

CHAPTER 99:09

PREVENTION OF DISCRIMINATION ACT

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AN ACT to provide for the elimination of' discrimination in employment, training, recruitment and membership of professional bodies and the promotion or equal remuneration to men and women in employment who perform work of equal value, and for matters connected therewith.

Act 26 of 1997

[13TH OCTOBER, 1997]

PART I

PRELIMINARY

1. This Act may be cited as the Prevention of Discrimination Act. Short title.

2. In this Act - Interpretation.

“commission agent” means an agent who is remunerated by commission;

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“contract worker” means a person who performs work for another person pursuant to a contract between the employer of the first-mentioned person and that other person;

“*de facto* spouse” in relation to a person, means a person of the opposite sex to the first-mentioned person who lives with the first-mentioned person as a husband or wife of that person although not legally married to that person;

“dependent contractor” means a person, whether or not employed under a contract of employment, who performs work or service for another person for compensation or reward on such terms and conditions that the first-mentioned person is, in relation to that other person, in a position of economic dependence on, and under an obligation to perform duties for that other person more as an employee than an independent contractor;

“disabled person” means an individual whose prospects of securing, retaining, and advancing in suitable employment are substantially reduced as a result of a duly recognised physical or mental impairment;

“educational authority” means a body of persons administering an educational institution;

“educational institution” means a school, a college, university or other institution at which education or training is provided;

“employee” means a person who offers his services to an employer under a contract of employment, a managerial employee or a dependent contractor and includes, where appropriate, a former employee;

“employer” means any person or undertaking, corporation, company, public authority or body or persons who or which employs any person under a contract or employment or uses the services of a dependent contractor, commission agent or a contract worker; and includes the heirs, successors and assigns or an employer;

“employment” includes—

- (i) part-time employment, temporary employment and employment under a contract or service or of apprenticeship;
- (ii) employment under a contractor services;
- (iii) engagement as a commission agent;

“employment agency” means any person who, whether for payment or not, assists persons find employment or assists employers to find employees;

“family responsibilities” means the responsibilities in respect of any dependent family member;

“marital status” means the status or condition of being

- (i) single;
- (ii) married;
- (iii) married but living separately and apart from one’s spouse;
- (iv) divorced;
- (v) widowed;
- (vi) the *de facto* spouse of another person;

“principal” means

- (i) in relation to a commission agent, a person for whom work is done by that commission agent;
- (ii) in relation to a contract worker, a person for whom a contract worker performs work otherwise than under a contract of employment;

“remuneration” means any money or other thing, whether called salary, wage, allowance or by any other name, had or contracted to be paid, delivered or given as recompense, reward or remuneration for any work or labour done or to be done, whether within a certain time or to a certain amount, or for a time or an amount uncertain, increment or other increment in such remuneration;

“sexual harassment” means unwanted conduct of a sexual nature in the workplace or in connection with the performance of work which is threatened or imposed as a condition of employment on an employee or which creates a hostile working environment for the employee.

Application of Act.

3. The provisions of this Act shall apply to employers and employees in the public and private sectors who are engaged in an employment relationship.

PART II

PROTECTION AGAINST UNLAWFUL DISCRIMINATION

Prohibited grounds of discrimination.

4. (1) For the purposes of this Act, a person discriminates against another person if the first mentioned person makes, on any of the grounds mentioned in subsection (2), any distinction, exclusion or preference the intent or effect of which is to nullify or impair equality of opportunity or treatment in any employment or occupation.

(2) The grounds referred to in subsection (1) are—

(a) race, sex, religion, colour, ethnic origin, indigenous population, national extraction, social origin, economic status, political opinion, disability, family responsibilities, pregnancy, marital status or age except for purposes of retirement and restrictions on work and employment of minors;

(b) any characteristic which appertains generally or is generally imputed to persons or a particular race, sex, religion, colour, ethnic origin, indigenous population, national extraction, social origin, political opinion, disability, family responsibility, pregnant state, marital status, or age except for purposes of retirement and restriction on work and employment of minors.

