

## HUMAN RIGHTS COMMISSION AMENDMENT BILL

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### EXPLANATORY NOTE

THIS Bill, which comes into force on 1 July 1991, is the first stage in a review of the Human Rights Commission Act 1977.

Part II of that Act (which relates to unlawful discrimination) is replaced. The number of grounds on which discrimination is prohibited are increased. New prohibited grounds of discrimination are—

- (a) Health status, which means—
  - (i) Physical, mental, intellectual, or psychological illness, disability, or impairment; or
  - (ii) Having in the body organisms that might cause disease:
- (b) Age, which means any age of or over the age of 15 years:
- (c) Sexual orientation, which—
  - (i) Means a heterosexual, homosexual, or bi-sexual orientation; and
  - (ii) Includes the condition of being trans-sexual, tranvestite, or hermaphroditic; but
  - (iii) Does not include a paedophilic orientation:
- (d) Pregnancy, which means the state of being pregnant:
- (e) Political opinion, which includes the lack of a particular political opinion or any political opinion:
- (f) Trade union involvement, which has the meaning that it has under section 211 (2) of the Labour Relations Act 1987:
- (g) Employment status, which includes the status of being unemployed:
- (h) Beneficiary status, which means being a recipient of a benefit or compensation under the Social Security Act 1964 or the Accident Compensation Act 1982:
- (i) 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:
- (j) Identity of partner or relative, which means—
  - (i) The status of being married to, or being in a relationship in the nature of a marriage with, a particular person; or
  - (ii) The status of being a relative of a particular person.

Each of the grounds specified in the new Part II of the principal Act is a prohibited ground of discrimination, for the purposes of that Act, if—

- (a) It pertains to a person or to a relative or associate of a person; and
- (b) It currently exists or has in the past existed; and
- (c) It—
  - (i) Exists in fact; or
  - (ii) Is suspected or assumed or believed to exist by the person alleged to have discriminated.

The creation of new prohibited grounds of discrimination has required the creation of new exceptions. These new exceptions are set out in the new Part II.

That Part contains in addition two significant provisions. One, the new *section 26D*, relates to sexual harassment. The other, the new *section 26E*, relates to racial harassment.

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## HUMAN RIGHTS COMMISSION AMENDMENT

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## A BILL INTITULED

**An Act to amend the Human Rights Commission Act 1977**

BE IT ENACTED by the Parliament of New Zealand as follows:

**1. Short Title and commencement**—(1) This Act may be cited as the Human Rights Commission Amendment Act 1990, and shall be read together with and deemed part of the Human Rights Commission Act 1977\* (hereinafter referred to as the principal Act). 5

(2) This Act shall come into force on the 1st day of July 1991. 10

**2. Interpretation**—(1) Section 2 of the principal Act is hereby amended by repealing the definitions of the terms “ethical belief” and “ethnic and national origins”.

(2) Section 2 of the principal Act is hereby amended by inserting, after the definition of the term “Proceedings Commissioner” (as inserted by section 4 (4) of the Human Rights Commission Amendment Act 1983), the following definition: 15

“ ‘Prohibited grounds of discrimination’ has the meaning given to it by section 14F of this Act:” . 20

**3. New Part II substituted**—The principal Act is hereby amended by repealing Part II, and substituting the following Part:

## “PART II

“UNLAWFUL DISCRIMINATION 25

*“Prohibited Grounds of Discrimination*

“14F. **Prohibited grounds of discrimination**—(1) For the purposes of this Act, the prohibited grounds of discrimination are—

