of education or training sought by the person is provided only for students above a particular age.

DIVISION V—DISCRIMINATION IN RELATION TO LAND, GOODS, SERVICES AND
ACCOMMODATION

Discrimination by person disposing of an interest in land

85j. It is unlawful for a person to discriminate against another on the ground of age—

(a) by refusing or failing to dispose of an interest in land to the other person;

or

(b) in the terms or conditions on which an interest in land is offered to the other person.

Discrimination in provision of goods and services

85k. (1) It is unlawful for a person who offers or provides—

(a) goods;

or

(b) services to which this Act applies,

(whether for payment or not) to discriminate against another on the ground of age—

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

or

(d) in the terms or conditions on which or the manner of which the goods are supplied or the services are performed.

(2) It is unlawful for a person who offers or provides—

(a) goods;

or

(b) services to which this Act applies,

(whether for payment or not) to refuse or fail to supply the goods or to perform the services to another on the ground that the other person is accompanied by a child.

(3) This section does not apply to discrimination on the ground of age in relation to—

(a) the charging of a fee or fare;

or

(b) the terms or conditions on which—

(i) a ticket is issued;

or

(ii) admission is allowed to any place,

where those terms or conditions are imposed on a genuine and reasonable basis.

Discrimination in relation to accommodation

85l. (1) It is unlawful for a person to discriminate against another on the ground of age—

(a) in terms or conditions on which accommodation is offered;

(b) by refusing an application for accommodation;

or

(c) by deferring such an application or according the applicant a later order of precedence on any list of applicants for that accommodation.

(2) It is unlawful for a person—

(a) to refuse an application for accommodation;

or

(b) to defer such an application or accord the applicant a late order of precedence on any list of applicants for that accommodation,

on the ground that the applicant intends to share that accommodation with a child.

(3) It is unlawful for a person to discriminate against a person for whom accommodation has been provided on the ground of age—

(a) in the terms or conditions on which accommodation is provided;

(b) by denying or limiting access to any benefit connected with the accommodation;

(c) by evicting the person;

or

(d) by subjecting the person to any detriment.

(4) This section does not apply to discrimination on the ground of age in relation to the provision of accommodation by an organization that does not seek to secure a pecuniary profit for its members, where the accommodation is provided only for persons of a particular age group.

(5) This section does not apply—

(a) in relation to the provision of accommodation for recreational purposes where the use of that accommodation is limited, on a genuine and reasonable basis, to persons of a particular age group;

(b) in relation to the provision of accommodation in the principal place of residence of the owner of the accommodation;

or

- (c) in relation to the provision of accommodation in premises that adjoin premises where the owner of the accommodation or any person appointed to manage the accommodation resides if the provision of the accommodation would be subject to the *Residential Tenancies Act, 1978*.

DIVISION VI—GENERAL EXEMPTIONS FROM THIS PART

Legal capacity of children

85m. Nothing in this Part derogates from the operation of a law that relates to the juristic capacity of children.

Charities

85n. This Part does not—

- (a) affect a provision in a charitable instrument for conferring benefits wholly or mainly on persons of a particular age, or age group;

or

- (b) render unlawful any act done to give effect to such a provision.

Testamentary dispositions or gifts

85o. This Part does not apply to the disposal of an interest in land or goods, or the provision of services, by way of, or pursuant to, a testamentary disposition or gift.

Projects for the benefit of persons of a particular age group

85p. This Part does not render unlawful an act done for the purpose of carrying out a scheme or undertaking for the benefit of persons of a particular age or age group in order to meet a need that arises out of, or that is related to, the age or ages of those persons.

Sport

85q. This Part does not render unlawful the exclusion of persons of particular age groups from participation in a competitive sporting activity.

Insurance, etc.

85r. (1) This Part does not render unlawful discrimination on the ground of age—

- (a) in the terms on which an annuity or life insurance is offered or may be obtained;

or

(b) —

- (i) in the terms on which a person may become a member of a superannuation scheme or provident fund;

or

- (ii) in the manner in which a superannuation scheme or provident fund may be administered.

(2) This Part does not render unlawful discrimination on the ground of age in the terms on which accident insurance or any other form of insurance (other than life insurance) is offered or may be obtained where the discrimination—

- (a) is based on actuarial or statistical data from a source on which it is reasonable to rely;

and

- (b) is reasonable having regard to the data.

DIVISION VII—DISCRIMINATION UNDER STATUTE

Discrimination under statute

85s. (1) The Minister must, within two years after the commencement of this Part, prepare a report on those Acts of the State that provide for discrimination on the ground of age.

(2) The report under subsection (1) must include recommendations from the Minister, and from relevant government agencies and instrumentalities, as to whether or not the Acts referred to in the report should be amended or repealed.

(3) The Minister must, within 12 sitting days after the report is completed, cause copies of the report to be laid before each House of Parliament.

Power of Tribunal to make certain orders

7. Section 96 of the principal Act is amended—

(a) by striking out paragraph (d) of subsection (1);

and

(b) by striking out subsection (2) and substituting the following subsection:

(2) The Tribunal may, at any stage of proceedings under this Part—

(a) make an interim order to prevent prejudice to any person affected by the proceedings;

(b) make an order dismissing the proceedings.

Proceedings under the Industrial Conciliation and Arbitration Act

8. Section 100 of the principal Act is amended—

(a) by striking out from subsection (3) “race or” and substituting “race,”;

(b) by inserting in subsection (3) “or age” after “impairment”;

(c) by striking out from subsection (5) “race or” and substituting “race,”;

and

(d) by inserting in subsection (5) “or age” after “impairment”.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor