

Equal Opportunity Act 2010

No. 16 of 2010

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Victoria

Equal Opportunity Act 2010[†]

No. 16 of 2010

[Assented to 27 April 2010]

The Parliament of Victoria enacts:

PART 1—PRELIMINARY

1 Purposes

The main purposes of this Act are—

- (a) to re-enact and extend the law relating to equal opportunity and protection against discrimination, sexual harassment and victimisation; and
- (b) to amend the **Racial and Religious Tolerance Act 2001** in relation to dispute resolution; and

- (c) to make consequential amendments to the **Racial and Religious Tolerance Act 2001**, the **Victorian Civil and Administrative Tribunal Act 1998** and other Acts.

2 Commencement

- (1) Section 1, this section and Part 16 come into operation on the day after the day on which this Act receives the Royal Assent.
- (2) Section 215 comes into operation on the day on which Division 3 of Part 5 of the **Public Finance and Accountability Act 2010** comes into operation.
- (3) Subject to subsection (4), the remaining provisions of this Act come into operation on a day or days to be proclaimed.
- (4) If a provision of this Act referred to in subsection (3) does not come into operation before 1 August 2011, it comes into operation on that day.

3 Objectives

The objectives of this Act are—

- (a) to eliminate discrimination, sexual harassment and victimisation, to the greatest possible extent;
- (b) to further promote and protect the right to equality set out in the Charter of Human Rights and Responsibilities;
- (c) to encourage the identification and elimination of systemic causes of discrimination, sexual harassment and victimisation;
- (d) to promote and facilitate the progressive realisation of equality, as far as reasonably practicable, by recognising that—

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- (i) discrimination can cause social and economic disadvantage and that access to opportunities is not equitably distributed throughout society;
 - (ii) equal application of a rule to different groups can have unequal results or outcomes;
 - (iii) the achievement of substantive equality may require the making of reasonable adjustments and reasonable accommodation and the taking of special measures;
- (e) to enable the Victorian Equal Opportunity and Human Rights Commission to encourage best practice and facilitate compliance with this Act by undertaking research, educative and enforcement functions;
 - (f) to enable the Commissioner of the Victorian Equal Opportunity and Human Rights Commission to resolve disputes about discrimination, sexual harassment and victimisation in a timely and effective manner, and to also provide direct access to the Victorian Civil and Administrative Tribunal for resolution of such disputes.

4 Definitions

(1) In this Act—

accommodation includes—

- (a) business premises;
- (b) a house or flat;
- (c) a hotel or motel;
- (d) a boarding house or hostel;

- (e) a caravan or caravan site;
- (f) a mobile home or mobile home site;
- (g) a camping site;

appointed member, of the Board, means a member of the Board other than the Commissioner;

assistance dog means a dog that is trained to perform tasks or functions that assist a person with an impairment to alleviate the effects of his or her impairment;

attribute means an attribute in section 6;

Board means the Board of the Commission established under section 161;

breastfeeding includes the act of expressing milk;

carer means a person on whom another person is wholly or substantially dependent for ongoing care and attention, other than a person who provides that care and attention wholly or substantially on a commercial basis;

child means a person under the age of 18 years;

club means an association of more than 30 persons associated together for social, literary, cultural, political, sporting, athletic or other lawful purposes that—

- (a) has a licence (other than a temporary limited licence or a major event licence) to supply liquor under the **Liquor Control Reform Act 1998**; and
- (b) operates its facilities wholly or partly from its own funds;

Commission means the Victorian Equal Opportunity and Human Rights Commission continued in existence by section 154;

Commissioner means the Commissioner appointed under section 169;

contract worker means a person who does work for a principal under a contract between the person's employer and the principal;

detriment includes humiliation and denigration;

discrimination has the meaning given in Part 2;

dispute means a dispute about compliance with this Act;

dispute resolution means dispute resolution conducted by the Commissioner under Division 1 of Part 8;

domestic partner of a person means—

- (a) a person who is in a registered domestic relationship with the person; or
- (b) a person to whom the person is not married but with whom the person is living as a couple on a genuine domestic basis (irrespective of gender);

educational authority means the person or body administering an educational institution;

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

employee includes—

- (a) a person employed under a contract of service, whether or not under a federal agreement or award;

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- (b) a person employed under the **Public Administration Act 2004** or appointed to a statutory office;
 - (c) a person engaged under a contract for services;
 - (d) a person who is engaged to perform any work the remuneration for which is based wholly or partly on commission—

and in Part 6 includes, but does not otherwise in this Act include, an unpaid worker or volunteer;

employer includes—

- (a) a person who employs another person under a contract of service, whether or not under a federal agreement or award;
- (b) a person who engages another person under a contract for services;
- (c) a person who engages another person to perform any work the remuneration for which is based wholly or partly on commission—

and in Part 6 includes, but does not otherwise in this Act include, a person who employs another person on an unpaid or voluntary basis;

employment includes—

- (a) employment under a contract of service, whether or not under a federal agreement or award;
- (b) employment under the **Public Administration Act 2004** or under a statutory appointment;

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- (c) engagement under a contract for services;
 - (d) work that is remunerated wholly or partly on commission—

and in Part 6 includes, but does not otherwise in this Act include, work on a voluntary or unpaid basis;

employment activity means an employee in his or her individual capacity—

- (a) making a reasonable request to his or her employer, orally or in writing, for information regarding his or her employment entitlements; or
- (b) communicating to his or her employer, orally or in writing, the employee's concern that he or she has not been, is not being or will not be, given some or all of his or her employment entitlements;

employment agent means a person who carries on a business of providing services for the purpose of finding employment for people seeking to be employed or procuring employees for people seeking to employ them, or both;

employment entitlements, in relation to an employee, means the employee's rights and entitlements under an applicable—

- (a) contract of service; or
- (b) federal agreement or award; or
- (c) minimum wage order under the Fair Work Act 2009 of the Commonwealth; or

- (d) contract for services; or
- (e) Act or enactment; or
- (f) law of the Commonwealth;

enactment means a rule, regulation, by-law, local law, order, Order in Council, proclamation or other instrument of a legislative character;

Fair Work Australia has the same meaning as in the Fair Work Act 2009 of the Commonwealth;

firm has the same meaning as in the **Partnership Act 1958**;

gender identity means—

- (a) the identification on a bona fide basis by a person of one sex as a member of the other sex (whether or not the person is recognised as such)—
 - (i) by assuming characteristics of the other sex, whether by means of medical intervention, style of dressing or otherwise; or
 - (ii) by living, or seeking to live, as a member of the other sex; or
- (b) the identification on a bona fide basis by a person of indeterminate sex as a member of a particular sex (whether or not the person is recognised as such)—
 - (i) by assuming characteristics of that sex, whether by means of medical intervention, style of dressing or otherwise; or
 - (ii) by living, or seeking to live, as a member of that sex;

home, in relation to a person, means a private residence of that person;

impairment means—

- (a) total or partial loss of a bodily function; or
- (b) the presence in the body of organisms that may cause disease; or
- (c) total or partial loss of a part of the body; or
- (d) malfunction of a part of the body, including—
 - (i) a mental or psychological disease or disorder;
 - (ii) a condition or disorder that results in a person learning more slowly than people who do not have that condition or disorder; or
- (e) malformation or disfigurement of a part of the body—

and includes an impairment that may exist in the future (including because of a genetic predisposition to that impairment) and, to avoid doubt, behaviour that is a symptom or manifestation of an impairment;

industrial activity means—

- (a) being or not being a member of, or joining, not joining or refusing to join, an industrial organisation or industrial association; or
- (b) establishing or being involved in establishing an industrial organisation or forming or being involved in forming an industrial association; or

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- (c) organising or promoting or proposing to organise or promote a lawful activity on behalf of an industrial organisation or industrial association; or
 - (d) encouraging, assisting, participating in or proposing to encourage, assist or participate in a lawful activity organised or promoted by an industrial organisation or industrial association; or
 - (e) not participating in or refusing to participate in a lawful activity organised or promoted by an industrial organisation or industrial association; or
 - (f) representing or advancing the views, claims or interests of members of an industrial organisation or industrial association;

industrial association means a group of employees or employers, formed formally or informally to represent or advance the views, claims or interests of the employees or employers in a particular industry, trade, profession, business or employment, not including an industrial organisation;

industrial organisation means one of the following organisations that is registered or recognised under a State or Commonwealth Act or enactment—

- (a) an organisation of employees;
 - (b) an organisation of employers;
 - (c) any other organisation established for the purposes of people who carry on a particular industry, trade, profession, business or employment;
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lawful sexual activity means engaging in, not engaging in or refusing to engage in a lawful sexual activity;

marital status means a person's status of being—

- (a) single; or
- (b) married; or
- (c) a domestic partner; or
- (d) married but living separately and apart from his or her spouse; or
- (e) divorced; or
- (f) widowed;

member of staff, of the Commission, means a member of the staff referred to in section 174;

occupational qualification means an authorisation or qualification that is needed for, or facilitates—

- (a) the practice of a profession; or
- (b) the carrying on of a trade or business; or
- (c) the engaging in of any other occupation or employment;

owners corporation has the meaning given in the **Owners Corporation Act 2006**;

parent includes—

- (a) step-parent;
- (b) adoptive parent;
- (c) foster parent;
- (d) guardian;

parental status means the status of being a parent or not being a parent;

party, in relation to a dispute, means—

- (a) a person who brings a dispute to the Commissioner for dispute resolution under section 113; or
- (b) a representative body who brings a dispute to the Commissioner for dispute resolution under section 114; or
- (c) a person on whose behalf a dispute is brought to the Commissioner for dispute resolution under section 113 or 114; or
- (d) a person about whom a dispute is brought to the Commissioner for dispute resolution;

person includes an unincorporated association and, in relation to a natural person, means a person of any age;

physical features means a person's height, weight, size or other bodily characteristics;

political belief or activity means—

- (a) holding or not holding a lawful political belief or view;
- (b) engaging in, not engaging in or refusing to engage in a lawful political activity;

practice guidelines means practice guidelines issued under Division 1 of Part 10;

principal, in relation to a contract worker, means a person who contracts with another person for work to be done by employees of the other person;

qualifying body means a person or body that is empowered to confer, renew or extend an occupational qualification;

race includes—

- (a) colour;
- (b) descent or ancestry;
- (c) nationality or national origin;
- (d) ethnicity or ethnic origin;
- (e) if 2 or more distinct races are collectively referred to as a race—
 - (i) each of those distinct races;
 - (ii) that collective race;

relative, in relation to a person, means—

- (a) a spouse or domestic partner of that person; or
 - (b) a parent or grandparent of that person or of a spouse or domestic partner of that person; or
 - (c) a child or grandchild (whether or not under the age of 18 years) of that person or of a spouse or domestic partner of that person; or
 - (d) a brother or sister of that person or of a spouse or domestic partner of that person; or
 - (e) a child (whether or not under the age of 18 years) of a brother or sister of that person or of a brother or sister of a spouse or domestic partner of that person; or
 - (f) a child (whether or not under the age of 18 years) of a brother or sister of a parent of that person or of a brother or sister of a parent of a spouse or domestic partner of that person;
-

religious belief or activity means—

- (a) holding or not holding a lawful religious belief or view;
- (b) engaging in, not engaging in or refusing to engage in a lawful religious activity;

services includes, without limiting the generality of the word—

- (a) access to and use of any place that members of the public are permitted to enter;
- (b) banking services, the provision of loans or finance, financial accommodation, credit guarantees and insurance;
- (c) provision of entertainment, recreation or refreshment;
- (d) services connected with transportation or travel;
- (e) services of any profession, trade or business, including those of an employment agent;
- (f) services provided by a government department, public authority, State owned enterprise or municipal council—

but does not include education or training in an educational institution;

sexual orientation means homosexuality (including lesbianism), bisexuality or heterosexuality;

spouse of a person means a person to whom the person is married;

State owned enterprise has the same meaning as in the **State Owned Enterprises Act 1992**;

terms includes conditions;

Tribunal means Victorian Civil and Administrative Tribunal established by the **Victorian Civil and Administrative Tribunal Act 1998**;

work arrangements means—

- (a) in the case of a person offered employment, arrangements—
 - (i) that would apply to the person as an employee; or
 - (ii) applying to the workplace; or
 - (b) in the case of an employee, arrangements applying to the employee or the workplace; or
 - (c) in the case of a contract worker, arrangements applying to the contract worker or the workplace of the principal; or
 - (d) in the case of a person invited to become a partner in a firm, arrangements—
 - (i) that would apply to the person as a partner; or
 - (ii) applying to the firm's workplace; or
 - (e) in the case of a partner of a firm, arrangements applying to the partner or the firm's workplace.
- (2) For the purposes of the definition of *domestic partner* in subsection (1)—
- (a) *registered domestic relationship* has the same meaning as in the **Relationships Act 2008**; and

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- (b) in determining whether persons who are not in a registered domestic relationship are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case.
- (3) A reference in the definition of *employee*, *employer*, *employment* or *employment entitlements* in subsection (1) to a federal agreement or award is a reference to—
- (a) an enterprise agreement made under the Fair Work Act 2009 of the Commonwealth; or
 - (b) an agreement-based transitional instrument within the meaning of the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 of the Commonwealth; or
 - (c) a modern award within the meaning of the Fair Work Act 2009 of the Commonwealth; or
 - (d) a determination of Fair Work Australia made under the Fair Work Act 2009 of the Commonwealth; or
 - (e) an award-based transitional instrument within the meaning of the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 of the Commonwealth; or
 - (f) a transitional minimum wage instrument within the meaning of the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 of the Commonwealth.
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5 Act binds the Crown

This Act binds the Crown in right of Victoria and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

PART 2—WHAT IS DISCRIMINATION?

6 Attributes

The following are the attributes on the basis of which discrimination is prohibited in the areas of activity set out in Part 4—

- (a) age;
- (b) breastfeeding;
- (c) employment activity;
- (d) gender identity;
- (e) impairment;
- (f) industrial activity;
- (g) lawful sexual activity;
- (h) marital status;
- (i) parental status or status as a carer;
- (j) physical features;
- (k) political belief or activity;
- (l) pregnancy;
- (m) race;
- (n) religious belief or activity;
- (o) sex;
- (p) sexual orientation;
- (q) personal association (whether as a relative or otherwise) with a person who is identified by reference to any of the above attributes.

7 Meaning of discrimination

- (1) Discrimination means—
 - (a) direct or indirect discrimination on the basis of an attribute; or
 - (b) a contravention of section 17, 19, 20, 22, 32, 33, 40, 45, 54, 55 or 56.
- (2) Discrimination on the basis of an attribute includes discrimination on the basis—
 - (a) that a person has that attribute or had it at any time, whether or not he or she had it at the time of the discrimination;
 - (b) of a characteristic that a person with that attribute generally has;
 - (c) of a characteristic that is generally imputed to a person with that attribute;
 - (d) that a person is presumed to have that attribute or to have had it at any time.
- (3) For the purposes of subsection (2), if a person with an impairment is accompanied by or possesses an assistance aid, being accompanied by or the possession of that assistance aid is taken to be a characteristic that a person with that attribute generally has.
- (4) In subsection (3)—

assistance aid means any of the following that alleviates the effects of a person's impairment—

 - (a) equipment (including a palliative or therapeutic device);

- (b) a person who provides assistance or services to a person with an impairment;

Examples

- 1 an interpreter;
- 2 a reader.

- (c) an assistance dog.

8 Direct discrimination

- (1) Direct discrimination occurs if a person treats, or proposes to treat, a person with an attribute unfavourably because of that attribute.