“(a) Sex: 30

“(b) Marital status, which means the status of being—

“(i) Single; or

- 5                   “(ii) Married; or  
                      “(iii) Married but separated; or  
                      “(iv) A party to a marriage now dissolved; or  
                      “(v) Widowed; or  
                      “(vi) Living in a relationship in the nature of a  
                      marriage:  
“(c) Religious belief:  
“(d) Ethical belief, which means the lack of a religious belief,  
                      in respect of a particular religion or religions or all  
10                   religions:  
“(e) Colour:  
“(f) Race:  
“(g) Ethnic or national origins, which includes nationality or  
                      citizenship:  
15                   “(h) Health status, which means—  
                      “(i) Physical, mental, intellectual, or psychological  
                      illness, disability, or impairment; or  
                      “(ii) Having in the body organisms that might  
                      cause disease:  
20                   “(i) Age, which means any age of or over the age of 15 years:  
“(j) Sexual orientation, which—  
                      “(i) Means a heterosexual, homosexual, or bi-  
                      sexual orientation; and  
                      “(ii) Includes the condition of being trans-sexual,  
25                   tranvestite, or hermaphroditic; but  
                      “(iii) Does not include a paedophilic orientation:  
“(k) Pregnancy, which means the state of being pregnant:  
“(l) Political opinion, which includes the lack of a particular  
                      political opinion or any political opinion:  
30                   “(m) Trade union involvement, which has the meaning that it  
                      has under section 211 (2) of the Labour Relations  
                      Act 1987:  
“(n) Employment status, which includes the status of being  
                      unemployed:  
35                   “(o) Beneficiary status, which means being a recipient of a  
                      benefit or compensation under the Social Security  
                      Act 1964 or the Accident Compensation Act 1982:  
“(p) Family status, which means—  
                      “(i) Having the responsibility for part-time care or  
40                   full-time care of children or other dependants; or  
                      “(ii) Having no responsibility for the care of  
                      children or other dependants:  
“(q) Identity of partner or relative, which means—

“(i) The status of being married to, or being in a relationship in the nature of a marriage with, a particular person; or

“(ii) The status of being a relative of a particular person.

“(2) Each of the grounds specified in **subsection (1)** of this section 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 currently exists or has in the past existed; and

“(c) It—

“(i) Exists in fact; or

“(ii) Is suspected or assumed or believed to exist by the person alleged to have discriminated.

*“Matters Relating to Employment*

“15. **Employment**—(1) It shall be unlawful for any person who is an employer, or any person acting or purporting to act on behalf of any person who is an employer,—

“(a) To refuse or omit to employ any person on work of any description which is available and for which that person is qualified; or

“(b) To refuse or omit to offer or afford any person the same terms of employment, conditions of work, fringe benefits, and opportunities for training, promotion, and transfer as are made available for persons of the same or substantially similar qualifications employed in the same or substantially similar circumstances on work of that description; or

“(c) To dismiss any person, or subject any person to any detriment, in circumstances in which other persons employed by that employer on work of that description are not or would not be dismissed or are not or would not be subjected to such detriment—

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.

“(3) Where the Commission is satisfied that a complaint under this section relates solely to equal pay, it shall refer the

complaint to the Secretary of Labour unless the complaint is made against the Crown.

“(4) For the purposes of this section ‘employer’ includes—

- 5       “(a) The employer of an independent contractor; and  
      “(b) The person for whom work is done by contract workers pursuant to a contract between that person and the person who supplies those contract workers;—  
and ‘employment’ has a corresponding meaning.

*“Exceptions in Relation to Employment*

10       “15A. **Exception in relation to crews of ships and aircraft**—Nothing in section 15 of this Act 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  
15       applied for it outside New Zealand.

      “15B. **Exceptions in relation to preferential treatment based on sex**—(1) Nothing in section 15 of this Act shall apply to preferential treatment based on sex where—

20       “(a) For reasons of authenticity, as in theatrical performances, posing for artists, or being a model for the display of clothes, being of a particular sex is a bona fide occupational qualification for the position or employment:

25       “(b) In the case of a position such as that of attendant in a public lavatory or as a person responsible for the fitting of clothes to customers or others, the position needs to be held by one sex to preserve reasonable standards of privacy:

30       “(c) The position is one of domestic employment in a private household:

      “(d) The nature or location of the employment makes it impracticable for the employee to live elsewhere than in premises provided by the employer, and—

35             “(i) The only premises available (being premises in which more than one employee is required to sleep) are not equipped with separate sleeping accommodation for each sex; and

40             “(ii) It is not reasonable to expect the employer to equip those premises with separate accommodation, or to provide separate premises, for each sex.

      “(2) No employer shall be entitled, by virtue of subsection (1) of this section, to accord to any person in respect of any position preferential treatment based on sex even though some of the

duties of that position would fall within **paragraph (a) or paragraph (b) of subsection (1)** of this section, 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.

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“(3) Nothing in **section 15** of this Act shall apply to preferential 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 of the religion or to avoid offending the religious susceptibilities of its adherents.

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“(4) Nothing in **section 15** of this Act shall apply to preferential treatment based on sex where the position is that of a counsellor on matters of some intimacy such as sexual matters or matters involving anger management.

“**15c. Exceptions in relation to sex or marital status—**

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(1) Nothing in **section 15** of this Act shall apply to preferential treatment based on sex or marital status where the position requires a married couple.

“(2) Where, as a condition or fringe benefit 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 15** of this Act by omitting to apply that condition or confer that benefit on employees of a particular sex or marital status if in all the circumstances it is not reasonably practicable for the employer to do so.

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“**15d. Exceptions in relation to religious or ethical belief—**(1) Nothing in **section 15** of this Act shall apply to preferential treatment based on religious or ethical belief where—

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“(a) That treatment is accorded under section 65 of the Private Schools Conditional Integration Act 1975; or

“(b) The sole or principal duties of the position (not being a position to which section 65 of the Private Schools Conditional Integration Act 1975 applies)—

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“(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 (such as by selling relevant books or by carrying out duties as an editor, announcer, or reporter for a newspaper, radio station, or other branch of the news media which has as its principal aim the propagation of that belief); or

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“(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.

5 “(2) Nothing in section 15 of this Act shall apply to preferential treatment based on religious or ethical belief where—

“(a) That treatment is accorded by an adherent of a particular belief to another adherent of that belief; and

10 “(b) Having regard to special circumstances that—

“(i) Govern the manner in which the duties of the position are required to be carried out; and

“(ii) Make it reasonable to require those duties to be carried out in that manner,—

15 it is reasonable to accord that treatment to a person of the same belief.

“(3) Nothing in section 15 of this Act shall apply in respect of any restrictions on the employment of persons on work involving the national security of New Zealand by reference to their religious or ethical beliefs.

20 “(4) Where a religious or ethical belief requires its adherents to follow a particular practice, such as wearing a turban or not working on Saturdays, that is not appropriate to the activities of an employer, nothing in section 15 of this Act shall apply to action taken by that employer by reason of that practice.

25 “(5) Nothing in subsection (4) of this section shall apply in relation to a practice if the employer, with some adjustment of the activities of the employer (not being an adjustment involving unreasonable disruption of the activities of the employer) could accommodate the practice.

30 “15E. **Exception in relation to sex or religious or ethical belief**—Nothing in section 15 of this Act shall apply to preferential treatment based on sex or religious or ethical belief 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

40 “(b) Are such that, because of the customs of the country in which those duties are to be performed, they can be carried out effectively only by a person of a particular sex or religious or ethical belief.

“15F. **Exceptions in relation to ethnic or national origin**—(1) Nothing in section 15 of this Act shall apply in respect of the employment of any person for any purpose for

which persons of a particular ethnic or national origin have or are commonly found to have a particular qualification or aptitude.

“(2) Nothing in **section 15** of this Act shall apply in respect of any restrictions on the employment of persons on work involving the national security of New Zealand by reference to their national origin or to the national origin of any relative.

“**15G. Exceptions in relation to health status—**

(1) Nothing in **section 15** of this Act shall apply to less favourable treatment based on health status where—

“(a) The position is one of domestic employment in a private household:

“(b) The position requires that the person have or not have a particular health status for reasons of authenticity, as in theatrical performances, posing for artists, or being a model for the display of clothes:

“(c) The position is such that the employee could perform the duties of the position adequately only with the aid of special services or facilities and it is not reasonable to expect the employer to provide those services or facilities:

“(d) The environment in which the duties of the position are to be performed or the nature of those duties is such that the employee could perform those duties only with substantial risk of physical injury to himself or herself or to any other person and it is not reasonable to take that risk:

“(e) The duties of the position in respect of which the less favourable treatment is accorded are to be performed wholly or mainly outside New Zealand and the countries to which the employee would be obliged to travel prohibit entry to persons having a particular health status:

“(f) Some of the duties of the position are of such a nature that the employee could perform them only with a substantial risk that the employee could infect members of the public with organisms causing disease.

“(2) No employer shall be entitled, by virtue of any of the provisions of **paragraphs (c) to (f) of subsection (1)** of this section, to accord to any person in respect of any position less favourable treatment based on health status even though some of the duties of that position would fall within any of those provisions 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.

5 “(3) Nothing in **section 15** of this Act shall apply to terms of employment or conditions of work which are set or varied after taking into account—

“(a) Any special limitations that the health status of a person imposes on his or her capacity to carry out the work; and

10 “(b) Any special services or facilities that are provided to enable or facilitate the carrying out of the work.

“**15H. Exceptions in relation to age**—(1) Nothing in **section 15** of this Act shall apply to preferential treatment based on age where—

15 “(a) The position is one of domestic employment in a private household:

“**(b)** For reasons of authenticity, as in theatrical performances, posing for artists, or being a model for the display of clothes, being of a particular age is a bona fide occupational qualification for the position or employment:

20 “**(c)** The duties of the position in respect of which that treatment is accorded—

25 “**(i)** Are to be performed wholly or mainly outside New Zealand; and

“**(ii)** Are such that, because of the law of the country in which those duties are to be performed, they can be carried out effectively only by a person who has attained a particular age.

30 “(2) No employer shall be entitled, by virtue of **paragraph (b) or paragraph (c) of subsection (1)** of this section, to accord to any person in respect of any position preferential treatment based on age even though some of the duties of that position would fall within any of those provisions 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.

40 “(3) Nothing in **section 15** of this Act shall apply to the payment of an employee at a lower rate than another employee employed in the same or substantially similar circumstances solely on the basis of the youth of the first-mentioned employee where the lower rate is required or permitted by any enactment or legal instrument.

“(4) Nothing in **section 15** of this Act shall apply to a requirement in a superannuation scheme provided or subsidised by the employer that an employee reach a qualifying age before becoming entitled to superannuation benefits under the scheme.

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“15i. **Exception in relation to sexual orientation**— Nothing in **section 15** of this Act shall apply to preferential treatment based on sexual orientation where the position is one of domestic employment in a private household.

“15j. **Exception in relation to pregnancy**—(1) Nothing in **section 15** of this Act shall apply in relation to preferential treatment accorded to any person on the basis that that person is or is not pregnant where—

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“(a) The position is one of domestic employment in a private household:

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“(b) For reasons of authenticity, as in theatrical performances, posing for artists, or being a model for the display of clothes, being pregnant or not being pregnant is a bona fide occupational qualification for the position or employment.

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“(2) Nothing in **section 15** of this Act shall apply to less favourable treatment accorded to any person on the basis that that person is pregnant where the environment in which the duties of the position are to be performed or the nature of those duties is such that the employee could perform those duties only with substantial risk of physical injury to herself or to any other person and it is not reasonable to take that risk.

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“(3) No employer shall be entitled, by virtue of **subsection (1) (b)** or **subsection (2)** of this section, to accord to any person in respect of any position preferential treatment based on the fact that that person is pregnant or is not pregnant even though some of the duties of that position would fall within any of those provisions 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.

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“15k. **Exception in relation to political opinion**— (1) Nothing in **section 15** of this Act shall apply in relation to preferential treatment based on political opinion where—

“(a) The position is one of domestic employment in a private household:

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“(b) The position is one as—

“(i) A political adviser to a member of Parliament;

or

“(ii) A political adviser to a member of a local authority; or

“(iii) A member of the staff of a political party.

5 “(2) Nothing in **section 15** of this Act shall apply in respect of any restrictions on the employment of persons on work involving the national security of New Zealand by reference to their political opinions.

10 “**15L. Exception in relation to trade union involvement**—Nothing in **section 15** of this Act shall apply in relation to less favourable treatment based on trade union involvement where the position is one of domestic employment in a private household.

15 “**15M. Exception in relation to identity of partner or relative**—Nothing in **section 15** of this Act shall apply in relation to restrictions imposed by an employer—

“(a) On the employment of any person who is a partner or relative of another employee if—

“(i) There would be a direct reporting relationship between them; or

20 “(ii) There is a substantial risk of collusion between them to the detriment of the employer; or

“(b) On the employment of any person who is a partner or relative of an employee of another employer if there is a substantial risk of collusion between that person and that person’s partner or relative to the detriment of the employer of that person.

25 “**16. Armed Forces, Police, and traffic officers**—  
(1) Nothing in **section 15** of this Act shall apply to requirements that differ in their application to persons of each sex and which concern the height or weight of members of the Armed Forces, members of the Police, or traffic officers.

“(2) Nothing in **section 15** of this Act shall prevent preferential treatment based on sex being given within the Armed Forces to any member of those Forces who—

35 “(a) Is or is intended to be a crew member on an aircraft or ship crewed by those Forces; or

“(b) Has the duty of serving in an active combat role in those Forces.

40 “(3) For the purpose of dealing with situations involving violence or the threat of violence, nothing in **section 15** of this Act shall prevent the recruitment of greater numbers of men than of women as members of the Police or as traffic officers.

“(4) In this section the term ‘traffic officer’ has the meaning assigned to it by section 2 (1) of the Transport Act 1962.

**“18. Particulars of applicants for employment—**(1) 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 15** of this Act. 5

“(2) Nothing in **subsection (1)** of this section shall apply to any reference on a form, or to any inquiry concerning, the sex or marital status of an applicant.

**“19. Partnerships—**(1) It shall be unlawful for a firm, or for persons jointly promoting the formation of a firm,— 10

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

“(b) To refuse or omit to offer or afford a person the same terms and conditions as a partner as are made available to other members or prospective members of the firm,— 15

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 20

“(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. 25

**“20. Industrial unions 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 30

“(b) To refuse or omit to offer any person the same terms of membership and the same access to any benefits, facilities, or services, including the right to stand for and hold office in the organisation, as would otherwise be made available; or 35

“(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 suspend—

by reason of any of the prohibited grounds of discrimination. 40

“(2) This section applies to an organisation of workers, an organisation of employers, or any other organisation which exists for the purposes of members who carry on a particular profession, trade, or calling.

“21. **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 to—

5 “(a) Refuse or omit to confer that approval, authorisation, or qualification on a person; or

“(b) Confer that approval, authorisation, or qualification on less favourable terms and conditions than would otherwise be made available; or

10 “(c) 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.

15 “(2) For the purposes of this section ‘confer’ includes renew or extend.

“21A. **Exceptions in relation to qualifying bodies**—

(1) Nothing in **section 21** of this Act 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 person of that religious belief so as to comply with the doctrines or rules of that religion or to avoid offending the religious susceptibilities of its adherents.

25 “(2) Nothing in **section 21** of this Act shall apply where—

30 “(a) The person seeking or holding the approval, authorisation, or qualification is not, by reason of that person’s health status, able to perform the duties required of a person who holds the approval, authorisation, or qualification; or

35 “(b) The health status of the person seeking or holding the approval, authorisation, or qualification coupled with 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 are such that, if that approval, authorisation, or qualification were granted to or retained by that person, there would be a substantial risk of physical injury to that person or others and it is not reasonable to take that risk; or

40 “(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 health status of that person.

“22. **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.

“22A. **Exceptions in relation to vocational training bodies**—(1) An educational establishment maintained wholly or principally for students of one sex, race, colour, or religious belief, or the authority responsible for the control of any such establishment, does not commit a breach of **section 22** of this Act by refusing to admit students of a different sex, race, colour, or religious belief.

“(2) Nothing in **section 22** of this Act 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 22** of this Act shall prevent an organisation or association from accepting for training only persons with a particular health status if that organisation or association is dedicated to the training of persons with that health status.

*“Discrimination in Other Matters*

“23. **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

5 “(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.

10 “23A. **Exceptions in relation to access by the public to places, vehicles, and facilities**—(1) Section 23 of this Act shall not apply to the maintenance of separate facilities for each sex on the ground of public decency.

15 “(2) Nothing in section 23 of this Act requires any person to provide for any person, by reason of the health status of that person, special services or special facilities to enable any person with that health status to gain access to or use any place or vehicle when it would not be reasonable to require the provision of such special services and facilities.

20 “(3) Nothing in subsection (2) of this section limits the provisions of section 25 of the Disabled Persons Community Welfare Act 1975.

“(4) Subject to subsection (5) of this section, nothing in section 23 of this Act shall apply where—

25 “(a) The health status of a person is such that there would be a substantial risk of physical injury to that person or to others if that person were to have access to or use any place or vehicle; and

“(b) It is not reasonable that the risk specified in paragraph (a) of this subsection be taken.

30 “(5) Subsection (4) of this section 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 level similar to that caused by other persons.

35 “(6) Nothing in section 23 of this Act makes it unlawful to refuse to allow entry to licensed premises and to exhibitions of films on the ground that the person has not reached the age at which, under the provisions of another enactment, the person may enter.

40 “24. **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 provide any other person with those goods, facilities, or services on less favourable terms or conditions than those upon or subject to which he or she would otherwise make them available—

by reason of any of the prohibited grounds of discrimination. 5

“(2) For the purposes of **subsection (1)** of this section, 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. 10

“(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 provides them on less favourable terms or conditions than would otherwise be made available, 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. 15

“(4) Subject to **subsection (3)** of this section, 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. 20

*“Exceptions in Relation to Provision of Goods and Services*

“**24A. Exceptions in relation to sex**—(1) **Section 24** of this Act shall not apply to the maintenance or provision of separate facilities or services for each sex on the ground of public decency. 25

“(2) Where the nature of a skill such as hairdressing varies according to whether it is exercised in relation to men or women, a person does not commit a breach of **section 24** of this Act by exercising the skill in relation to one sex only, in accordance with that person’s normal practice. 30

“(3) It shall not be a breach of **section 24** of this Act to offer or provide annuities, life insurance policies, accident insurance policies, or other policies of insurance on different terms or conditions for each sex so long as the differential treatment— 35

“(a) Is based on actuarial or statistical data, upon which it is reasonable to rely, relating to life-expectancy, accidents, or sickness; and

“(b) Is reasonable having regard to the data and to any other relevant factors. 40

“(4) Subject to **subsection (5)** of this section, nothing in **section 24** of this Act 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.

“(5) **Subsection (4)** of this section does not apply in relation to the exclusion of persons from participation in—

- “(a) The coaching of persons engaged in any sporting activity; or
- 5 “(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 14 years.

10 “**24B. Exception in relation to courses and counselling**—Nothing in **section 24** of this Act shall apply in respect of the holding of courses, or the provision of counselling, on matters that are of some intimacy, such as sexual matters or matters involving anger management.

15 “**24C. Exceptions in relation to health status**—(1) It shall not be a breach of **section 24** of this Act to offer or provide annuities, life assurance policies, accident insurance policies, or other policies of insurance on different terms or conditions for persons of differing health status so long as the differential treatment—

- 20 “(a) Is based on actuarial or statistical data, upon which it is reasonable to rely, relating to life-expectancy, accidents, or sickness; and
- “(b) Is reasonable having regard to the data and to any other relevant factors.

25 “(2) It shall not be a breach of **section 24** of this Act for a person who supplies facilities or services—

- “(a) To refuse to supply those facilities or services for any person if—
  - 30 “(i) That person’s health status requires those facilities or services to be supplied 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
- 35 “(b) To supply 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 the health status of the person to whom the facilities or services are supplied is such that there are

40 reasonable grounds for the more onerous terms.

“(3) It shall not be a breach of **section 24** of this Act to exclude any person from any competitive sporting event or activity if—

- “(a) The health status of that person is such that there would be a substantial risk of physical injury to that person

or to others if that person were to take part in that competitive sporting event or activity; and

“(b) It is not reasonable that the risk specified in **paragraph (a)** of this subsection be taken.

“(4) It shall not be a breach of **section 24** of this Act to conduct competitive sporting events or activities in which only persons with a particular health status may take part. 5

“**24D. Exceptions in relation to age**—(1) It shall not be a breach of **section 24** of this Act to offer or provide annuities, life assurance policies, accident insurance policies, or other policies of insurance on different terms or conditions for persons of different ages so long as the differential treatment— 10

“(a) Is based on actuarial or statistical data, upon which it is reasonable to rely, relating to life-expectancy, accidents, or sickness; and 15

“(b) Is reasonable having regard to the data and to any other relevant factors.

“(2) It shall not be a breach of **section 24** of this Act—

“(a) To refuse to provide alcohol, tobacco, publications, and films to a person on the ground that the person has not reached the age at which, under the provisions of another enactment, the person may be provided with such goods; or 20

“(b) To refuse to provide any person with the opportunity of obtaining a licence or qualification on the ground that the person has not reached the age at which, under the provisions of another enactment, the person may be provided with such an opportunity; or 25

“(c) To provide goods, services, or facilities at a reduced rate on the ground of age. 30

“**25. 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 35

“(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 40

“(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.

“(3) For the purposes of this section—

“ ‘Dispose’ includes sell, assign, lease, let, sublease, sublet, license, or mortgage, and agree to dispose:

“ ‘Residential accommodation’ includes accommodation in a dwellinghouse, flat, motel, boardinghouse, or camping ground.

“**25A. Exception in relation to shared residential accommodation**—Nothing in **section 25** of this Act 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.

“**25B. Exception in relation to sex, marital status, or religious or ethical belief**—Nothing in **section 25** of this Act shall apply to residential accommodation in any hostel or in any establishment (such as a hospital, club, school, university, or religious institution), 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.