(3) Any act or omission or any practice or policy that directly or indirectly results in discrimination against a person on the grounds referred to in subsection (2), is an act of discrimination regardless of whether the person responsible for the act or omission or the practice or policy intended to discriminate.

PART III

PROTECTION AGAINST DISCRIMINATION IN EMPLOYMENT

5. (1) It shall be unlawful for any person who is an employer or any person acting or purporting to act on behalf of a person who is an employer, in relation to recruitment, selection or employment or any other person for purposes of training, apprenticeship or employment, to discriminate against that other person on the grounds listed in section 4 (2) -

Unlawful
discrimination
in employ-
ment.

- (a) in the advertisement of the job;
- (b) in the arrangements made for the purpose of determining who should be offered that employment;
- (c) in determining who should be offered employment;
- (d) in the terms or conditions on which employment is offered;
- (e) the creation, classification or abolition of jobs.

(2) It shall be unlawful for an employer to discriminate against an employee on the grounds listed in section 4 (2)

- (a) in terms or conditions or employment afforded to that employee by this employer;
- (b) in conditions or work or occupational safety and health measures;
- (c) in the provision or facilities related to or connected with employment;
- (d) by denying access, or limiting access to opportunities for advancement, promotion, transfer or training, or to any other benefits, facilities or services associated with employment;
- (e) by retrenching or dismissing the employee;

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(f) by subjecting the employee to any other disadvantage.

Bona fide
occupational
qualifications.

6. (1) Nothing in section 5 shall apply to any distinction, exclusion, or preference based on the grounds listed in section 4 (2) where a genuine occupational qualification exists.

(2) For the purposes of this Act a genuine occupational qualification for a job exists where -

(a) the essential nature of the job calls for a person of particular race, sex, religion, national extraction, indigenous population, ethnic origin, social origin, disability, pregnancy, family responsibilities, marital status or age for reasons or physiology (excluding physical strength or stamina) or, in dramatic performance or other entertainment for reasons of authenticity, so that the essential nature of the job would be materially different if carried out by a person or the opposite sex or a person with an occupational qualification which is different from any stated aforesaid; or

(b) in a religious Institution, the essential nature of the job calls for a particular religious affiliation or belief and the essential nature of said job would be materially different or could not be carried out if performed by a person of a different religious affiliation or belief; or

(c) the job needs to be held by a person of a particular sex to preserve decency or privacy because -

(i) it is likely to involve physical contact with persons of the same sex as he employees in circumstances where those persons might reasonably object to its being carried out by persons of the opposite sex;

(ii) the holder of the job is likely to do work in circumstances where persons of the same sex might reasonably object to the presence of a person of the opposite sex because they are in a state of undress or use the same sanitary facilities;

(d) the nature or location of the establishment makes it impracticable for the holder or the job to live elsewhere than in premises provided by the employer and -

(i) the only such premises which are available for persons holding that kind or job are occupied or normally occupied, by persons of the sex and are not equipped with separate sleeping accommodation and sanitary facilities for persons of, the opposite sex; and

(ii) it is not reasonable to expect the employer either to equip these premises with such accommodation and facilities or to provide other premises for persons of the opposite sex or to work out a practicable the use of such facilities for members of both sexes; or

(e) the job requires a married couple; or

(f) the nature of the establishment, or the part of it where the work is carried out, requires the job to be held by a person of a particular sex because-

(i) it is, or is part of, a hospital, prison, or other establishment for persons requiring special care, supervision or attention; and

(ii) those persons are all of the same sex (disregarding any person of the opposite sex whose presence is exceptional); and

(iii) it is reasonable, having regard to the essential character or the establishment or that part, that the job should not be held by a person of the opposite sex; or

(g) the holder of the job provides individuals with personal services promoting their health, welfare or education, and those services can most effectively be provided by a person of a particular sex; or

(h) on the grounds or disability when it is shown that -

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(i) the disability in question was a relevant consideration in relation to the particular requirements of the employment concerned and the performance of the job could not be carried out as a result of the disability; or
(ii) special facilities or modifications, whether physical, administrative, or otherwise, are required to be made at the work place to accommodate the disabled person which the employer cannot reasonably be expected to provide.

Special measure to promote equality.

7. Special measures taken by employers of a temporary nature to promote equality of opportunity in employment based on the grounds set out in section 4 (2) shall not be deemed to be unlawful discrimination within the meaning of section 5 of this Act.

Sexual harassment.

8. Any act of sexual harassment against an employee committed by an employer, managerial employee or co-worker shall constitute unlawful discrimination based on sex within the meaning of section 4 of this Act.

PART IV

PROMOTION OF EQUAL REMUNERATION

Equal remuneration.

9. (1) Every employer and every person acting on behalf of such employer shall be obligated to pay equal remuneration to men and women performing work of equal value for such employer.

(2) In this section —

“equal remuneration” means rates of remuneration that have been established without differentiation based on the grounds of sex;

“work of equal value” means work equal in value in terms of the demands it makes in relation to such matters as skill levels, duties, physical and mental effort, responsibility and conditions of work.

(3) The burden of proof to establish that equal remuneration has been paid shall rest on the employer.

PART V

PROMOTION OF EQUAL REMUNERATION

10. (1) Where employment in a particular profession is largely provided through partnership firms, it is unlawful for such firms of professionals consisting of six or more partners or for six or more persons proposing to form themselves into such a partnership firm, to discriminate against any person on the grounds set out in section 4 (2)—

Professional partnership.

- (a) in the arrangements they make for the purpose of determining who should be offered a position as partner in the firm; or
- (b) by expelling persons from the firm or subjecting persons in the firm to unfair treatment.

(2) Subsection (1) shall not apply if the treatment afforded to the partner or potential partner is based on a genuine occupational qualification.

11. (1) It shall be unlawful for a trade union, an organisation of employers, other organisation of employees or other organisation whose members carry on a particular profession or trade for the purpose of which the organisation exists to discriminate against any person on the grounds set out in section 4 (2) ---

Professional or trade organisations.

- (a) by refusing or failing to accept that person's application for membership; or
- (b) in the terms on which it is prepared to admit that person to membership; or
- (c) in the case of a person who is a member of the organisation—
 - (i) by denying, limiting or deliberately admitting to afford access to any benefits, facilities or services provided by the organisation;
 - (ii) by depriving that person of membership or varying the terms of membership;

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- (iii) by limiting or depriving that person of access to or acquisition of leadership positions within the organisation;
- or
- (iv) by subjecting that person to any other unfair treatment.

Qualifying
bodies.

12. (1) It shall be unlawful for an educational authority or body that is to confer, renew, extend, revoke or withdraw an authorisation or qualification that is needed for or facilitates the practice of a profession, the carrying on of a trade or the engaging in an occupation, to discriminate against a person on the grounds set out under section 4 (2)—

- (a) by refusing or failing to confer, renew or extend the authorisation or qualification;
- (b) in the terms or conditions on which it is prepared to confer the authorisation or qualification or to renew or extend it; or
- (c) by revoking or withdrawing the authorisation or qualification or varying the terms or conditions upon which it is held.

(2) In this section, authorisation or qualification includes recognition, registration, enrolment, approval and certification.

Vocational
training
bodies.

13. (1) It shall be unlawful for any association which comprises employers and has as its principal objectives, that affording of their employees access to training facilities, or for any other person or educational authority recognised as providing facilities for training for employment, to discriminate -

- (a) in the arrangements made for the purpose of determining who should be offered training;
- (b) in the terms and conditions on which who should be afforded access to training courses or other facilities and services including vocational counselling and guidance;
- (c) by refusing or deliberately omitting to afford access to training courses or other facilities and services including vocational counselling and guidance;

(d) by terminating any training which has already started,

on the grounds set out in section 4(2) against a person who is seeking or undergoing technical or vocational training which would help to fit that person for any kind of employment or occupation.