Examples

- 1 An employer advises an employee that she will not be trained to work on new machinery because she is too old to learn new skills. The employer has discriminated against the employee by denying her training in her employment on the basis of her age.
- 2 A real estate agent refuses an African man's application for a lease. The real estate agent tells the man that the landlord would prefer an Australian tenant. The real estate agent has discriminated against the man by denying him accommodation on the basis of his race.

- (2) In determining whether a person directly discriminates it is irrelevant—
- (a) whether or not that person is aware of the discrimination or considers the treatment to be unfavourable;
 - (b) whether or not the attribute is the only or dominant reason for the treatment, provided that it is a substantial reason.

9 Indirect discrimination

- (1) Indirect discrimination occurs if a person imposes, or proposes to impose, a requirement, condition or practice—
 - (a) that has, or is likely to have, the effect of disadvantaging persons with an attribute; and
 - (b) that is not reasonable.
 - (2) The person who imposes, or proposes to impose, the requirement, condition or practice has the burden of proving that the requirement, condition or practice is reasonable.
 - (3) Whether a requirement, condition or practice is reasonable depends on all the relevant circumstances of the case, including the following—
 - (a) the nature and extent of the disadvantage resulting from the imposition, or proposed imposition, of the requirement, condition or practice;
 - (b) whether the disadvantage is proportionate to the result sought by the person who imposes, or proposes to impose, the requirement, condition or practice;
 - (c) the cost of any alternative requirement, condition or practice;
 - (d) the financial circumstances of the person imposing, or proposing to impose, the requirement, condition or practice;
 - (e) whether reasonable adjustments or reasonable accommodation could be made to the requirement, condition or practice to reduce the disadvantage caused, including the availability of an alternative requirement, condition or practice that would achieve the result sought by the person imposing, or
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proposing to impose, the requirement, condition or practice but would result in less disadvantage.

- (4) In determining whether a person indirectly discriminates it is irrelevant whether or not that person is aware of the discrimination.

Examples

- 1 A store requires customers to produce photographic identification in the form of a driver's licence before collecting an order. This may disadvantage a person with a visual impairment who is not eligible to hold a driver's licence. The store's requirement may not be reasonable if the person with a visual impairment can provide an alternative form of photographic identification.
- 2 An advertisement for a job as a cleaner requires an applicant to speak and read English fluently. This may disadvantage a person on the basis of his or her race. The requirement may not be reasonable if speaking and reading English fluently is not necessary to perform the job.

10 Motive is irrelevant to discrimination

In determining whether or not a person discriminates, the person's motive is irrelevant.

11 Discrimination by acting with others and by not acting

It is irrelevant whether discrimination occurs by a person—

- (a) acting alone or in association with any other person;
- (b) doing an act or omitting to do an act.

12 Special measures

- (1) A person may take a special measure for the purpose of promoting or realising substantive equality for members of a group with a particular attribute.
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Examples

- 1 A company operates in an industry in which Aboriginal and Torres Strait Islanders are under-represented. The company develops a training program to increase employment opportunities in the company for Aboriginal and Torres Strait Islanders.
 - 2 A swimming pool that is located in an area with a significant Muslim population holds women-only swimming sessions to enable Muslim women who cannot swim in mixed company to use the pool.
 - 3 A person establishes a counselling service to provide counselling for gay men and lesbians who are victims of family violence, and whose needs are not met by general family violence counselling services.
- (2) A person does not discriminate against another person by taking a special measure.
- (3) A special measure must—
- (a) be undertaken in good faith for achieving the purpose set out in subsection (1); and
 - (b) be reasonably likely to achieve the purpose set out in subsection (1); and
 - (c) be a proportionate means of achieving the purpose set out in subsection (1); and
 - (d) be justified because the members of the group have a particular need for advancement or assistance.
- (4) A measure is taken for the purpose set out in subsection (1) if it is taken—
- (a) solely for that purpose; or
 - (b) for that purpose as well as other purposes.
- (5) A person who undertakes a special measure may impose reasonable restrictions on eligibility for the measure.

Example

It may be reasonable to restrict eligibility for a special measure to people with the attribute who are of a particular age.

- (6) A person who undertakes a special measure has the burden of proving that the measure is a special measure.
- (7) On achieving the purpose set out in subsection (1), the measure ceases to be a special measure.

13 When is discrimination lawful?

- (1) This Act does not prohibit discrimination to which a Division of Part 4 applies if—
 - (a) an exception in that Division applies; or
 - (b) the conduct constituting discrimination under that Division also constitutes discrimination under another Division of Part 4 and an exception in the other Division applies; or
 - (c) a general exception under Part 5 applies; or
 - (d) an exemption under Part 5 applies.

Example

A football club refuses to register a 15-year-old girl to participate in a football competition that is restricted to boys only. Section 72 contains an exception from discrimination on grounds of sex in relation to competitive sporting activity. If that applies to the competition, the club's refusal to register the girl will not be unlawful, regardless of whether any dispute about the refusal is brought as a dispute about discrimination in sport (Division 7), discrimination by a club (Division 6) or discrimination in the provision of services (Division 4).

- (2) An exception or an exemption referred to in subsection (1) is a defence to discrimination, and the person seeking to rely on the exception or exemption has the burden of proving that it applies.

**PART 3—DUTY TO ELIMINATE DISCRIMINATION,
SEXUAL HARASSMENT AND VICTIMISATION**

14 Purpose of Part

The purpose of this Part is to provide for the taking of positive action to eliminate discrimination, sexual harassment and victimisation.

15 Duty to eliminate discrimination, sexual harassment or victimisation

- (1) This section applies to a person who has a duty under Part 4, 6 or 7 not to engage in discrimination, sexual harassment or victimisation.
- (2) A person must take reasonable and proportionate measures to eliminate that discrimination, sexual harassment or victimisation as far as possible.
- (3) Part 8 does not apply to a contravention of the duty imposed by subsection (2).
- (4) A contravention of the duty imposed by subsection (2) may be the subject of an investigation or a public inquiry undertaken by the Commission under Part 9.
- (5) The duty imposed by subsection (2) is in addition to—
 - (a) a duty under Part 4, 6 or 7; and
 - (b) in the case of a person who is a public authority, a duty under section 38 of the Charter of Human Rights and Responsibilities.
- (6) In determining whether a measure is reasonable and proportionate the following factors must be considered—

- (a) the size of the person's business or operations;
- (b) the nature and circumstances of the person's business or operations;
- (c) the person's resources;
- (d) the person's business and operational priorities;
- (e) the practicability and the cost of the measures.

Examples

- 1 A small, not-for-profit community organisation takes steps to ensure that its staff are aware of the organisation's commitment to treating staff with dignity, fairness and respect and makes a clear statement about how complaints from staff will be managed.
 - 2 A large company undertakes an assessment of its compliance with this Act. As a result of the assessment, the company develops a compliance strategy that includes regular monitoring and provides for continuous improvement of the strategy.
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PART 4—WHEN IS DISCRIMINATION PROHIBITED?

Division 1—Discrimination in employment

16 Discrimination against job applicants

An employer must not discriminate against a person—

- (a) in determining who should be offered employment; or
- (b) in the terms on which employment is offered to the person; or
- (c) by refusing or deliberately omitting to offer employment to the person; or
- (d) by denying the person access to a guidance program, an apprenticeship training program or other occupational training or retraining program.

17 Employer must accommodate responsibilities as parent or carer of person offered employment

- (1) An employer must not, in relation to the work arrangements of a person offered employment, unreasonably refuse to accommodate the responsibilities that the person has as a parent or carer.

Example

An employer may be able to accommodate a person's responsibilities as a parent or carer by offering work on the basis that the person could work additional daily hours to provide for a shorter working week or occasionally work from home.

- (2) In determining whether an employer unreasonably refuses to accommodate the responsibilities that a person has as a parent or carer, all relevant facts and circumstances must be considered, including—

- (a) the person's circumstances, including the nature of his or her responsibilities as a parent or carer; and
- (b) the nature of the role that is being offered; and
- (c) the nature of the arrangements required to accommodate those responsibilities; and
- (d) the financial circumstances of the employer; and
- (e) the size and nature of the workplace and the employer's business; and
- (f) the effect on the workplace and the employer's business of accommodating those responsibilities, including—
 - (i) the financial impact of doing so;
 - (ii) the number of persons who would benefit from or be disadvantaged by doing so;
 - (iii) the impact on efficiency and productivity and, if applicable, on customer service of doing so; and
- (g) the consequences for the employer of making such accommodation; and
- (h) the consequences for the person of not making such accommodation.

18 Discrimination against employees

An employer must not discriminate against an employee—

- (a) by denying or limiting access by the employee to opportunities for promotion, transfer or training or to any other benefits connected with the employment; or
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- (b) by dismissing the employee or otherwise terminating his or her employment; or
 - (c) by denying the employee access to a guidance program, an apprenticeship training program or other occupational training or retraining program; or
 - (d) by subjecting the employee to any other detriment.

19 Employer must accommodate employee's responsibilities as parent or carer

- (1) An employer must not, in relation to the work arrangements of an employee, unreasonably refuse to accommodate the responsibilities that the employee has as a parent or carer.

Example

An employer may be able to accommodate an employee's responsibilities as a parent or carer by allowing the employee to work from home on a Wednesday morning or have a later start time on a Wednesday or, if the employee works on a part-time basis, by rescheduling a regular staff meeting so that the employee can attend.

- (2) In determining whether an employer unreasonably refuses to accommodate the responsibilities that an employee has as a parent or carer, all relevant facts and circumstances must be considered, including—
 - (a) the employee's circumstances, including the nature of his or her responsibilities as a parent or carer; and
 - (b) the nature of the employee's role; and
 - (c) the nature of the arrangements required to accommodate those responsibilities; and
 - (d) the financial circumstances of the employer; and

- (e) the size and nature of the workplace and the employer's business; and
- (f) the effect on the workplace and the employer's business of accommodating those responsibilities, including—
 - (i) the financial impact of doing so;
 - (ii) the number of persons who would benefit from or be disadvantaged by doing so;
 - (iii) the impact on efficiency and productivity and, if applicable, on customer service of doing so; and
- (g) the consequences for the employer of making such accommodation; and
- (h) the consequences for the employee of not making such accommodation.

20 Employer must make reasonable adjustments for person offered employment or employee with an impairment

- (1) This section applies to a person with an impairment who—
 - (a) is offered employment or is an employee; and
 - (b) requires adjustments in order to perform the genuine and reasonable requirements of the employment.
- (2) The employer must make reasonable adjustments unless the person or employee could not or cannot adequately perform the genuine and reasonable requirements of the employment even after the adjustments are made.

Example

An employer may be able to make reasonable adjustments for a person or employee with an impairment by—

- providing a ramp for access to the workplace or a particular software package for computers;
- modifying work instructions or reference manuals;
- allowing the person or employee to be absent during work hours for rehabilitation, assessment or treatment;
- allowing the person or employee to take breaks more frequently.

- (3) In determining whether an adjustment is reasonable, all relevant facts and circumstances must be considered, including—
- (a) the person's or employee's circumstances, including the nature of his or her impairment; and
 - (b) the nature of the employee's role or the role that is being offered; and
 - (c) the nature of the adjustment required to accommodate the person's or employee's impairment; and
 - (d) the financial circumstances of the employer; and
 - (e) the size and nature of the workplace and the employer's business; and
 - (f) the effect on the workplace and the employer's business of making the adjustment including—
 - (i) the financial impact of doing so;
 - (ii) the number of persons who would benefit from or be disadvantaged by doing so;
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- (iii) the impact on efficiency and productivity and, if applicable, on customer service of doing so; and
 - (g) the consequences for the employer of making the adjustment; and
 - (h) the consequences for the person or employee of not making the adjustment; and
 - (i) any relevant action plan made under Part 3 of the Disability Discrimination Act 1992 of the Commonwealth; and
 - (j) if the employer is a public sector body within the meaning of section 38 of the **Disability Act 2006**, any relevant Disability Action Plan made under that section; and
 - (k) any relevant disability standards made under the Disability Discrimination Act 1992 of the Commonwealth.
- (4) For the purposes of subsection (2), in determining whether or not the person or employee could or can adequately perform the genuine and reasonable requirements of the employment, all the relevant facts and circumstances must be considered, including—
- (a) the person's or employee's training, qualifications and experience;
 - (b) the person's or employee's current performance in the employment, if applicable.

21 Discrimination against contract workers

- (1) A principal must not discriminate against a contract worker—
- (a) in the terms on which the principal allows the contract worker to work; or
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- (b) by not allowing the contract worker to work or continue to work; or
 - (c) by denying or limiting access by the contract worker to any benefit connected with the work; or
 - (d) by subjecting the contract worker to any other detriment.
- (2) Subsection (1) does not apply to anything done or omitted to be done by a principal in relation to a contract worker that would not contravene this Act if done or omitted to be done by the employer of that contract worker.

22 Principal must accommodate contract worker's responsibilities as parent or carer

- (1) A principal must not, in relation to the work arrangements of a contract worker, unreasonably refuse to accommodate the responsibilities that the contract worker has as a parent or carer.

Example

A principal may be able to accommodate a contract worker's responsibilities as a parent or carer by allowing the contract worker to have flexible start, finish or break times.

- (2) In determining whether a principal unreasonably refuses to accommodate the responsibilities that a contract worker has as a parent or carer, all relevant facts and circumstances must be considered, including—
- (a) the contract worker's circumstances, including the nature of his or her responsibilities as a parent or carer; and
 - (b) the nature of the work contracted for; and
 - (c) the nature of the arrangements required to accommodate those responsibilities; and

- (d) the financial circumstances of the principal;
and
- (e) the size and nature of the workplace and the principal's business; and
- (f) the effect on the workplace and the principal's business of accommodating those responsibilities, including—
 - (i) the financial impact of doing so;
 - (ii) the number of persons who would benefit from or be disadvantaged by doing so;
 - (iii) the impact on efficiency and productivity and, if applicable, on customer service of doing so; and
- (g) the consequences for the principal of making such accommodation; and
- (h) the consequences for the contract worker of not making such accommodation.

23 Exception—adjustments for person or employee with an impairment not reasonable

An employer may discriminate against a person or an employee on the basis of the person's or employee's impairment in any of the areas specified in section 16 or 18 if—

- (a) the person or employee requires adjustments in order to perform the genuine and reasonable requirements of the employment;
and
- (b) in the case of a person to whom section 20 applies, the employer has complied with that section; and

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- (c) in any case, either—
- (i) the adjustments are not reasonable adjustments, having regard to the facts and circumstances set out in section 20(3); or
 - (ii) the person or employee could not or cannot adequately perform the genuine and reasonable requirements of the employment even after the adjustments are made, having regard to the facts and circumstances set out in section 20(4).

24 Exception—domestic or personal services

- (1) An employer may discriminate in determining who should be offered employment in relation to the provision of domestic or personal services (including the care, instruction or supervision of children)—
- (a) in the employer's home; or
 - (b) if the employer is in the business of providing domestic or personal services to others, in the home of the person to whom those services are provided if the discrimination is requested by or on behalf of that person.

Example

An agency employs people to provide personal care services. A woman contacts the agency and requests that it provide a carer to assist her with personal care in her home. The woman tells the agency that the carer must be female. The agency may discriminate in determining who should be employed to provide personal care to the woman as the services will be provided in the woman's home, and she has specifically asked for a female carer.

- (2) To avoid doubt, this section applies whether or not the employer is acting personally or through an agent in determining who should be employed.

25 Exception—care of children

- (1) Nothing in section 16 or 18 applies to discrimination by an employer against a person or employee if—
 - (a) the employment involves the care, instruction or supervision of children; and
 - (b) the discrimination is reasonably necessary to protect the physical, psychological or emotional wellbeing of the children.
- (2) Subsection (1) does not apply to employment by a post-secondary education provider (within the meaning of the **Education and Training Reform Act 2006**).

26 Exception—genuine occupational requirements

- (1) An employer may limit the offering of employment to people of one sex if it is a genuine occupational requirement of the employment that the employees be people of that sex.
 - (2) Without limiting the generality of subsection (1), it is a genuine occupational requirement to be a person of a particular sex in relation to employment if—
 - (a) the employment can be performed only by a person having particular physical characteristics (other than strength or stamina) that are possessed only by people of that sex; or
 - (b) the employment needs to be performed by a person of that sex to preserve decency or privacy because it involves the fitting of clothing for people of that sex; or
 - (c) the employment includes the conduct of searches of the clothing or bodies of people of that sex; or
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- (d) the employee will be required to enter a lavatory ordinarily used by people of that sex while it is in use by people of that sex; or
 - (e) the employee will be required to enter areas ordinarily used only by people of that sex while those people are in a state of undress.
- (3) An employer may limit the offering of employment in relation to a dramatic or an artistic performance, entertainment, photographic or modelling work or any other employment—
- (a) to people of a particular age, sex or race;
 - (b) to people with or without a particular impairment—
- if it is necessary to do so for reasons of authenticity or credibility.
- (4) An employer may discriminate on the basis of physical features in the offering of employment in relation to a dramatic or an artistic performance, photographic or modelling work or any similar employment.

27 Exception—political employment

An employer may discriminate on the basis of political belief or activity in the offering of employment to another person as a ministerial adviser, member of staff of a political party, member of the electorate staff of any person or any similar employment.

28 Exception—welfare services

An employer may limit the offering of employment to people with a particular attribute in relation to the provision of services for people with the same attribute if those services—

- (a) are either—
 - (i) a special measure under section 12; or
 - (ii) a service for special needs under section 88; and
- (b) can be provided most effectively by people with that attribute.

Examples

- 1 A service that provides in-home support for people who have a mental illness may require that a person who applies for a job as a support worker has previously used mental health services.
- 2 A support service for women who have experienced family violence may require that its counsellors are female.

29 Exception—early retirement schemes

In deciding the terms on which to offer an employee an incentive to resign or retire, an employer may take into account the age of the employee and any eligibility of the employee to receive a retirement benefit from a superannuation fund.

Division 2—Discrimination in employment-related areas

30 Discrimination in establishing firms

- (1) A person who intends to establish a firm comprising 5 or more partners must not discriminate against another person in the terms on which the other person is invited to become a partner.
- (2) A person who intends to establish a firm comprising less than 5 partners may discriminate against another person in the terms on which the other person is invited to become a partner if the discrimination is reasonable.

31 Discrimination by firms

- (1) A firm comprising 5 or more partners must not discriminate against a person—
 - (a) in deciding who should be invited to become a partner; or
 - (b) in the terms on which the person is invited to become a partner.
 - (2) A firm comprising 5 or more partners must not discriminate against a partner of that firm—
 - (a) by denying or limiting access by the partner to any benefit arising from partnership in the firm; or
 - (b) by expelling the partner from the firm; or
 - (c) by subjecting the partner to any other detriment.
 - (3) A firm comprising less than 5 partners may discriminate against a person—
 - (a) in deciding who should be invited to become a partner; or
 - (b) in the terms on which the person is invited to become a partner—if the discrimination is reasonable.
 - (4) A firm comprising less than 5 partners may discriminate against a partner of that firm—
 - (a) by denying or limiting access by the partner to any benefit arising from partnership in the firm; or
 - (b) by expelling the partner from the firm; or
 - (c) by subjecting the partner to any other detriment—if the discrimination is reasonable.
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32 Firm must accommodate responsibilities as parent or carer of person invited to become a partner or of a partner

- (1) A firm comprising 5 or more partners must not, in the work arrangements of a person invited to become a partner or of a partner, unreasonably refuse to accommodate the responsibilities that the person or partner has as a parent or carer.

Example

A firm may be able to accommodate the responsibilities that a person or partner has as a parent or carer by allowing the person or partner to have flexible attendance arrangements.

- (2) In determining whether a firm unreasonably refuses to accommodate the responsibilities that a person or partner has as a parent or carer, all relevant facts and circumstances must be considered, including—
- (a) the circumstances of the person or partner, including the nature of his or her responsibilities as a parent or carer; and
 - (b) the nature of the partnership role; and
 - (c) the nature of the arrangements required to accommodate those responsibilities; and
 - (d) the financial circumstances of the firm; and
 - (e) the size and nature of the workplace and the firm's business; and
 - (f) the effect on the workplace and the firm's business of accommodating those responsibilities, including—
 - (i) the financial impact of doing so;
 - (ii) the number of persons who would benefit from or be disadvantaged by doing so;
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- (iii) the impact on efficiency and productivity and, if applicable, on customer service of doing so; and
 - (g) the consequences for the firm of making such accommodation; and
 - (h) the consequences for the person or partner of not making such accommodation.

33 Firm must make reasonable adjustments for person invited to become a partner or partner with an impairment

- (1) This section applies to a person with an impairment who—
 - (a) is invited to become a partner or is a partner in a firm; and
 - (b) requires adjustments in order to perform the genuine and reasonable requirements of partnership in the firm.
- (2) The firm must make reasonable adjustments unless the person or partner could not or cannot adequately perform the genuine and reasonable requirements of partnership in the firm even after the adjustments are made.

Example

A firm may be able to make reasonable adjustments for a person or partner with an impairment by—

- making physical adjustments to the office in which the person or partner would be working;
- allocating some of the person's or partner's duties to another partner.

- (3) In determining whether an adjustment is reasonable, all relevant facts and circumstances must be considered, including—

- (a) the person's or partner's circumstances, including the nature of his or her impairment; and
 - (b) the nature of the adjustment required to accommodate the person's or partner's impairment; and
 - (c) the financial circumstances of the firm; and
 - (d) the size and nature of the workplace and the firm's business; and
 - (e) the effect on the workplace and the firm's business of making the adjustment, including—
 - (i) the financial impact of doing so;
 - (ii) the number of persons who would benefit from or be disadvantaged by doing so;
 - (iii) the impact on efficiency and productivity and, if applicable, on customer service of doing so; and
 - (f) the consequences for the firm of making the adjustment; and
 - (g) the consequences for the person or partner of not making the adjustment; and
 - (h) any relevant action plan made under Part 3 of the Disability Discrimination Act 1992 of the Commonwealth; and
 - (i) if the firm is a public sector body within the meaning of section 38 of the **Disability Act 2006**, any relevant Disability Action Plan made under that section; and
 - (j) any relevant disability standards made under the Disability Discrimination Act 1992 of the Commonwealth.
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- (4) For the purposes of subsection (2), in determining whether or not the person or partner could or can adequately perform the genuine and reasonable requirements of partnership in the firm, all the relevant facts and circumstances must be considered, including—
- (a) the person's or partner's training, qualifications and experience;
 - (b) the partner's current performance in the partnership, if applicable.

34 Exception—adjustments for person or partner with an impairment not reasonable

A firm may discriminate against a person or a partner on the basis of the person's or partner's impairment in any of the areas specified in section 30 or 31 if—

- (a) the person or partner requires adjustments in order to perform the genuine and reasonable requirements of partnership in the firm; and
- (b) in the case of a person to whom section 32 applies, the firm has complied with that section; and
- (c) in any case, either—
 - (i) the adjustments are not reasonable, having regard to the facts and circumstances set out in section 33(3); or
 - (ii) the person or partner could not or cannot adequately perform the genuine and reasonable requirements of partnership in the firm even after the adjustments are made, having regard to the facts and circumstances set out in section 33(4).

35 Discrimination by industrial organisations

- (1) An industrial organisation, or a member of the committee of management or other governing body of an industrial organisation, must not discriminate against a person—
 - (a) in deciding who may join the organisation;
or
 - (b) by refusing or failing to accept the person's application for membership; or
 - (c) in the terms on which it admits the person to membership.
- (2) An industrial organisation, or a member of the committee of management or other governing body of an industrial organisation, must not discriminate against a member of the organisation—
 - (a) by denying or limiting access to any benefit arising from membership; or
 - (b) by depriving the member of membership; or
 - (c) by varying the terms of membership; or
 - (d) by subjecting the member to any other detriment.

36 Discrimination by qualifying bodies

- (1) A qualifying body must not discriminate against a person—
 - (a) by refusing or failing to confer, renew or extend an occupational qualification; or
 - (b) in the terms on which it confers, renews or extends an occupational qualification; or
 - (c) by varying the terms on which an occupational qualification is held; or
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- (d) by revoking or withdrawing an occupational qualification; or
 - (e) by subjecting the person to any other detriment.
- (2) A reference to a qualifying body in this section includes a reference to each member of the qualifying body.

37 Exception—reasonable terms of qualification

A qualifying body may set reasonable terms in relation to an occupational qualification, or make reasonable variations to those terms, to enable a person with an impairment to practise the profession, carry on the trade or business or engage in the occupation or employment to which the qualification relates.

Example

A person is required to complete a certain number of hours of supervised clinical practice before he or she can qualify as a health professional. A woman cannot do clinical practice because of her impairment. The qualifying body may dispense with the requirement for clinical practice, and restrict the work she is allowed to perform under the qualification to teaching and research.

Division 3—Discrimination in education

38 Discrimination by educational authorities

- (1) An educational authority must not discriminate against a person—
- (a) in deciding who should be admitted as a student; or
 - (b) by refusing, or failing to accept, the person's application for admission as a student; or
 - (c) in the terms on which the authority admits the person as a student.
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- (2) An educational authority must not discriminate against a student—
 - (a) by denying or limiting access to any benefit provided by the authority; or
 - (b) by expelling the student; or
 - (c) by subjecting the student to any other detriment.

39 Exception—educational institutions for particular groups

An educational authority that operates an educational institution or program wholly or mainly for students of a particular sex, race, religious belief, age or age group or students with a general or particular impairment may exclude from that institution or program—

- (a) people who are not of the particular sex, race, religious belief, age or age group; or
- (b) people who do not have a general, or the particular, impairment.

40 Educational authority must make reasonable adjustments for person with an impairment

- (1) This section applies if a person with an impairment requires adjustments in order to participate in or continue to participate in or derive or continue to derive any substantial benefit from an educational program of an educational authority.
 - (2) The educational authority must make reasonable adjustments unless the person could not participate in or continue to participate in or derive or continue to derive any substantial benefit from the educational program even after the adjustments are made.
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Example

An educational authority may make reasonable adjustments for a person with an impairment by—

- providing a teacher's aide or particular software packages for computers;
- moving a particular course or event from an inaccessible venue to an accessible one.

- (3) In determining whether an adjustment is reasonable, all relevant facts and circumstances must be considered, including—
- (a) the person's circumstances, including the nature of his or her impairment; and
 - (b) the nature of the adjustment required to accommodate the person's impairment; and
 - (c) the effect on the person of making the adjustment, including the effect on the person's ability to—
 - (i) achieve learning outcomes;
 - (ii) participate in courses or programs;
 - (iii) work independently; and
 - (d) the effect on the educational authority, staff, other students or any other person of making the adjustment, including—
 - (i) the financial impact of making the adjustment;
 - (ii) the number of people who would benefit from or be disadvantaged by making the adjustment; and
 - (e) the consequences for the educational authority of making the adjustment; and
 - (f) the consequences for the person of not making the adjustment; and
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- (g) any relevant action plan made under Part 3 of the Disability Discrimination Act 1992 of the Commonwealth; and
- (h) if the educational authority is a public sector body within the meaning of section 38 of the **Disability Act 2006**, any relevant Disability Action Plan made under that section; and
- (i) any relevant disability standards made under the Disability Discrimination Act 1992 of the Commonwealth.

41 Exception—not reasonable for educational authority to make adjustments

An educational authority may discriminate against a person on the basis of the person's impairment if—

- (a) the person requires adjustments in order to participate in or continue to participate in or derive or continue to derive any substantial benefit from an educational program of the educational authority; and
 - (b) the educational authority has complied with section 40; and
 - (c) either—
 - (i) the adjustments are not reasonable, having regard to the facts and circumstances set out in section 40(3); or
 - (ii) the person could not or cannot participate in or continue to participate in or derive or continue to derive any substantial benefit from the educational program even after the adjustments are made.
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42 Exception—standards of dress and behaviour

- (1) An educational authority may set and enforce reasonable standards of dress, appearance and behaviour for students.
- (2) In relation to a school, without limiting the generality of what constitutes a reasonable standard of dress, appearance or behaviour, the views of the school community are a relevant factor in assessing the reasonableness of the standard.

43 Exception—age-based admission schemes and age quotas

An educational authority may select students for an educational program on the basis of an admission scheme—

- (a) that has a minimum qualifying age; or
- (b) that imposes quotas in relation to students of different ages or age groups.

Division 4—Discrimination in the provision of goods and services and disposal of land

44 Discrimination in the provision of goods and services

- (1) A person must not discriminate against another person—
 - (a) by refusing to provide goods or services to the other person; or
 - (b) in the terms on which goods or services are provided to the other person; or
 - (c) by subjecting the other person to any other detriment in connection with the provision of goods or services to him or her.

- (2) Subsection (1) applies whether or not the goods or services are provided for payment.

45 Service provider must make reasonable adjustments for person with an impairment

- (1) This section applies—
- (a) if a person with an impairment requires adjustments to be made to the provision of a service by another person (the *service provider*) in order to participate in or access the service or derive any substantial benefit from the service;
 - (b) whether or not the services are provided for payment.
- (2) The service provider must make reasonable adjustments unless the person could not participate in or access the service or derive any substantial benefit from the service even after the adjustments are made.

Example

A service provider may make reasonable adjustments for a person with an impairment by—

- including subtitles in recorded audio-visual presentations;
 - providing home delivery or making home visits.
- (3) In determining whether an adjustment is reasonable, all relevant facts and circumstances must be considered, including—
- (a) the person's circumstances, including the nature of his or her impairment; and
 - (b) the nature of the adjustment required to accommodate the person's impairment; and
 - (c) the financial circumstances of the service provider; and

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- (d) the effect on the service provider of making the adjustment, including—
 - (i) the financial impact of doing so;
 - (ii) the number of persons who would benefit from or be disadvantageded by doing so; and
 - (e) the consequences for the service provider of making the adjustment; and
 - (f) the consequences for the person of the service provider not making the adjustment; and
 - (g) any relevant action plan made under Part 3 of the Disability Discrimination Act 1992 of the Commonwealth; and
 - (h) if the service provider is a public sector body within the meaning of section 38 of the **Disability Act 2006**, any relevant Disability Action Plan made under that section; and
 - (i) any relevant disability standards made under the Disability Discrimination Act 1992 of the Commonwealth.

46 Exception—adjustments to provision of service not reasonable

A service provider may discriminate against a person on the basis of the person's impairment if—

- (a) the person requires adjustments to be made to the provision of a service by the service provider in order to participate in or access the service or derive any substantial benefit from the service; and
- (b) the service provider has complied with section 45; and

(c) either—

- (i) the adjustments are not reasonable, having regard to the facts and circumstances set out in section 45(3); or
- (ii) the person could not or cannot participate in or access the service or derive any substantial benefit from the service even after the adjustment is made.

47 Exception—insurance

(1) An insurer may discriminate against another person by refusing to provide an insurance policy to the other person, or in the terms on which an insurance policy is provided, if—

(a) the discrimination is permitted under—

- (i) the Sex Discrimination Act 1984 of the Commonwealth; or
- (ii) the Disability Discrimination Act 1992 of the Commonwealth; or
- (iii) the Age Discrimination Act 2004 of the Commonwealth; or

(b) the discrimination—

- (i) is based on actuarial or statistical data on which it is reasonable for the insurer to rely; and
- (ii) is reasonable having regard to that data and any other relevant factors; or

(c) in a case where no such actuarial or statistical data is available and cannot reasonably be obtained, the discrimination is reasonable having regard to any other relevant factors.