“**25C. Exceptions in relation to health status**—(1) Subject to **subsection (2)** of this section, nothing in **section 25** of this Act shall apply, in relation to any accommodation, if—

“(a) The health status of a person is such that there would be a substantial risk of physical injury to that person or to others if that person were to live in that accommodation; and

“(b) It is not reasonable that the risk specified in **paragraph (a)** of this subsection be taken.

“(2) **Subsection (1)** of this section shall not apply if the person in charge of the accommodation could, without unreasonable disruption, take reasonable measures to reduce the risk to a level similar to that caused by other persons.

“(3) Nothing in **section 25** of this Act applies in relation to accommodation which is dedicated to the use of persons with a particular health status and which is available only to those persons. 5

“**26. Educational establishments**—(1) It shall be unlawful for an educational establishment, or the authority responsible for the control of an educational establishment,— 10

“(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 15

“(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— 20

by reason of any of the prohibited grounds of discrimination.

“(2) In this section ‘educational establishment’ includes an establishment offering any form of technical training or instruction.

“**26A. Exception in relation to courses and counselling**—Nothing in **section 26** of this Act shall apply in respect of the holding at any educational establishment of courses, or the provision at any educational establishment of counselling, on matters that are of some intimacy, such as sexual matters or matters involving anger management. 25 30

“**26B. Exception in relation to sex, race, colour, or religious or ethical belief**—An educational establishment maintained wholly or principally for students of one sex, race, colour, or religious or ethical belief, or the authority responsible for the control of any such establishment, does not commit a breach of **section 26** of this Act by refusing to admit students of a different sex, race, colour, or religious or ethical belief. 35

“**26c. Exceptions in relation to health status**—  
(1) Nothing in **section 26** of this Act makes it unlawful to refuse admission to an educational establishment to a person whose health status 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 40

the person to participate in the educational programme or to enable the person to derive substantial benefits from that programme).

5 “(2) Subject to **subsection (3)** of this section, nothing in **section 26** of this Act shall apply where—

“**(a)** The health status of a person is such that there would be a substantial risk of physical injury to that person or to others if that person were to be admitted to an educational establishment; and

10 “**(b)** It is not reasonable that the risk specified in **paragraph (a)** of this subsection be taken.

“**(3)** Nothing in **subsection (2)** of this section shall apply if the person in charge of the educational establishment could, without unreasonable disruption, take reasonable measures to reduce the risk to a level similar to that caused by other persons.

15 “**(4)** Nothing in **section 26** of this Act applies in relation to an educational establishment which is dedicated to the use of persons with a particular health status and which is available only to those persons.

20 “**26D. Sexual harassment**—(1) It shall be unlawful for any person 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 contrary to any of the provisions of **sections 15, 18, 19, 20, 21, 22, 23, 24, 25, and 26** of this Act.

25 “(2) It shall be unlawful for any person, by the use of words (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—

30 “**(a)** Is unwelcome or offensive to that person (whether or not that is conveyed to the first-mentioned person); and

35 “**(b)** Is either repeated or of such a significant nature that it has a detrimental effect on that person’s—

“**(i)** Employment; or

“**(ii)** Participation in a partnership; or

“**(iii)** Participation in an industrial union or professional or trade association; or

40 “**(iv)** Access to an approval, authorisation, or qualification; or

“**(v)** Participation in vocational training; or

“**(vi)** Access to places, vehicles, and facilities; or

“**(vii)** Access to or use of goods and services; or

“(viii) Access to or use of land, housing, or other accommodation; or

“(ix) Participation in education.

“26E. **Racial harassment**—It shall be unlawful for any person to use words (whether written or spoken), or visual material, or physical behaviour that— 5

“(a) Express or expresses hostility against, or brings into contempt, any other person on the ground of the colour, race, or ethnic or national origins of that person; and 10

“(b) Is unwelcome 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’s— 15

“(i) Employment; or

“(ii) Participation in a partnership; or

“(iii) Participation in an industrial union or professional or trade association; or

“(iv) Access to an approval, authorisation, or qualification; or 20

“(v) Participation in vocational training; or

“(vi) Access to places, vehicles, and facilities; or

“(vii) Access to or use of goods and services; or

“(viii) Access to or use of land, housing, or other accommodation; or 25

“(ix) Participation in education.