(2) It shall not be unlawful under subsection (1) to give preference to nationals above non-nationals.

14. (1) It shall be unlawful for an employment agency to discriminate against a person on the grounds set out section 4 (2)— Employment agencies.

(a) by refusing to provide that person with any of its services; or

(b) in the terms on which it offers to provide that person with any of its services; or

(c) in to manner in which it provides that person with any of its services; or

(d) in any other manner in which it facilitates the hire or employment of that person.

(2) This section shall not apply if the discrimination concerns employment which the employer could lawfully refuse to offer that person.

(3) An employment agency shall not be liable under this section if it proves—

(a) that it acted in reliance on a statement made to it by an employer to the effect that.

by reason of the operation of subsection (2), its action would not be unlawful; and

(b) that it was reasonable for it to rely on the statements .

(4) Any person who knowingly, or recklessly, makes a statement referred to in subsection (3) (a) which is false or misleading in a material respect commits an offence and shall be liable on summary conviction to a fine of forty-five thousand dollars.

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PART VI

PROTECTION AGAINST DISCRIMINATION IN OTHER AREAS

Goods,
services and
facilities.

15. It shall be unlawful for a person who, whether for payment or not, provides goods and services, or makes facilities available, to discriminate against a person on the grounds set out in section 4 (2)—

(a) by refusing provide that person with those goods or services or to make those facilities available; or

(b) in the manner in which or in the terms and conditions on which those goods or services are provided or made available to that person.

Discrimination
by subterfuge.

16. Where a requirement or condition which is not apparently in contravention of any provision in this Act, has the effect of giving preference to a person on the grounds not out in section 4(2) in a situation where such preference would be unlawful under this Act, the imposition of that condition or requirement shall be unlawful unless the person imposing it establishes good reason for its imposition and shows that its imposition is not a subterfuge to avoid complying with this Act.

Advertise-
ments.

17. (1) It shall be unlawful for any person to publish or display or to cause to 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 provision under this Act.

(2) The publisher of an advertisement made unlawful by subsection (1) shall not be subject to any liability under that subsection if the publisher proves -

(a) that the advertisement was published in reliance on a statement made by the person who caused it to be published to the effect that the publication would not be unlawful; and

(3) A person who knowingly or recklessly makes a statement referred to in subsection (2) which is false or misleading in a material particular commits an offence and shall be liable on summary conviction to a fine of fifteen thousand dollars.

18. Where by virtue of any provision of Part II or III, it would be unlawful, in particular circumstances, for a person to discriminate against another person on the grounds set out in section 4(2), it shall be unlawful for that person to request or require that other person to provide information (whether by way of completing a form or otherwise) that would not, in the same or substantially similar circumstances be required or requested of the person of the opposite sex, or of a different race, religion, colour, political opinion, ethnic origin, indigenous population, social origin, pregnant state or status or with different family responsibilities.

Application forms, etc.

PART VII

GENERAL EXCEPTIONS

19. (1) Nothing in Parts III and IV shall affect—

Charities.

(a) a provision of a deed, will or other document, whether made before or after the coming into operation of this Act, that confers charitable benefits or enables charitable benefits to be conferred on persons on the basis of the grounds set out in subsection 4 (2) of this Act; or

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

(2) In this section “charitable benefits” means benefits for purposes that are exclusively charitable according to law.

20. Nothing in this Act shall affect—

Religious bodies.