(2) In this section—

insurance policy includes an annuity, a life assurance policy, an accident insurance policy and an illness insurance policy;

insurer means a person who is in the business of providing insurance policies.

48 Exception—credit providers

(1) A credit provider may discriminate against an applicant for credit on the basis of age by refusing to provide credit, or in the terms on which credit is provided, if—

(a) the criteria for refusal or the terms imposed—

(i) are based on actuarial or statistical data on which it is reasonable for the credit provider to rely; and

(ii) are reasonable having regard to that data and any other relevant factors; or

(b) in a case where no such actuarial or statistical data is available and cannot reasonably be obtained, the criteria for refusal or the terms imposed are reasonable having regard to any other relevant factors.

(2) In this section *credit provider* means a person who provides credit in the course of a business carried on by that person.

49 Exception—supervision of children

A person may require, as a term of providing goods or services to a child, that the child be accompanied or supervised by an adult if there is a reasonable risk that, if unaccompanied or unsupervised, the child may—

- (a) cause a disruption; or
- (b) endanger himself or herself or any other person.

50 Discrimination in the disposal of land

- (1) A person must not discriminate against another person—
 - (a) by refusing to dispose of any land to the other person; or
 - (b) in the terms on which any land is offered to the other person.
- (2) Subsection (1) does not apply to the disposal or offering of a leasehold interest in land for the purpose of accommodation.
- (3) The provisions of this section apply despite anything to the contrary—
 - (a) in any Act, other than this Act or the Charter of Human Rights and Responsibilities; or
 - (b) in any document affecting or relating to the land; or
 - (c) if section 97 of the **Transfer of Land Act 1958** or the **Subdivision Act 1988** applies to the land, in any document created by or in relation to a service company or owners corporation referred to or established under either of those Acts in relation to the land.
- (4) A person is not personally liable for breach of any covenant or obligation contained in any document referred to in subsection (3) if the person would have contravened this section if the person had complied with the covenant or obligation.

51 Exception—disposal by will or gift

A person may discriminate against another person in the disposal of land by will or as a gift.

Division 5—Discrimination in accommodation

52 Discrimination in offering to provide accommodation

A person must not discriminate against another person—

- (a) by refusing, or failing to accept, the other person's application for accommodation; or
- (b) in the way in which the other person's application for accommodation is processed; or
- (c) in the terms on which accommodation is offered to the other person.

53 Discrimination in providing accommodation

A person must not discriminate against another person—

- (a) by varying the terms on which the accommodation is provided to the other person; or
- (b) by denying or limiting access by the other person to any benefit associated with the accommodation; or
- (c) by evicting the other person from the accommodation; or
- (d) by refusing to extend or renew the provision of accommodation to the other person; or
- (e) in the terms on which the provision of accommodation to the other person is extended or renewed; or
- (f) by subjecting the other person to any other detriment in connection with the provision of accommodation to that person.

54 Discrimination by refusing to allow assistance dogs

- (1) A person must not refuse to provide accommodation to a person with an impairment because that person has an assistance dog.
- (2) A person must not require, as a term of providing accommodation to a person with an impairment who has an assistance dog—
 - (a) that the dog be kept elsewhere; or
 - (b) that the person pay an extra charge because of the dog.
- (3) This section does not affect the liability of the person with the assistance dog for any damage caused by the dog.

55 Discrimination by refusing to allow alterations

- (1) A person who has provided accommodation to another person with an impairment must allow the other person to make reasonable alterations to that accommodation to meet his or her special needs if—
 - (a) the alterations are at the expense of the other person; and
 - (b) the alterations do not require any alterations to the premises of another occupier; and
 - (c) the action required to restore the accommodation to the condition it was in before the alterations is reasonably practicable in the circumstances; and
 - (d) the other person agrees to restore the accommodation to its previous condition before leaving it and it is reasonably likely that he or she will do so.
 - (2) This section is in addition to, and does not affect or take away from, any requirements imposed by or under the **Building Act 1993**.
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**56 Discrimination by refusing to allow alterations—
owners corporations**

- (1) This section applies if a person with an impairment—
 - (a) owns a lot affected by an owners corporation; or
 - (b) is an occupier of a lot affected by an owners corporation.
- (2) The owners corporation must allow the person to make reasonable alterations to common property to meet his or her special needs if—
 - (a) the alterations are at the expense of the person; and
 - (b) the alterations do not require any alterations to a lot occupied by another person; and
 - (c) the alterations do not adversely affect—
 - (i) the interests of another occupier of a lot affected by the owners corporation; or
 - (ii) the interests of an owner of another lot affected by the owners corporation; or
 - (iii) the interests of the owners corporation; or
 - (iv) the use of common property by another occupier of a lot or an owner of another lot affected by the owners corporation; and
 - (d) the action required to restore the common property to the condition it was in before the alterations is reasonably practicable in the circumstances; and

- (e) the person agrees to restore the common property to its previous condition before vacating the lot and it is reasonably likely that he or she will do so.

Example

An owners corporation may be able to allow the person to make reasonable alterations to the common property by—

- fixing a ramp to the external facade of the building;
- installing a mechanical device in the front door of the building to enable the person to open the door automatically.

- (3) This section is in addition to, and does not affect or take away from any requirements imposed by or under the **Building Act 1993**.

- (4) This section does not affect anything in—

- (a) Part 10 or 11 of the **Owners Corporations Act 2006**; or
- (b) Division 5 of Part 5 of the **Subdivision Act 1988**.

- (5) In this section—

common property and *lot affected by an owners corporation* have the meanings given in section 3 of the **Owners Corporation Act 2006**.

57 Discrimination in access to public premises

- (1) A person must not discriminate against another person on the basis of impairment in relation to any premises that the public or a section of the public is entitled or allowed to enter or use (whether or not for payment)—
- (a) by refusing to allow the other person access to, or the use of, the premises; or
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- (b) in the terms or conditions on which the other person is allowed access to, or the use of, the premises; or
 - (c) in relation to the provision of means of access to the premises; or
 - (d) by refusing to allow the other person the use of any facilities in the premises that the public or a sector of the public is entitled or allowed to use (whether or not for payment); or
 - (e) in the terms or conditions on which the other person is allowed the use of any facilities in the premises that the public or a section of the public is entitled or allowed to use (whether or not for payment); or
 - (f) by requiring the other person to leave the premises or cease to use any facilities in the premises that the public or a section of the public is entitled or allowed to use (whether or not for payment).
- (2) In this section and section 58—
- premises* includes—
- (a) a structure, building, aircraft, vehicle or vessel;
 - (b) a place, whether enclosed or built on or not;
 - (c) a part of premises.

58 Exception—access to or use of public premises unreasonable

- (1) A person may discriminate against another person on the basis of the other person's impairment in relation to any premises or facilities in the premises that the public or a section of the public is entitled or allowed to enter or use (whether or

not for payment) if the person could not reasonably be expected to avoid the discrimination.

- (2) In determining whether the person could be reasonably expected to avoid the discrimination, all relevant facts and circumstances must be considered, including—
- (a) the circumstances of the person with the impairment, including the nature of his or her impairment; and
 - (b) the nature of the measures required to provide or allow access to or use of the premises or facilities in the premises; and
 - (c) the financial circumstances of the person; and
 - (d) the consequences for the person of avoiding the discrimination; and
 - (e) the consequences for the person with the impairment of the person not avoiding the discrimination; and
 - (f) any relevant disability standards made under the Disability Discrimination Act 1992 of the Commonwealth.

59 Exception—shared accommodation

- (1) A person may discriminate in deciding who is to occupy residential accommodation—
- (a) in which the person or a near relative of the person lives and intends to continue to live; and
 - (b) that is to accommodate no more than 3 people in addition to a person or the near relatives of a person referred to in paragraph (a).
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(2) In this section—

near relative, in relation to a person, means—

- (a) a parent or grandparent, child or grandchild (whether or not under the age of 18) or brother or sister of that person; or
- (b) the spouse or domestic partner of that person or of a person referred to in paragraph (a).

60 Exception—welfare measures

A person may refuse to provide accommodation to another person in a hostel or similar institution established wholly or mainly for the welfare of persons of a particular sex, age, race or religious belief if the other person is not of that sex, age, race or religious belief.

61 Exception—accommodation for students

An educational authority that operates an educational institution wholly or mainly for students of a particular sex, race, religious belief, age or age group, or students with a general or particular impairment may provide accommodation wholly or mainly for—

- (a) students of that sex, race, religious belief, age or age group; or
- (b) students with a general, or the particular, impairment.

62 Exception—accommodation for commercial sexual services

A person may refuse to provide accommodation to another person if the other person intends to use the accommodation for, or in connection with, a lawful sexual activity on a commercial basis.

63 Application of this Division

- (1) The provisions of this Division apply despite anything to the contrary—
 - (a) in any document affecting or relating to the land on which the accommodation or premises is situated; or
 - (b) if the relevant accommodation is on land to which section 97 of the **Transfer of Land Act 1958** or the **Subdivision Act 1988** applies, in any document created by or in relation to a service company or owners corporation referred to or established under either of those Acts in relation to the land.
- (2) A person is not personally liable for breach of any covenant or obligation contained in any document referred to in subsection (1) if the person would have contravened a provision of this Division if the person had complied with the covenant or obligation.

Division 6—Discrimination by clubs and club members

64 Discrimination against applicants for membership

A club, or a member of the committee of management or other governing body of a club, must not discriminate against a person who applies for membership of the club—

- (a) in determining the terms of a particular category or type of membership of the club; or
- (b) in the arrangements made for deciding who should be offered membership; or
- (c) by refusing, or failing to accept, the person's application for membership; or

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- (d) in the way in which the person's application is processed; or
 - (e) in the terms on which the person is admitted as a member.

65 Discrimination against club members

A club, or a member of the committee of management or other governing body of a club, must not discriminate against a member of the club—

- (a) by refusing, or failing to accept, the member's application for a different category or type of membership; or
- (b) by denying or limiting access to any benefit provided by the club; or
- (c) by varying the terms of membership; or
- (d) by depriving the member of membership; or
- (e) by subjecting the member to any other detriment.

66 Exception—clubs for minority cultures

A club, or a member of the committee of management or other governing body of a club, may exclude from membership a person who is not a member of the group of people with an attribute for whom the club was established if the club operates principally to preserve a minority culture.

67 Exception—clubs and benefits for particular age groups

- (1) A club, or a member of the committee of management or other governing body of a club, may exclude a person from membership if—

- (a) the club exists principally to provide benefits for people of a particular age group; and
 - (b) the person is not in that age group.
- (2) A club, or a member of the committee of management or other governing body of a club, may restrict a benefit to members who are members of a particular age group, if it is reasonable to do so in the circumstances.

68 Exception—single sex clubs

- (1) A club, or a member of the committee of management or other governing body of a club, may exclude from membership a person on the basis of that person's sex if membership of the club is available only to persons of the opposite sex.
- (2) A club referred to in subsection (1) must make its rules of eligibility for membership publicly available, without charge.

69 Exception—separate access to benefits for men and women

A club, or a member of the committee of management or other governing body of a club, may limit a member's access to a benefit on the basis of the member's sex if—

- (a) it is not practicable for men and women to enjoy the benefit at the same time; and
 - (b) either—
 - (i) access to the same or an equivalent benefit is provided for men and women separately; or
 - (ii) men and women are each entitled to a reasonably equivalent opportunity to enjoy the benefit.
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Division 7—Discrimination in sport

70 Definitions

In this Division—

competitive sporting activity includes any exhibition or demonstration of a sport, but does not include—

- (a) the coaching of people engaged in a sporting activity; or
- (b) the umpiring or refereeing of a sporting activity; or
- (c) the administration of a sporting activity; or
- (d) the non-competitive practice of a sport;

participating in a sporting activity includes—

- (a) coaching people involved in a sporting activity;
- (b) umpiring or refereeing a sporting activity;
- (c) participating in the administration of a sporting activity;

sport and *sporting activity* include game and pastime.

71 Discrimination in sport

A person must not discriminate against another person—

- (a) by refusing or failing to select the other person in a sporting team; or
- (b) by excluding the other person from participating in a sporting activity.

72 Exception—competitive sporting activities

- (1) A person may exclude people of one sex or with a gender identity from participating in a competitive sporting activity in which the strength, stamina or physique of competitors is relevant.
- (2) A person may restrict participation in a competitive sporting activity—
 - (a) to people who can effectively compete; or
 - (b) to people of a specified age or age group; or
 - (c) to people with a general or particular impairment.
- (3) Subsection (1) does not apply to a sporting activity for children under the age of 12 years.

Division 8—Discrimination in local government

73 Discrimination by councillors

A councillor of a municipal council must not, in the performance of his or her public functions, discriminate against—

- (a) another councillor of that council; or
- (b) a member of a committee of that council who is not a councillor of that council.

74 Exception—political belief or activity

Section 73 does not apply to discrimination on the basis of political belief or activity.

**PART 5—GENERAL EXCEPTIONS TO AND EXEMPTIONS
FROM THE PROHIBITION OF DISCRIMINATION**

75 Things done with statutory authority

- (1) A person may discriminate if the discrimination is necessary to comply with, or is authorised by, a provision of—
 - (a) an Act, other than this Act; or
 - (b) an enactment, other than an enactment under this Act.
- (2) For the purpose of subsection (1), it is not necessary that the provision refer to discrimination, as long as it authorises or necessitates the relevant conduct that would otherwise constitute discrimination.
- (3) Sections 50(3) and 63(1) prevail over this section to the extent of any inconsistency between them.

76 Things done to comply with orders of courts and tribunals

A person may discriminate if the discrimination is necessary to comply with—

- (a) an order of the Tribunal; or
- (b) an order of any other tribunal or any court.

77 Pensions

Nothing in Part 4 affects discriminatory provisions relating to pensions.

78 Superannuation—existing fund conditions before 1 January 1996

- (1) A person may discriminate by retaining an existing superannuation fund condition in relation to a person who was a member of that fund at 1 January 1996 or who became a member of that fund within a period of 12 months after that date.

(2) In this section—

existing superannuation fund condition means, in relation to a superannuation fund, a condition of the fund, or of membership of the fund, that was in operation at 1 January 1996.

79 Superannuation—new fund conditions after 1 January 1996

- (1) A person may discriminate against another person on the basis of age by imposing conditions in relation to a superannuation fund if—
- (a) the discrimination occurs in the application of prescribed standards under the Superannuation (Self Managed Superannuation Funds) Taxation Act 1987 or Superannuation Industry (Supervision) Act 1993 of the Commonwealth; or
 - (b) the discrimination is required to comply with, obtain benefits, or avoid penalties under any other Commonwealth Act; or
 - (c) the discrimination is—
 - (i) based on actuarial or statistical data on which it is reasonable for the person to rely; and
 - (ii) reasonable having regard to that data and any other relevant factors; or
 - (d) in a case where no such actuarial or statistical data is available and cannot reasonably be obtained, the discrimination is reasonable having regard to any other relevant factors.
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- (2) A person may discriminate against another person—
- (a) on the basis of sex or marital status, by imposing conditions in relation to a superannuation fund if the discrimination is permitted under the Sex Discrimination Act 1984 of the Commonwealth; or
 - (b) on the basis of impairment, by imposing conditions in relation to a superannuation fund if the discrimination is permitted under the Disability Discrimination Act 1992 of the Commonwealth; or
 - (c) on the basis of age, by imposing conditions in relation to a superannuation fund if the discrimination is permitted under the Age Discrimination Act 2004 of the Commonwealth.