“27. **Indirect discrimination**—Where a requirement or condition which is not apparently in contravention of any provision of this Part of this Act has the effect of giving preference to a person on one of the prohibited grounds of discrimination in a situation where such preference would be unlawful under any provision of this Part of this Act other than this section, the imposition of that condition or requirement shall be unlawful under that provision unless the person imposing it establishes good reason for its imposition. 30 35

“29. **Measures to ensure equality**—Anything done or omitted which would otherwise constitute a breach of any of the provisions of this Part of this Act shall not constitute such a breach if— 40

“(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 of a class described by the prohibited grounds of discrimination; 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.

5     “30. **Measures relating to pregnancy, childbirth, or family responsibilities**—For the avoidance of doubt it is hereby declared that preferential treatment granted by reason of—

10     “(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 of this Act.

“*Victimisation, Advertisements, and Agency*

15     “31. **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—

20     “(a) On the ground that that person, or any relative or associate of that person,—

   “(i) Has indicated an intention to make use of his or her rights under this Act or the Race Relations Act 1971; or

25     “(ii) Has made use of his or her rights, or promoted the rights of some other person under this Act, or the Race Relations Act 1971; or

   “(iii) Has given information or evidence in relation to any complaint, investigation, or proceeding under this Act, or the Race Relations Act 1971; or

30     “(iv) Has otherwise done anything under or by reference to this Act, or the Race Relations Act 1971; 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 (iv) of paragraph (a)** of this subsection 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.

40     “(2) **Subsection (1)** of this section 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.

“32. **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 of this Act. 5

“(2) For the purposes of **subsection (1)** of this section, use of a job description with a sexual connotation (such as ‘waiter’, ‘sales girl’, ‘postman’, or ‘stewardess’) shall be taken to indicate an intention to discriminate, unless the advertisement contains an indication to the contrary. 10

“33. **Liability of employer and principals**—(1) Subject to **subsection (3)** of this section, anything done or omitted by a person as the employee of another person shall, for the purposes of this Part of this Act, 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. 15

“(2) Anything done or omitted by a person as the agent of another person shall, for the purposes of this Part of this Act, 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. 20

“(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.” 25 30

**4. Charitable instruments**—(1) Section 91 of the principal Act (as amended by section 18 (1) of the Human Rights Commission Amendment Act 1983) is hereby amended by repealing subsection (1), and substituting the following subsection: 35

“(1) Nothing in this Act shall apply—

“(a) To any provision in an existing or future charitable instrument where that provision confers benefits, or enables benefits to be conferred, in persons of a class described by the prohibited grounds of discrimination; or 40

“(b) To any act done in order to comply with any provision described in **paragraph (a)** of this subsection.”

(2) Section 18 (1) of the Human Rights Commission Amendment Act 1983 is hereby consequentially repealed.

5 **5. Amendments to Race Relations Act 1971**—(1) The Race Relations Act 1971 is hereby amended by repealing sections 3 to 9.

(2) The Race Relations Act 1971 is hereby further amended by repealing paragraph (a) of section 13 (1) (as amended by section 86 of the principal Act), and substituting the following paragraph:

10 “(a) To investigate, notwithstanding anything in the Human Rights Commission Act 1977, any act or omission or any practice which is or appears to be a breach of any of the provisions of **Part II** of that Act on the grounds of colour, race, or ethnic or national origins.”

15 (3) The Race Relations Act 1971 is hereby further amended by omitting from section 37 (2) (as amended by section 86 of the principal Act) the words “sections 3 to 7 or 9A of this Act”, and substituting the words “**Part II** of the Human Rights Commission Act 1977 in respect of the grounds of colour, race, or ethnic or national origins”.

20 (4) The principal Act is hereby consequentially amended by repealing so much of the First Schedule as relates to sections 13 (a) and 37 (2) of the Race Relations Act 1971.

25 **6. Amendment to Labour Relations Act 1987**—Section 211 of the Labour Relations Act 1987 is hereby amended—

(a) By omitting from subsection (1) the words “by reason of the colour, race, ethnic or national origins, sex, marital status, or religious or ethical belief of that worker”, and substituting the words “by reason of any of the prohibited grounds of discrimination in **section 14F** of the Human Rights Commission Act 1977”; and

(b) By repealing subsection (3).

35 **7. Repeals**—The following enactments are hereby consequentially repealed:

(a) Section 2 of the Human Rights Commission Amendment Act 1981:

(b) Sections 8 to 10 of the Human Rights Commission Amendment Act 1983.