(a) the ordination of priests, ministers of religion or members of that body;

(b) the training or education or persons seeking

ordination or appointment as priests, ministers of religion or members of a religious order;

(c) the selection or appointment of persons to perform duties or functions for the purposes of, or in connection with, or otherwise to participate in any religious observance or practice; or

(d) any other act or practice of a body established for religious purposes, being an act or practice that conforms to the doctrines, tenets or beliefs of a religion or is necessary to avoid injury to the religious susceptibilities of adherents to that religion.

PART VIII

OFFENCES RELATING TO DISCRIMINATION

Pressure to discriminate.

21. (1) It shall be unlawful to induce or attempt to induce a person to do any act which contravenes Part III or IV by—

(a) providing or offering to provide the person with any benefit; or

(b) subjecting or threatening to subject the person to any detriment.

(2) An offer or threat is not prevented from falling within subsection (1), because it is not made directly to the person in question, if it is made in such a way that the person is likely to hear it or hear of it.

(3) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding fifteen thousand dollars.

Victimisation.

22. (1) A person who commits an act of victimisation against another person shall be guilty of an offence and shall be liable to a fine not exceeding fifteen thousand dollars.

(2) For the purposes of subsection (1) a person shall be taken to commit an act of victimisation against another person if the first-mentioned person subjects or threatens to subject the other person to any detriment—

(a) on the ground that the other person —

(i) has made, or proposes to make, a complaint under this Act;

(ii) has brought, or proposes to bring proceedings under this Act against any person;

(iii) has furnished or proposes to furnish, any information, or has produced, or proposes to produce, any documents to a person exercising or performing any power or function under this Act;

(iv) has attended or proposes to attend an inquiry under this Act or to provide evidence or testimony as a witness;
or

(v) has made a good faith allegation that a person has committed an act of discrimination in contravention of this Act.

(b) on the ground that the first-mentioned person believes that the other person has done, or proposes to do, an act or thing referred to in paragraph (a) (i) to (v).

PART IX

BURDEN OF PROOF

23. Except where otherwise provided in this Act, the person alleging a violation of this Act shall bear a burden of presenting a *prima facie* case of discrimination or of an offence related to discrimination under this Act, whereupon the burden of proof shall shift to the respondent to disprove the allegations.

Burden of proof.

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Proof of exception.

24. Where by any provision of this Act, conduct is excepted from conduct that is unlawful under this Act or that is a contravention of this Act, the onus of proving the exception lies upon the party claiming the exception.

PART X

PENALTIES AND REMEDIES

General penalty.

25. Any person who contravenes the provisions of this Act shall, unless a penalty is otherwise specifically provided, be guilty of an offence and shall be liable to a fine not exceeding twenty thousand dollars.

Supplemental remedies.

26. Without prejudice to any other remedy that may be available in any court, any person who is aggrieved by any act or omission of an employer in contravention of the provisions of Part II or III shall be entitled to apply to the court convicting such employer for any such contravention, for any or the following remedies -

(a) damages from the employer, for any loss caused directly or indirectly as a result of the contravention.

(b) an order directing the employer to redress the contravention including an order, if the employer and aggrieved person agree, to reinstate such aggrieved person;

PART XI

MISCELLANEOUS

Power to make regulations.

27. The Minister may make regulations for giving effect to the purposes of this Act and for the carrying out or the provisions of this Act.

Act not to derogate from other law.
[19 of 1990]

28. This Act shall not derogate from the provisions of the Equal Rights Act or any other law.

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29. The Chief labour Officer may institute or cause to be instituted any prosecution for the purpose of enforcing any of the provisions of this Act and any officer of the Department of Labour may appear as prosecutor for and on behalf of the Chief Labour Officer.

Institution of prosecution by the Chief Labour Officer.

30. All complaints under this Act may be heard and determined and all offences, penalties or other remedies may be prosecuted and enforced in the manner provided by the Summary Jurisdiction Acts:

Procedure.

Provided that any order for the payment or recovery of damage or other compensation shall be enforceable in the same manner as an order for the payment of compensation under the Summary Jurisdiction (Procedure) Act.

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