80 Charities

- (1) Nothing in Part 4 (including sections 50 and 63)—
- (a) affects a provision of a deed, will or other instrument that confers charitable benefits, or enables charitable benefits to be conferred; or
 - (b) prohibits anything that is done in order to give effect to such a provision.
- (2) This section applies to an instrument made before, on or after the commencement of this section.
- (3) In this section—
- charitable benefits* means benefits exclusively charitable according to Victorian law.

81 Definition of *religious body*

For the purposes of sections 82 and 83, *religious body* means—

- (a) a body established for a religious purpose; or
- (b) an entity that establishes, or directs, controls or administers, an educational or other charitable entity that is intended to be, and is, conducted in accordance with religious doctrines, beliefs or principles.

82 Religious bodies

- (1) Nothing in Part 4 applies to—
 - (a) the ordination or appointment of priests, ministers of religion or members of a religious order; or
 - (b) the training or education of people seeking ordination or appointment as priests, ministers of religion or members of a religious order; or
 - (c) the selection or appointment of people to perform functions in relation to, or otherwise participate in, any religious observance or practice.
 - (2) Nothing in Part 4 applies to anything done (except in relation to employment) on the basis of a person's religious belief or activity, sex, sexual orientation, lawful sexual activity, marital status, parental status or gender identity by a religious body that—
 - (a) conforms with the doctrines, beliefs or principles of the religion; or
 - (b) is reasonably necessary to avoid injury to the religious sensitivities of adherents of the religion.
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- (3) Nothing in Part 4 applies to anything done in relation to the employment of a person by a religious body where—
 - (a) conformity with the doctrines, beliefs or principles of the religion is an inherent requirement of the particular position; and
 - (b) the person's religious belief or activity, sex, sexual orientation, lawful sexual activity, marital status, parental status or gender identity means that he or she does not meet that inherent requirement.
- (4) The nature of the religious body and the religious doctrines, beliefs or principles in accordance with which it is conducted must be taken into account in determining what is an inherent requirement for the purposes of subsection (3).

83 Religious schools

- (1) This section applies to a person or body, including a religious body, that establishes, directs, controls, administers or is an educational institution that is, or is to be, conducted in accordance with religious doctrines, beliefs or principles.
 - (2) Nothing in Part 4 applies to anything done (except in relation to employment) on the basis of a person's religious belief or activity, sex, sexual orientation, lawful sexual activity, marital status, parental status or gender identity by a person or body to which this section applies in the course of establishing, directing, controlling or administering the educational institution that—
 - (a) conforms with the doctrines, beliefs or principles of the religion; or
 - (b) is reasonably necessary to avoid injury to the religious sensitivities of adherents of the religion.
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- (3) Nothing in Part 4 applies to anything done in relation to the employment of a person by a person or body to which this section applies where—
- (a) conformity with the doctrines, beliefs or principles of the religion is an inherent requirement of the particular position; and
 - (b) the person's religious belief or activity, sex, sexual orientation, lawful sexual activity, marital status, parental status or gender identity means that he or she does not meet that inherent requirement.
- (4) The nature of the educational institution and the religious doctrines, beliefs or principles in accordance with which it is conducted must be taken into account in determining what is an inherent requirement for the purposes of subsection (3).

84 Religious beliefs or principles

Nothing in Part 4 applies to discrimination by a person against another person on the basis of that person's religious belief or activity, sex, sexual orientation, lawful sexual activity, marital status, parental status or gender identity if the discrimination is reasonably necessary for the first person to comply with the doctrines, beliefs or principles of their religion.

85 Legal incapacity and age of majority

- (1) Nothing in this Act is intended to affect the law in relation to the legal capacity or incapacity of any person or the age of majority.

- (2) A person may discriminate against another person if—
- (a) the other person is subject to a legal incapacity because of his or her age or impairment; and
 - (b) the incapacity is relevant to the transaction or activity in which they are involved.

Example

A service provider may refuse to enter into a contract with a child who, because of his or her age, does not have legal capacity to enter the contract.

86 Protection of health, safety and property

- (1) A person may discriminate against another person on the basis of impairment or physical features if the discrimination is reasonably necessary—
- (a) to protect the health or safety of any person (including the person discriminated against) or of the public generally; or
 - (b) to protect the property of any person (including the person discriminated against) or any public property.
- (2) A person may discriminate against another person on the basis of pregnancy if the discrimination is reasonably necessary to protect the health or safety of any person (including the person discriminated against).

87 Age benefits and concessions

A person may provide benefits, including concessions, to another person based on age.

88 Special needs

- (1) A person may establish special services, benefits or facilities that meet the special needs of people with a particular attribute and may limit eligibility for such services to people with the particular attribute.

Example

A community organisation establishes a support group for single fathers in response to research that shows that single fathers have a need for targeted counselling and support.

- (2) A person does not discriminate by establishing special services, benefits or facilities, or by limiting eligibility for such services in accordance with subsection (1).
- (3) Without limiting the generality of subsection (1)—
 - (a) a person may grant a woman any right, privilege or benefit in relation to pregnancy or childbirth;
 - (b) a person may provide, or restrict the offering of, holiday tours to people of a particular age or age group.

89 Exemptions by the Tribunal

- (1) The Tribunal, by notice published in the Government Gazette, may grant an exemption—
 - (a) from any of the provisions of this Act in relation to—
 - (i) a person or class of people; or
 - (ii) an activity or class of activities; or
 - (b) from any of the provisions of this Act in any other circumstances specified by the Tribunal.
 - (2) An exemption remains in force for the period, not exceeding 5 years, that is specified in the notice.
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- (3) The Tribunal, by notice published in the Government Gazette—
- (a) may renew an exemption from time to time for the period, not exceeding 5 years, specified in the notice;
 - (b) may revoke an exemption with effect from the date specified in the notice, which must be a date not less than 3 months after the date the notice is published.
- (4) An exemption may be granted or renewed subject to any conditions the Tribunal thinks fit.
- (5) An exemption may be granted, renewed or revoked—
- (a) on the application of a person whose interests, in the opinion of the Tribunal, are or may be affected by the exemption; or
 - (b) on the Tribunal's own initiative.

90 Factors to be considered by Tribunal

In deciding whether to grant, renew or revoke an exemption, the Tribunal must consider—

- (a) whether the proposed exemption is unnecessary because—
 - (i) an exception or exemption in this Act already applies to the conduct sought to be exempted; or
 - (ii) the conduct sought to be exempted would not amount to prohibited discrimination; and
 - (b) whether the proposed exemption is a reasonable limitation on the right to equality set out in the Charter of Human Rights and Responsibilities; and
 - (c) all the relevant circumstances of the case.
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Part 5—General Exceptions to and Exemptions from the Prohibition of
Discrimination

91 Applicant to give notice to Commission

An applicant for the grant, renewal or revocation
of an exemption under section 89 must give a
copy of the application to the Commission.

PART 6—PROHIBITION OF SEXUAL HARASSMENT

92 What is sexual harassment?

- (1) For the purpose of this Act, a person sexually harasses another person if he or she—
- (a) makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person; or
 - (b) engages in any other unwelcome conduct of a sexual nature in relation to the other person—

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated.

- (2) In subsection (1) *conduct of a sexual nature* includes—
- (a) subjecting a person to any act of physical intimacy;
 - (b) making, orally or in writing, any remark or statement with sexual connotations to a person or about a person in his or her presence;
 - (c) making any gesture, action or comment of a sexual nature in a person's presence.

93 Harassment by employers and employees

- (1) An employer must not sexually harass—
- (a) a person seeking employment with that employer; or
 - (b) an employee of that employer.

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- (2) An employee must not sexually harass—
- (a) another person employed by his or her employer; or
 - (b) his or her employer; or
 - (c) a person seeking employment with his or her employer.
- (3) For the purposes of this section—
- (a) a municipal councillor is to be taken to be an employer of employees of that council;
 - (b) a member of the governing body (however called) of a body corporate or unincorporated association is to be taken to be an employer of employees of that body corporate or unincorporated association.

94 Harassment in common workplaces

- (1) A person must not sexually harass another person at a place that is a workplace of both of them.
- (2) For the purposes of this section it is irrelevant—
- (a) whether each person is an employer, an employee or neither; and
 - (b) if they are employees, whether their employers are the same or different.
- (3) In this section *workplace* means any place where a person attends for the purpose of carrying out any functions in relation to his or her employment, occupation, business, trade or profession and need not be a person's principal place of business or employment.

95 Harassment by partners

A partner in a firm must not sexually harass—

- (a) a person seeking admission to that firm as a partner; or
- (b) another partner in that firm.

96 Harassment in industrial organisations

(1) A member of an industrial organisation must not sexually harass—

- (a) a person seeking to become a member of that organisation; or
- (b) another member of that organisation; or
- (c) an employee of that organisation.

(2) An employee of an industrial organisation must not sexually harass—

- (a) a person seeking to become a member of that organisation; or
- (b) a member of that organisation.

97 Harassment by members of qualifying bodies

(1) A member of a qualifying body must not sexually harass—

- (a) a person seeking action in connection with an occupational qualification; or
- (b) another member of that qualifying body; or
- (c) an employee of that qualifying body.

(2) An employee of a qualifying body must not sexually harass—

- (a) a person seeking action in connection with an occupational qualification; or
- (b) a member of that qualifying body.

- (3) In this section *action in connection with an occupational qualification* means conferring, renewing, extending, revoking or withdrawing an occupational qualification.

98 Harassment in educational institutions

- (1) An employee of an educational institution must not sexually harass—
- (a) a person seeking admission to that institution as a student; or
 - (b) a student at that institution.
- (2) A student at an educational institution must not sexually harass—
- (a) another student at that institution; or
 - (b) an employee of that institution; or
 - (c) a member of the educational authority administering that institution.
- (3) A member of an educational authority must not sexually harass—
- (a) a person seeking admission to the institution administered by the authority as a student; or
 - (b) a student at that institution.

99 Harassment in the provision of goods and services

- (1) A person must not sexually harass another person in the course of providing, or offering to provide, goods or services to that other person.
- (2) A person must not sexually harass another person in the course of receiving or selecting goods or services provided by that other person.
- (3) This section applies whether or not the goods or services are provided or received for payment.

100 Harassment in the provision of accommodation

A person must not sexually harass another person in the course of providing, or offering to provide, accommodation to that other person.

101 Harassment in clubs

A member of a club, including a member of the committee of management or other governing body of the club, must not sexually harass—

- (a) a person seeking to become a member of the club; or
- (b) another member of the club; or
- (c) an employee of the club.

102 Harassment in local government

A councillor of a municipal council must not sexually harass—

- (a) another councillor of that council; or
 - (b) a member of a committee of that council who is not a councillor of that council.
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**PART 7—PROHIBITION OF OTHER CONDUCT AND
VICARIOUS LIABILITY FOR DISCRIMINATION**

Division 1—Victimisation

103 Prohibition of victimisation

A person must not victimise another person.

104 What is victimisation?

- (1) A person victimises another person if the person subjects or threatens to subject the other person to any detriment because the other person, or a person associated with the other person—
 - (a) has brought a dispute to the Commissioner for dispute resolution; or
 - (b) has made a complaint against any person under the old Act; or
 - (c) has brought any other proceedings under this Act or the old Act against any person; or
 - (d) has given evidence or information, or produced a document, in connection with—
 - (i) any proceedings under this Act or the old Act; or
 - (ii) any investigation or public inquiry conducted by the Commission; or
 - (e) has attended a compulsory conference or mediation at the Tribunal in any proceedings under this Act or the old Act; or
 - (f) has otherwise done anything in accordance with this Act or the old Act in relation to any person; or
 - (g) has alleged that any person has contravened a provision of Part 4 or 6 or this Part, or Part 3, 5 or 6 of the old Act, unless the

allegation is false and was not made in good faith; or

- (h) has refused to do anything that—
 - (i) would contravene a provision of Part 4 or 6 or this Part; or
 - (ii) would have contravened a provision of Part 3, 5 or 6 of the old Act—

or because the person believes that the other person or the associate has done or intends to do any of those things.

- (2) It is sufficient for subsection (1)(g) that the allegation states the act or omission that would constitute the contravention without actually stating that this Act, or a provision of this Act, has been contravened.
- (3) In determining whether a person victimises another person it is irrelevant—
 - (a) whether or not a factor in subsection (1) is the only or dominant reason for the treatment or threatened treatment provided that it is a substantial reason;
 - (b) whether the person acts alone or in association with any other person.
- (4) In this section, *old Act* means the **Equal Opportunity Act 1995**, as in force before its repeal.

Division 2—Authorising or assisting discrimination

105 Prohibition of authorising or assisting discrimination

A person must not request, instruct, induce, encourage, authorise or assist another person to contravene a provision of Part 4 or 6 or this Part.

106 Liability of person who authorises or assists

If, as a result of a person doing any of the things specified in section 105, the other person contravenes a provision of Part 4 or 6 or this Part, a person may—

(a) bring a dispute to the Commissioner for dispute resolution; or

(b) make an application to the Tribunal—

against either the person who authorises or assists or the person who contravenes a provision of Part 4 or 6 or this Part or both of those persons.

Division 3—Discriminatory requests for information

107 Prohibition on requesting discriminatory information

- (1) A person must not request or require another person to supply information that could be used by the first person to form the basis of discrimination against the other person.
- (2) For the purpose of subsection (1), it is irrelevant whether the request or requirement is made orally, in writing, in an application form or otherwise.

108 Exception—information required for purposes not involving prohibited discrimination

- (1) A person may request or require another person to supply information that could be used by the first person to form the basis of discrimination against the other person if the information is reasonably required for a purpose that does not involve prohibited discrimination.
- (2) A person who requests or requires another person to supply information referred to in subsection (1) has the burden of proving that the information is

reasonably required for a purpose that does not involve prohibited discrimination.

- (3) A person who requests or requires another person to supply information referred to in subsection (1)—
- (a) must not directly or indirectly disclose or communicate the information to any person unless it is necessary to do so for the purpose that does not involve prohibited discrimination; and
 - (b) must destroy or permanently de-identify the information when it is no longer required for the purpose that does not involve prohibited discrimination.
- (4) A person who requests or requires another person to supply information referred to in subsection (1) must not be required—
- (a) to produce in a court any document containing the information; or
 - (b) to disclose or communicate to any court the information—
- unless it is necessary to do so for the purposes of subsection (2).
- (5) In subsection (4), *produce* includes permit access to.

Division 4—Vicarious liability

109 Vicarious liability of employers and principals

If a person in the course of employment or while acting as an agent—

- (a) contravenes a provision of Part 4 or 6 or this Part; or

(b) engages in any conduct that would, if engaged in by the person's employer or principal, contravene a provision of Part 4 or 6 or this Part—

both the person and the employer or principal must be taken to have contravened the provision and a person may bring a dispute to the Commissioner for dispute resolution or make an application to the Tribunal against either or both of them.

110 Exception to vicarious liability

An employer or principal is not vicariously liable for a contravention of a provision of Part 4 or 6 or this Part by an employee or agent if the employer or principal proves, on the balance of probabilities, that the employer or principal took reasonable precautions to prevent the employee or agent contravening this Act.

PART 8—DISPUTES

Division 1—Dispute resolution by the Commissioner

111 Functions of the Commissioner

The Commissioner has the following functions in relation to dispute resolution—

- (a) to offer services designed to facilitate resolution of disputes;
- (b) to establish policies and issue procedures and directions on the manner in which dispute resolution under this Act should be conducted.

112 Principles of dispute resolution offered by the Commissioner

The principles of dispute resolution offered by the Commissioner are that—

- (a) dispute resolution should be provided as early as possible; and
- (b) the type of dispute resolution offered should be appropriate to the nature of the dispute; and
- (c) the dispute resolution process is fair to all parties; and
- (d) dispute resolution is voluntary; and
- (e) dispute resolution should be consistent with the objectives of this Act.

113 Who may bring a dispute to the Commissioner?

- (1) The following persons may bring a dispute to the Commissioner for dispute resolution—
- (a) a person who claims that another person has contravened a provision of Part 4, 6 or 7 in relation to that person;
 - (b) if that person is unable to bring a dispute because of impairment—
 - (i) a person authorised by that person to act on his or her behalf; or
 - (ii) if that person is unable to authorise another person, any other person on his or her behalf;
 - (c) if that person is a child—
 - (i) the child; or
 - (ii) a parent of the child on the child's behalf; or
 - (iii) if the Commissioner is satisfied that the child or a parent of the child consents, any other person on the child's behalf.
- (2) A person may bring a dispute on behalf of the person and another person or persons if the Commissioner is satisfied that—
- (a) each person—
 - (i) is entitled to bring a dispute under subsection (1)(a); and
 - (ii) has consented to the dispute being brought on the person's behalf; and
 - (b) the alleged contravention arises out of the same conduct.

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- (3) An authorisation under subsection (1)(b)(i) may be given—
- (a) in writing; or
 - (b) in any other manner approved by the Commissioner.
- (4) Two or more people may jointly bring a dispute to the Commissioner for dispute resolution.
- (5) It is not necessary for the alleged contravention to relate exclusively to the person bringing the dispute.

114 Representative body may bring a dispute to the Commissioner

- (1) A representative body may bring a dispute to the Commissioner for dispute resolution on behalf of a named person or persons if the Commissioner is satisfied that—
- (a) each person—
 - (i) is entitled to bring a dispute under section 113(1)(a); and
 - (ii) has consented to the dispute being brought by the body on the person's behalf; and
 - (b) the representative body has a sufficient interest in the dispute; and
 - (c) if the dispute is brought on behalf of more than one person, the alleged contravention arises out of the same conduct.
- (2) A representative body has sufficient interest in a dispute if the conduct that constitutes the alleged contravention is a matter of genuine concern to the body because of the way conduct of that nature adversely affects or has the potential to adversely affect the interests of the body or the interests or welfare of the persons it represents.
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115 Beginning and end of dispute resolution

- (1) Dispute resolution starts when the person bringing the dispute informs the Commissioner that he or she wishes to proceed with dispute resolution.
- (2) Dispute resolution ends when the earliest of the following occurs—
 - (a) the Commissioner declines to provide or to continue to provide dispute resolution under section 116;
 - (b) a party withdraws from dispute resolution under section 118;
 - (c) the parties to the dispute reach agreement about the subject matter of the dispute.

116 Discretion to decline to provide or continue dispute resolution

The Commissioner may decline to provide or to continue to provide dispute resolution for any of the following reasons—

- (a) the alleged contravention occurred more than 12 months before the dispute was brought;
 - (b) the matter has been adequately dealt with by a court or tribunal;
 - (c) the matter involves subject matter that would be more appropriately dealt with by a court or tribunal;
 - (d) a person has initiated proceedings in another forum;
 - (e) having regard to all the circumstances, the Commissioner considers it is not appropriate to provide or to continue to provide dispute resolution.
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117 Admissibility of information gathered during dispute resolution

- (1) Evidence of anything said or done in the course of dispute resolution is inadmissible in proceedings before the Tribunal or any other legal proceeding relating to the subject matter of the dispute.
- (2) This section applies despite section 131 of the **Evidence Act 2008**.

118 Withdrawal from dispute resolution

- (1) A party to a dispute may withdraw from dispute resolution at any time by informing the Commissioner that the party no longer wishes to participate in the dispute resolution.
- (2) Withdrawal from dispute resolution does not prevent a person making an application to the Tribunal under this Act or commencing proceedings in another jurisdiction.

119 Settlement agreements

- (1) This section applies if, following dispute resolution, the parties to the dispute reach agreement with respect to the subject matter of the dispute.
 - (2) Any party may request that a written record of agreement be prepared by the parties or the Commissioner.
 - (3) A request must be made within 30 days after the agreement is reached.
 - (4) If a record of agreement is prepared by the Commissioner following a request under subsection (2)—
 - (a) the record must be signed by or on behalf of each party; and
 - (b) the Commissioner must certify the record of agreement.
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- (5) If a record of agreement is prepared by the parties following a request under subsection (2)—
 - (a) the record must be signed by or on behalf of each party; and
 - (b) on the request of a party, the Commissioner may certify the record of agreement.
 - (6) If the Commissioner certifies the record of agreement under subsection (4)(b) or (5)(b), the Commissioner must give each party a copy of the signed and certified record.
 - (7) The refusal of the Commissioner to certify the record of agreement does not affect the validity of the agreement.

120 Registration of settlement agreements

- (1) Any party, after notifying the other party in writing, may lodge a copy of the signed and certified record of agreement with the Tribunal for registration.
 - (2) Subject to subsection (3), the Tribunal must register the agreement and give a certified copy of the registered record to each party.
 - (3) If the Tribunal, constituted by a presidential member, considers that it may not be practicable to enforce, or to supervise compliance with, an agreement or part of an agreement the Tribunal—
 - (a) in the case of an agreement, may refuse to register the record of agreement; or
 - (b) in the case of part of an agreement, may refuse to register the part of the record of agreement that it considers may not be practicable to enforce, or to supervise compliance with.
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- (4) On registration, the registered agreement or registered part of the agreement must be taken to be an order of the Tribunal in accordance with its terms and may be enforced accordingly.
 - (5) The refusal of the Tribunal to register the record of agreement or any part of the record of agreement does not affect the validity of the agreement.

121 Tribunal may make interim orders to prevent prejudice to dispute resolution

- (1) The Tribunal may make an interim order to prevent any party to a dispute from acting in a manner prejudicial to dispute resolution or to any decision or order the Tribunal might subsequently make.
- (2) An application for an order under subsection (1) may be made by—
 - (a) a person bringing the dispute to the Commissioner for dispute resolution; or
 - (b) the Commissioner.
- (3) An application may be made at any time before an application under section 122 relating to the dispute has been made to the Tribunal.
- (4) In making an interim order, the Tribunal must have regard to—
 - (a) whether or not the person bringing the dispute has established a prima facie case with respect to the dispute; and
 - (b) any possible detriment or advantage to the public interest in making the order; and
 - (c) any possible detriment to the case of the person bringing the dispute if the order is not made.

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- (5) An interim order applies for the period, not exceeding 28 days, specified in it and may be extended from time to time by the Tribunal.
 - (6) The party against whom the interim order is sought is a party to the proceeding on an application under subsection (2).
 - (7) Nothing in this section affects or takes away from the Tribunal's power under section 123 of the **Victorian Civil and Administrative Tribunal Act 1998** to make orders of an interim nature in a proceeding in the Tribunal.

Division 2—Applications to the Tribunal

122 Application may be made to Tribunal in respect of dispute

A person may make an application to the Tribunal in respect of an alleged contravention of Part 4, 6 or 7, whether or not the person has brought a dispute to the Commissioner for dispute resolution.

123 Who can apply?

- (1) The following persons may make an application to the Tribunal under section 122—
 - (a) a person who claims that another person has contravened a provision of Part 4, 6 or 7 in relation to that person;
 - (b) if that person is unable to make an application because of impairment—
 - (i) a person authorised by that person to act on his or her behalf; or
 - (ii) if that person is unable to authorise another person, any other person on his or her behalf;

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- (c) if that person is a child—
- (i) the child; or
 - (ii) a parent of the child on the child's behalf; or
 - (iii) if the Tribunal is satisfied that the child or a parent of the child consents, any other person on the child's behalf.
- (2) A person may make an application on behalf of the person and another person or persons if the Tribunal is satisfied that—
- (a) each person—
 - (i) is entitled to make an application under subsection (1)(a); and
 - (ii) has consented to the application being made on the person's behalf; and
 - (b) the alleged contravention arises out of the same conduct.
- (3) An authorisation under subsection (1)(b)(i) may be given—
- (a) in writing; or
 - (b) in any other manner approved by the Tribunal.
- (4) It is not necessary for the alleged contravention to relate exclusively to the person making the application.

124 Representative body may apply to Tribunal

- (1) A representative body may make an application to the Tribunal on behalf of a named person or persons if the Tribunal is satisfied that—
- (a) each person—
 - (i) is entitled to make an application under section 123(1)(a); and

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- (ii) has consented to the application being made by the body on the person's behalf; and
 - (b) the representative body has a sufficient interest in the application; and
 - (c) if the application is made on behalf of more than one person, the alleged contravention arises out of the same conduct.
- (2) A representative body has sufficient interest in an application if the conduct that constitutes the alleged contravention is a matter of genuine concern to the body because of the way conduct of that nature adversely affects or has the potential to adversely affect the interests of the body or the interests or welfare of the persons it represents.

125 What may the Tribunal decide?

After hearing the evidence and representations that the parties to an application desire to adduce or make, the Tribunal may—

- (a) find that a person has contravened a provision of Part 4, 6 or 7 and make any one or more of the following orders—
 - (i) an order that the person refrain from committing any further contravention of this Act;
 - (ii) an order that the person pay to the applicant, within a specified period, an amount the Tribunal thinks fit to compensate the applicant for loss, damage or injury suffered in consequence of the contravention;
 - (iii) an order that the person do anything specified in the order with a view to redressing any loss, damage or injury

suffered by the applicant as a result of the contravention; or

- (b) find that a person has contravened a provision of Part 4, 6 or 7 but decline to take any further action; or
- (c) find that a person has not contravened a provision of Part 4, 6 or 7 and make an order that the application or part of the application be dismissed.

126 Commission may apply to enforce order of Tribunal

- (1) This section applies if—
 - (a) the Tribunal has made an order referred to in section 125(a); and
 - (b) a person has failed to comply with the order.
- (2) If the applicant consents, the Commission may enforce the order on behalf of the applicant in accordance with section 121(1) or 122(1) of the **Victorian Civil and Administrative Tribunal Act 1998**.

Note

If the Commission enforces the order in accordance with section 121(1) or 122(1) of the **Victorian Civil and Administrative Tribunal Act 1998**, the applicant may subsequently enforce that order as an order of the court. See sections 121(3) and 122(3) of the **Victorian Civil and Administrative Tribunal Act 1998**.

PART 9—INVESTIGATIONS AND PUBLIC INQUIRIES

Division 1—Commission may conduct investigation or public inquiry

127 When investigation may be conducted

The Commission may conduct an investigation into any matter relating to the operation of this Act—

- (a) that raises an issue that is serious in nature; and
- (b) that indicates a possible contravention of this Act; and
- (c) that relates to a class or group of persons—

if the investigation would advance the objectives of this Act.

Example

An organisation has a policy that indirectly discriminates against persons with a particular attribute. The Commission has received several calls complaining about this policy and the policy has received media attention. Although some claims that the policy is discriminatory have been settled on an individual basis, the policy has not been changed. The Commission may decide that, in these circumstances, an investigation could help identify and eliminate a systemic cause of discrimination.

128 When public inquiry may be conducted

- (1) The Commission may recommend to the Attorney-General that the Commission conduct a public inquiry into a matter relating to the operation of this Act—
 - (a) that raises an issue that is serious in nature; and

(b) that relates to a class or group of persons—
if the Commission considers that it is in the public
interest.

- (2) The Commission may commence a public inquiry
with the consent of the Attorney-General.

**129 Matters referred by Tribunal for investigation or
public inquiry**

The Tribunal may refer a matter (other than a
matter that is the subject of proceedings before the
Tribunal) to the Commission to consider—

- (a) whether the Commission should conduct an
investigation;
- (b) whether the Commission should recommend
to the Attorney-General that the Commission
conduct a public inquiry.

Division 2—Conduct of investigations and public inquiries

**130 Commission to conduct investigation or public
inquiry as it thinks fit**

- (1) Subject to this Part, the Commission may conduct
an investigation or public inquiry in the manner it
thinks fit.
- (2) In conducting an investigation or public inquiry
the Commission is bound by the principles of
natural justice, unless otherwise expressly
provided in this Part.

131 Hearing for public inquiry to be held in public

- (1) If the Commission decides to hold a hearing for
the purposes of conducting a public inquiry, the
hearing must be held in public.

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- (2) Despite subsection (1), the hearing may be closed if the Commission has made—
- (a) a direction under section 136 prohibiting disclosure of a person's identity or information that would be reasonably likely to identify a person; or
 - (b) a direction under section 137 prohibiting or limiting the publication of evidence, information or the contents of any document.

132 Power to compel production of information or documents

- (1) If the Commission reasonably believes that—
- (a) a person is in possession of information or a document that is relevant to an investigation or public inquiry; and
 - (b) the information or document is necessary for the conduct of the investigation or public inquiry—

the Commission may by written notice require the person to provide the information or document or both.

- (2) A notice referred to in subsection (1) must specify that the person must do either or both of the following within a reasonable period specified in the notice, or on a reasonable date and at a reasonable time specified in the notice—
- (a) give the Commission a document containing information required by the notice;
 - (b) produce to the Commission the documents specified in the notice.
- (3) A document referred to in subsection (2)(a) must be signed by the person or, in the case of a notice served on a body corporate, an officer of the body corporate.
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- (4) If a document is produced to the Commission in accordance with a notice under this section, the Commission may—
- (a) take possession of the document; and
 - (b) make copies of the document or take extracts from the document; and
 - (c) retain possession of the document for as long as is necessary for the purposes of the investigation or public inquiry to which the document relates.
- (5) The Commission must allow a document retained under this section to be inspected, at all reasonable times, by any person who would be entitled to inspect the document if it were not in the possession of the Commission.

133 Power to compel attendance

- (1) If the Commission reasonably believes that—
- (a) a person has information that is relevant to an investigation or public inquiry; and
 - (b) the information is necessary for the conduct of the investigation or public inquiry—
- the Commission may by written notice require the person to attend before the Commission, at a reasonable time and place, to answer questions.
- (2) A person who is required under this section to attend before the Commission—
- (a) is entitled to be paid a reasonable sum for his or her attendance; and
 - (b) is entitled to have a legal or personal representative present.

134 Compliance with notice requiring attendance or production of documents

A person must not, without reasonable excuse, fail to comply with a notice of the Commission under section 132 or 133.

Penalty: 60 penalty units in the case of a natural person;
300 penalty units in the case of a body corporate.

135 Protection against self-incrimination

It is a reasonable excuse for a natural person to refuse to give information, answer a question or produce a document under this Act if the giving of the information, the answering of the question or the production of the document would tend to incriminate the person.

136 Disclosure of identity of persons who give information or documents

- (1) This section applies to a person who has given or who will give evidence, information or documents to the Commission as part of an investigation or public inquiry, whether or not the person is compelled to do so under section 132 or 133.
 - (2) The Commission may give directions prohibiting the disclosure of the identity of the person or prohibiting the disclosure of information that would be reasonably likely to identify the person if the Commission considers that preservation of the person's anonymity is necessary—
 - (a) to protect the person's security of employment, privacy or any right protected by the Charter of Human Rights and Responsibilities; or
 - (b) to protect the person from victimisation.
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137 Publication of evidence, information or documents

- (1) The Commission may give directions prohibiting or limiting the publication of—
 - (a) any evidence given before the Commission or any information given to the Commission as part of an investigation or public inquiry; or
 - (b) the contents of any document produced to the Commission as part of an investigation or public inquiry.
 - (2) Subsection (1) applies whether or not a person was compelled to give the evidence or produce the information or document under section 132 or 133.
 - (3) In deciding whether or not to give a direction under subsection (1), the Commission must have regard to the need to prevent such of the following as are relevant to the circumstances—
 - (a) prejudice to the relations between the Government and the Commonwealth Government or between the Government and the Government of another State or a Territory; or
 - (b) the disclosure of deliberations or decisions of the Cabinet, or of a Committee of the Cabinet; or
 - (c) prejudice to the proper functioning of the Government; or
 - (d) the disclosure, or the ascertaining by a person, of the existence or identity of a confidential source of information in relation to the enforcement of the criminal law; or
 - (e) the endangering of the life or physical safety of any person; or
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- (f) prejudice to the proper enforcement of the law or the protection of public safety; or
- (g) the disclosure of information the disclosure of which is prohibited, absolutely or subject to qualifications, by or under another Act; or
- (h) the unreasonable disclosure of the personal affairs of any person; or
- (i) the unreasonable disclosure of confidential commercial information.

138 Tribunal may make interim orders to prevent prejudice to investigation or public inquiry

- (1) The Commission may apply to the Tribunal for an interim order to prevent any person from acting in a manner prejudicial to an investigation or public inquiry while the investigation or public inquiry is being conducted.
- (2) In making an interim order, the Tribunal must have regard to any possible detriment or advantage to the public interest in making the order.
- (3) An interim order applies for the period, not exceeding 28 days, specified in it and may be extended from time to time by the Tribunal.
- (4) The person against whom the order is sought is a party to a proceeding on an application under subsection (1).
- (5) Nothing in this section affects or takes away from the Tribunal's power under section 123 of the **Victorian Civil and Administrative Tribunal Act 1998** to make orders of an interim nature.

Division 3—Outcomes of investigations and public inquiries

139 Outcome of an investigation

- (1) After conducting an investigation, the Commission may take any action it thinks fit.
- (2) Without limiting subsection (1), the Commission may—
 - (a) take no further action;
 - (b) enter into an agreement with a person about action required to comply with this Act;
 - (c) accept an enforceable undertaking under Division 4;
 - (d) issue a compliance notice to a person in accordance with Division 4.

140 Outcome of a public inquiry

- (1) After conducting a public inquiry, the Commission may provide a report on the public inquiry to the Attorney-General.
- (2) If the Commission provides a report to the Attorney-General under subsection (1), the Attorney-General may cause a copy of that report to be laid before each House of Parliament.
- (3) The Commission may publish a report on a public inquiry, whether or not the report has been provided to the Attorney-General.

141 Content of reports

- (1) If the Commission believes there are grounds for making adverse findings about a person in the report of a public inquiry, the Commission must give the person a reasonable opportunity to comment on the subject matter of the public inquiry and respond to the grounds for making the adverse findings before—

-
- (a) providing the report to the Attorney-General;
or
- (b) publishing the report.
- (2) The Commission may exclude from the report any matter if it considers it desirable to do so, having regard to the factors set out in section 136(2) or 137(3).
- (3) If the Commission provides the report to the Attorney-General, the Commission must advise the Attorney-General about any matter excluded from the report under subsection (2) and the reasons for its exclusion.

142 Report on public inquiry not prohibited disclosure

Section 176 does not apply to a report published or provided to the Attorney-General under this Division.

Division 4—Enforceable undertakings and compliance notices

143 Definition

In this Division—

unlawful act means a contravention of section 15 or a provision of Part 4, 6 or 7.

144 Enforceable undertakings

If, following an investigation, the Commission believes that an unlawful act has occurred, is occurring or is likely to occur, the Commission may accept a written undertaking from a person under which the person undertakes to take certain actions or refrain from taking certain actions to comply with this Act.

145 Register of enforceable undertakings

The Commission may keep a register of enforceable undertakings that is available to the public.

146 Compliance notices

- (1) If, following an investigation, the Commission believes that an unlawful act has occurred or is occurring, the Commission may issue a compliance notice to a person responsible for the unlawful act.
- (2) A compliance notice must set out the following—
 - (a) the basis for the Commission's belief that an unlawful act has occurred or is occurring;
 - (b) the provisions of this Act that the Commission believes the person has contravened;
 - (c) the date by which the person must remedy the unlawful act;
 - (d) the further action that the Commission may take if the unlawful act is not remedied;
 - (e) that the person may apply to the Tribunal for review of the issuing of the notice or any term of the notice.
- (3) A person may, within 28 days of receiving the compliance notice, apply to the Tribunal for a review of the issuing of the compliance notice or of any term of the compliance notice.

147 Failure to comply with enforceable undertaking or compliance notice

- (1) This section applies if—
 - (a) the Commission has accepted an enforceable undertaking from a person; or

- (b) the Commission has issued a compliance notice to a person.
- (2) If the person fails to comply with the enforceable undertaking or the compliance notice—
- (a) the Commission may apply to the Tribunal to enforce the undertaking or the notice; and
 - (b) the Tribunal may make an order requiring the person to comply with the undertaking or notice.
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**PART 10—PRACTICE GUIDELINES, REVIEWS AND
ACTION PLANS**

Division 1—Practice guidelines

148 Commission may issue practice guidelines

- (1) The Commission may issue practice guidelines on any matter relating to this Act.
- (2) In preparing practice guidelines, the Commission must consult with persons or bodies that the Commission considers represent the areas or persons to whom the practice guidelines will relate.

149 Effect of practice guidelines

Practice guidelines—

- (a) are not legally binding; but
- (b) a court or the Tribunal may consider evidence of compliance with practice guidelines if relevant to any matter before the court or Tribunal under this Act.

150 Publication of practice guidelines or withdrawal of practice guidelines

- (1) If the Commission issues practice guidelines, the Commission must publish notice of their issue—
 - (a) in the Government Gazette; and
 - (b) in an appropriate publication.
- (2) A notice published under subsection (1) must state that the practice guidelines may be inspected on the Commission's Internet site.
- (3) If the Commission withdraws practice guidelines, the Commission must publish notice of the withdrawal—

- (a) in the Government Gazette; and
 - (b) in an appropriate publication.
- (4) The Commission must publish the practice guidelines on its Internet site.
- (5) For the purposes of this section, *appropriate publication* includes—
- (a) a newspaper circulating generally in Victoria; and
 - (b) a publication relevant to a particular profession, trade or sector of the community to which the practice guidelines relate.

Division 2—Reviews

151 Commission may conduct review of compliance

- (1) On request of a person, the Commission may review that person's programs and practices to determine their compliance with this Act.
 - (2) If, after undertaking a review, the Commission gives the person advice about whether programs or practices are compliant with this Act, the giving of that advice does not give rise to—
 - (a) any liability of, or other claim against, the Commission; or
 - (b) any right, expectation, duty or obligation that would not otherwise be conferred or imposed on the person who has been given the advice; or
 - (c) any defence that would not otherwise be available to that person.
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Division 3—Action plans

152 Action plans

- (1) A person may prepare an action plan that specifies steps necessary to improve compliance with this Act.
- (2) The Commission may—
 - (a) provide advice about preparing and implementing action plans; and
 - (b) set minimum requirements for action plans.
- (3) An action plan is not legally binding, but a court or the Tribunal may consider an action plan if relevant to any matter before the court or Tribunal under this Act.

153 Register of action plans

- (1) A person who prepares an action plan may give a copy of the action plan to the Commission.
 - (2) If the action plan meets the minimum requirements for action plans set by the Commission, the Commission must include the action plan in a Register of Action Plans.
 - (3) The Commission must make the Register of Action Plans available on the Internet site of the Commission and may publish the Register in any other manner it thinks fit.
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**PART 11—VICTORIAN EQUAL OPPORTUNITY AND
HUMAN RIGHTS COMMISSION**

Division 1—The Commission

154 Continuation of Commission

- (1) There continues to be a Victorian Equal Opportunity and Human Rights Commission.
- (2) The Commission—
 - (a) is a body corporate with perpetual succession; and
 - (b) must have an official seal; and
 - (c) may sue and be sued in its corporate name; and
 - (d) may acquire, hold and dispose of real and personal property; and
 - (e) may do and suffer all acts and things that a body corporate may, by law, do and suffer.
- (3) The official seal must be kept as directed by the Commission and must not be used except as authorised by the Commission.
- (4) All courts must take judicial notice of the seal of the Commission on a document and, until the contrary is proved, must presume that the seal was properly affixed.

155 Functions and powers of Commission

- (1) The Commission has the following functions—
 - (a) to establish and undertake information and education programs;
 - (b) to promote and advance the objectives of this Act and to be an advocate for this Act;
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- (c) any other functions conferred on it by or under this Act or any other Act, including the Charter of Human Rights and Responsibilities.
- (2) The Commission has all the powers necessary to enable it to perform its functions.
- (3) The Commission must exercise all its functions and powers in accordance with this Act and compatibly with the Charter of Human Rights and Responsibilities.

156 Commission's educative functions

- (1) The Commission must undertake programs to disseminate information and educate the public with respect to—
 - (a) the objectives of this Act; and
 - (b) the Charter of Human Rights and Responsibilities; and
 - (c) the objectives of the **Racial and Religious Tolerance Act 2001**; and
 - (d) any other matters relevant to the provisions of this Act.
- (2) If the Commission becomes aware of any provision of an Act that discriminates or has the effect of discriminating against any person, the Commission must notify as soon as practicable—
 - (a) the Attorney-General; and
 - (b) the Minister responsible for administering that provision or Act.

157 Commission's research functions

- (1) The Commission may undertake research into any matter arising from, or incidental to, the operation of this Act that it considers would advance the objectives of this Act.

- (2) The Commission may collect and analyse data relevant to the operation and the objectives of this Act.

158 Commission may report on educative or research functions

The Commission may, at any time, submit a report to the Attorney-General on any matter arising from the performance of the Commission's functions under section 156 or 157.

159 Commission may intervene in proceedings

The Commission may, with the leave of the court or a tribunal, intervene in and be joined as a party to proceedings in the court or tribunal that involve issues of equality of opportunity, discrimination, sexual harassment or victimisation.

160 Commission may assist in proceedings as amicus curiae

The Commission may, with the leave of the court or tribunal, assist a court or tribunal, as amicus curiae, in the following proceedings—

- (a) proceedings in which the Commission considers that the orders sought, or likely to be sought, may significantly affect the right to protection against discrimination of persons who are not parties to the proceedings;
 - (b) proceedings that, in the opinion of the Commission, have significant implications for the administration of this Act;
 - (c) proceedings where the Commission is satisfied that it would be in the public interest for the Commission to assist the court or tribunal as amicus curiae.
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Division 2—The Board

161 Constitution of Board

- (1) There is established a Board of the Commission.
- (2) The Board consists of—
 - (a) the Commissioner; and
 - (b) either 4 or 6 other members appointed by the Governor in Council on the recommendation of the Minister.

162 Functions of the Board

- (1) The Board is responsible for—
 - (a) determining the Commission's strategic direction and the general nature of activities to be undertaken by the Commission in performing its functions; and
 - (b) setting policies, priorities and strategies for the Commission in performing its functions.
 - (2) Without limiting subsection (1), the Board is responsible for the following functions in relation to investigations and public inquiries—
 - (a) deciding whether the Commission should conduct an investigation under Part 9;
 - (b) deciding whether the Commission should recommend to the Attorney-General that the Commission conduct a public inquiry under Part 9;
 - (c) deciding whether the Commission should commence a public inquiry under Part 9.
 - (3) The Board has any other functions conferred on it by or under this or any other Act.
 - (4) The Board has all the powers necessary to enable it to perform its functions.
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163 Terms of appointment of appointed members

- (1) An appointed member of the Board holds office for the period, not exceeding 5 years, specified in his or her instrument of appointment.
- (2) An appointed member is to be appointed on a part-time basis.
- (3) An appointed member is eligible for reappointment.
- (4) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to an appointed member in respect of the appointment.

164 Resignation and removal

- (1) An appointed member of the Board ceases to hold office if the member—
 - (a) has been convicted in Victoria or elsewhere of an indictable offence or an offence that, if committed in Victoria, would be an indictable offence; or
 - (b) becomes an insolvent under administration; or
 - (c) resigns by writing delivered to the Governor in Council; or
 - (d) is removed from office by the Governor in Council under subsection (2).
 - (2) The Governor in Council may remove an appointed member from office on the ground that—
 - (a) the member is absent, without leave having been granted by the Board, from 3 consecutive meetings of which reasonable notice has been given to the member, either personally or by post, fax, email or other electronic communication; or
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- (b) the member is incapable of carrying out the duties or functions of office; or
- (c) the member has engaged in misconduct in carrying out the member's duties or functions of office; or
- (d) the member has personally engaged in conduct that a court or tribunal has found to be in contravention of an equal opportunity or anti-discrimination law of an Australian jurisdiction and, if the member had engaged in the conduct in carrying out the member's duties or functions of office, the conduct would have amounted to misconduct in carrying out those duties or functions.

165 Acting appointments

- (1) The Governor in Council, on the recommendation of the Minister, may appoint a person to act as a member of the Board if an appointed member—
 - (a) ceases to hold office before his or her term of appointment expires; or
 - (b) is unable to perform the duties or functions of the office.
- (2) An acting member holds office—
 - (a) if appointed to act under subsection (1)(a), for the rest of the term of appointment of the member whose place he or she fills; or
 - (b) if appointed to act under subsection (1)(b), for the period that the appointed member is unable to perform the duties or functions of the office.
- (3) The Governor in Council—
 - (a) subject to this Act, may determine the terms of appointment of an acting member;
 - (b) may at any time terminate the appointment.

- (4) While the appointment of an acting member remains in force, the acting member has and may exercise all the powers and perform all the duties and functions of the member.

166 Payment of members

- (1) An appointed member of the Board, other than a member who is an employee of the public service, is entitled to receive the fees that are fixed from time to time by the Governor in Council for that member.
- (2) Each appointed member of the Board is entitled to receive the allowances that are fixed from time to time by the Governor in Council.

167 Procedure of Board

- (1) The Commissioner must preside at a meeting of the Board at which the Commissioner is present.
- (2) If the Commissioner is not present, the members present may elect a member to preside.
- (3) The person presiding has a deliberative vote and a second or casting vote.
- (4) A majority of the members of the Board currently holding office constitutes a quorum.
- (5) Subject to this Act, the Board may regulate its own proceedings.

168 Effect of vacancy or defect

An act or decision of the Board is not invalid only because—

- (a) of a vacancy in its membership; or
 - (b) of a defect or irregularity in the appointment of any member; or
 - (c) in the case of a person appointed to act as a member, the occasion for his or her acting had not arisen or had ceased.
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Division 3—The Commissioner

169 Appointment and role of Commissioner

- (1) There is to be a Commissioner of the Victorian Equal Opportunity and Human Rights Commission appointed by the Governor in Council.
- (2) The Commissioner has the powers, functions and duties of the Commission under this or any other Act.
- (3) The Commissioner—
 - (a) has control of the day-to-day administration of the affairs of the Commission in accordance with the policies, priorities and strategies determined by the Board; and
 - (b) has any other functions, powers and duties conferred on the Commissioner by or under this or any other Act.
- (4) The exercise of a power or the performance of a duty or function by the Commissioner is subject to the exercise of the Board's powers and functions under section 162.

170 Terms of appointment

- (1) The Commissioner holds office for the period, not exceeding 5 years, specified in his or her instrument of appointment.
- (2) The Commissioner is to be appointed on a full-time basis.
- (3) The Commissioner is eligible for reappointment.
- (4) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to the Commissioner in respect of the appointment.

171 Resignation and removal

- (1) The Commissioner ceases to hold office if the Commissioner—
 - (a) resigns by writing delivered to the Governor in Council; or
 - (b) has been convicted in Victoria or elsewhere of an indictable offence or an offence that, if committed in Victoria, would be an indictable offence; or
 - (c) becomes an insolvent under administration; or
 - (d) is removed from office by the Governor in Council under subsection (2).
 - (2) The Governor in Council may remove the Commissioner from office on the ground that—
 - (a) the Commissioner is absent, without leave having been granted by the Board, from 3 consecutive meetings of the Board of which reasonable notice has been given to the Commissioner, either personally or by post, fax, email or other electronic communication; or
 - (b) the Commissioner is incapable of carrying out the duties of office; or
 - (c) the Commissioner has engaged in misconduct in carrying out those duties; or
 - (d) the Commissioner has personally engaged in conduct that a court or tribunal has found to be in contravention of an equal opportunity or anti-discrimination law of an Australian jurisdiction and, if the Commissioner had engaged in the conduct in carrying out the Commissioner's duties or functions of office, the conduct would have amounted to
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misconduct in carrying out those duties or functions.

172 Acting Commissioner

- (1) The Governor in Council may appoint a person to act as Commissioner if the Commissioner—
 - (a) ceases to hold office before his or her term of appointment expires; or
 - (b) is unable to perform the duties or functions of the office.
- (2) An acting Commissioner holds office—
 - (a) if appointed to act under subsection (1)(a), for the rest of the term of appointment of the Commissioner; or
 - (b) if appointed to act under subsection (1)(b), for the period that the Commissioner is unable to perform the duties or functions of the office.
- (3) The Governor in Council—
 - (a) subject to this Act, may determine the terms of appointment of an acting Commissioner;
 - (b) may at any time terminate the appointment.
- (4) While the appointment of an acting Commissioner remains in force, the acting Commissioner has and may exercise all the powers and perform all the duties and functions of the Commissioner.

173 Payment of Commissioner

The Commissioner is entitled to receive the remuneration and allowances that are fixed from time to time by the Governor in Council.

Division 4—General provisions

174 Staff of Commission

Any staff that are necessary for the purpose of administering the following Acts are to be employed under Part 3 of the **Public Administration Act 2004**—

- (a) this Act;
- (b) the Charter of Human Rights and Responsibilities;
- (c) the **Racial and Religious Tolerance Act 2001**.

Note

Under an Order made by the Governor in Council under section 16 of the **Public Administration Act 2004**, the Commissioner has all the functions of a public service body Head in relation to employees of the Commission.

175 Delegation

- (1) The Commission, by instrument, may delegate to the Commissioner or a member of staff of the Commission any of the Commission's powers, functions or duties under this Act other than this power of delegation.
- (2) The Board, by instrument, may delegate any of the Board's powers, functions or duties under this Act, other than this power of delegation and the Board's functions under section 162(2)—
 - (a) to an appointed member of the Board; or
 - (b) to the members of a subcommittee of the Board; or

Note

A public entity may form subcommittees under section 83 of the **Public Administration Act 2004**.

- (c) to the Commissioner.

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- (3) The Board, by instrument, may delegate any of the Board's powers, functions or duties under section 162(2)—
- (a) to an appointed member of the Board; or
 - (b) to the members of a subcommittee of the Board.
- (4) The Commissioner, by instrument, may delegate to a member of staff of the Commission any of the Commissioner's powers, functions or duties under this Act other than this power of delegation.

176 Secrecy

- (1) This section applies to every person who is or has been—
- (a) an appointed member of the Board; or
 - (b) the Commissioner; or
 - (c) a member of the staff of the Commission; or
 - (d) a person (other than a person referred to in paragraph (c)) acting under the authority of the Commission, the Board or the Commissioner; or
 - (e) a person to whom section 15 of the **Equal Opportunity Act 1984** applied immediately before its repeal; or
 - (f) a member of the Commission before 1 October 2009.
- (2) This section applies to information concerning the affairs of any person that is or has been obtained by a person to whom this section applies—
- (a) in the course of performing functions or duties or exercising powers under this Act or an old Act; or
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(b) as a result of another person performing functions or duties or exercising powers under this Act or the old Act.

(3) A person to whom this section applies must not, either directly or indirectly, make a record of, disclose or communicate to any person any information to which this section applies unless it is necessary to do so for the purposes of, or in connection with, the performance of a function or duty or the exercise of a power under this Act or an old Act.

Penalty: 60 penalty units, in the case of a natural person;
300 penalty units, in the case of a body corporate.

(4) A person to whom this section applies must not be required—

(a) to produce in a court any document containing information to which this section applies; or

(b) to disclose or communicate to any court any information to which this section applies—

unless it is necessary to do so for the purposes of, or for a prosecution under or arising out of, this Act or an old Act.

(5) In this section—

court includes a tribunal, authority or person having power to require the production of documents or the answering of questions;

old Act means either of the following as in force immediately before its repeal—

- (a) the **Equal Opportunity Act 1984**;
- (b) the **Equal Opportunity Act 1995**;

produce includes permit access to.

177 Disclosure of information relating to disputes, complaints and investigations

- (1) To avoid doubt, a person to whom section 176 applies may disclose information relating to disputes, complaints or investigations to which that section applies if the disclosure is—
 - (a) made for the purpose of the Commission's educative functions; and
 - (b) consistent with the Commission's obligations under this Act or any other Act, including the Charter of Human Rights and Responsibilities and the **Information Privacy Act 2000**.
- (2) Without limiting subsection (1)(b), information may be disclosed if—
 - (a) the information does not identify any person; or
 - (b) the information is already in the public domain; or
 - (c) all relevant parties have consented to the disclosure of the information.

- (3) In this section—

complaint means a complaint within the meaning of either of the following as in force immediately before its repeal—

- (a) the **Equal Opportunity Act 1984**;
- (b) the **Equal Opportunity Act 1995**;

investigation includes an investigation conducted under the **Equal Opportunity Act 1995**, as in force immediately before its repeal.

178 Protection from liability

- (1) This section applies to a person who is or has been—
 - (a) the Commissioner; or
 - (b) a member of the staff of the Commission; or
 - (c) another person (other than a person referred to in paragraph (b)) acting under the authority of the Commission, the Board or the Commissioner; or
 - (d) the Chief Conciliator within the meaning of the **Equal Opportunity Act 1995** as in force immediately before 1 October 2009; or
 - (e) a member of the Commission before 1 October 2009.
 - (2) A person to whom this section applies is not personally liable for anything done or omitted to be done in good faith—
 - (a) in the performance of a function or duty or the exercise of a power under this Act; or
 - (b) in the reasonable belief that the act or omission was in the performance of a function or duty or the exercise of a power under this Act; or
 - (c) in the provision of information or advice in relation to this or any other Act or any Commonwealth Act or any Act of another State or of a Territory.
 - (3) Any liability resulting from an act or omission that, but for subsection (2), would attach to a person to whom this section applies attaches instead to the Commission.
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179 Annual reports

In its report of operations for a financial year under Part 7 of the **Financial Management Act 1994**, the Commission—

- (a) must include information on education programs and the review of Acts undertaken under section 156 and research undertaken under section 157 during that financial year;
 - (b) may include any recommendations the Commission considers appropriate for the elimination or modification of discriminatory provisions of Acts.
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PART 12—OFFENCES

Division 1—Proceedings for offences

180 Who may bring proceedings for an offence?

- (1) Proceedings for an offence under this Act or the regulations may be brought by—
- (a) the Commission; or
 - (b) a member of the police force; or
 - (c) a person who is authorised to do so, either generally or in a particular case, by the Commission.
- (2) In a proceeding for an offence against this Act it must be presumed, in the absence of evidence to the contrary, that the person bringing the proceeding was authorised to bring it.

181 Offences are to be dealt with summarily

An offence against this Act is to be prosecuted summarily.

Division 2—Discriminatory advertising

182 Offence of discriminatory advertising

A person must not—

- (a) publish or display; or
- (b) authorise the publication or display of—
an advertisement or other notice that indicates, or could be reasonably understood as indicating, that any person intends to engage in any conduct that would contravene a provision of Part 4, 6 or 7.

Penalty: 60 penalty units, in the case of a natural person;
300 penalty units, in the case of a body corporate.

183 Defence

It is a defence to a charge under section 182 if the accused proves that the accused took reasonable precautions and exercised due diligence to prevent the publication or display.

184 Proceedings for the offence of discriminatory advertising

- (1) For the purpose of proceedings under section 182, the Commission may, by written notice, require any person to produce any documents specified in the notice to the Commission.
- (2) A person must not refuse, without reasonable excuse, to produce a document referred to in subsection (1) to the Commission.

Penalty: 60 penalty units in the case of a natural person;
300 penalty units in the case of a body corporate.

Division 3—Other offences

185 Obstructing Commission

- (1) A person must not hinder or obstruct a relevant person who is performing a function under this Act.

Penalty: 60 penalty units in the case of a natural person;
300 penalty units in the case of a body corporate.

(2) In this section—

performing a function includes exercising a power;

relevant person means—

- (a) a member of the Board;
- (b) the Commissioner;
- (c) a member of staff of the Commission.

186 False or misleading information

A person must not give any information or make any statement to the Commission, the Commissioner or a person acting on behalf of the Commission or the Commissioner in the exercise of powers or the performance of functions under this Act if the person knows that the information or statement is false or misleading in any material particular.

Penalty: 60 penalty units in the case of a natural person;
300 penalty units in the case of a body corporate.

PART 13—GENERAL

187 Proceedings against unincorporated associations

- (1) A dispute or other proceeding under this Act against an unincorporated association may be instituted and carried on against the association in the name of its president, secretary or other similar officer.
- (2) The death, resignation or removal of the person against whom the proceeding was instituted does not affect the continuity of the proceeding and it may be continued against the association in the name of that person's replacement.

188 Contravention does not create civil or criminal liability

A contravention of this Act does not create any civil or criminal liability except to the extent expressly provided by this Act.

189 Protection of people giving evidence and information

If—

- (a) a person has brought a dispute to the Commissioner for dispute resolution; or
- (b) a document or any information or evidence has been produced or given to the Commission or the Commissioner under this Act—

a person is not personally liable for any loss, damage or injury suffered by another person by reason only of the bringing of the dispute or the production or giving of the document, information or evidence.

190 Regulations

The Governor in Council may make regulations for or with respect to—

- (a) prescribing matters in connection with the exercise of powers by the Commission or the Commissioner;
 - (b) prescribing forms for the purposes of this Act;
 - (c) prescribing penalties, not exceeding 2 penalty units, for contraventions of the regulations;
 - (d) generally prescribing any matters or things required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
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**PART 14—REPEAL OF EQUAL OPPORTUNITY ACT 1995
AND TRANSITIONAL PROVISIONS**

Division 1—Repeal of Equal Opportunity Act 1995

191 Repeal of Equal Opportunity Act 1995

The Equal Opportunity Act 1995 is repealed.

See:
Act No.
42/1995.
Reprint No. 5
as at
10 May 2007
and
amending
Act Nos
24/2006,
43/2006,
69/2006,
16/2007,
1/2008,
12/2008,
4/2009,
14/2009,
68/2009 and
74/2009.
LawToday:
www.
legislation.
vic.gov.au

Division 2—Transitional Provisions

192 Definitions

In this Division—

commencement day means the day that Division 1
of Part 14 comes into operation;

complainant means a person who lodges a
complaint or on whose behalf a complaint is
lodged;

complaint means a complaint lodged under Part 7
of the old Act;

old Act means the **Equal Opportunity Act 1995**,
as in force immediately before the
commencement day.

193 Complaints lodged before commencement day

- (1) This section applies to a complaint that was lodged with the Commissioner, but not finally dealt with before the commencement day.
 - (2) The old Act continues to apply to the complaint if the respondent was notified of the complaint under section 107 of the old Act before the commencement day, unless the parties to the complaint consent in writing to the complaint being dealt with as a dispute.
 - (3) If the parties to a complaint consent to the complaint being dealt with as a dispute—
 - (a) the complaint is taken to be a dispute; and
 - (b) the complainant is taken to have brought a dispute to the Commissioner for dispute resolution under section 113 or 114, whichever is applicable; and
 - (c) anything done under the old Act in relation to the complaint is taken, to the extent it could have been done under this Act, to have been done under this Act.
 - (4) If the respondent had not been notified of the complaint under section 107 of the old Act before the commencement day—
 - (a) the complaint is taken to be a dispute; and
 - (b) the complainant is taken to have brought a dispute to the Commissioner for dispute resolution under section 113 or 114, whichever is applicable.
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-
- (5) If a complaint is taken to be a dispute because of subsection (3) or (4), Part 8 applies to the complaint as if a reference in that Part—
- (a) to a provision of Part 4, 6 or 7 were a reference to a provision of Part 3, 5 or 6 of the old Act; and
 - (b) a reference to an alleged contravention were a reference to an alleged contravention of a provision of Part 3, 5 or 6 of the old Act.
- (6) Subsections (3) and (4) apply whether or not the contravention alleged in the complaint would have contravened a provision of Part 4, 6 or 7 of this Act, if this Act had been in force when the alleged contravention occurred.

194 Alleged contraventions that occurred prior to commencement day

- (1) A person may bring to the Commissioner for dispute resolution a dispute about an alleged contravention of a provision of Part 3, 5 or 6 of the old Act that occurred before the commencement day if—
- (a) the person did not lodge a complaint under section 105 of the old Act about the alleged contravention before the commencement day; and
 - (b) the alleged contravention, if proven, would have also been a contravention of a provision of Part 4, 6 or 7 of this Act, if this Act had been in force when the alleged contravention occurred.
- (2) A person may make an application to the Tribunal under Division 2 of Part 8 about an alleged contravention of a provision of Part 3, 5 or 6 of the old Act that occurred before the commencement day if—

- (a) the person did not lodge a complaint under section 105 of the old Act about the alleged contravention before the commencement day; and
- (b) the alleged contravention, if proven, would have also been a contravention of a provision of Part 4, 6 or 7 of this Act, if this Act had been in force when the alleged contravention occurred.

195 Exemptions under the old Act by the Tribunal

- (1) An exemption that was granted by the Tribunal under section 83 of the old Act and that was in force immediately before the commencement day—
 - (a) continues in force, in accordance with its terms, for the remainder of the period specified in the notice published under section 83(1) of the old Act unless it is sooner revoked; and
 - (b) may be revoked or renewed in accordance with this Act as if it were an exemption granted under section 89.
 - (2) If a person had applied to the Tribunal for the grant, renewal or revocation of an exemption under section 83 of the old Act and, immediately before the commencement day, that application had not been determined—
 - (a) the old Act continues to apply to the determination; and
 - (b) the exemption may be granted, renewed or revoked in accordance with section 83 of the old Act.
-

-
- (3) An exemption granted or renewed under subsection (2)(b) may be revoked or renewed in accordance with this Act as if it were an exemption granted under section 89.

196 Tribunal may make orders of a transitional nature

- (1) If any difficulty arises in a proceeding because of the operation of this Part, the Tribunal may make any order it considers appropriate to resolve the difficulty.
- (2) The Tribunal may make such an order on the application of any party to the proceeding or on its own initiative.
-

**PART 15—CONSEQUENTIAL AMENDMENTS TO THE
RACIAL AND RELIGIOUS TOLERANCE ACT 2001 AND
OTHER ACTS**

**Division 1—Amendments to the Racial and Religious
Tolerance Act 2001**

197 Purposes

See:
Act No.
47/2001
and
amending
Act Nos
25/2006,
43/2006 and
14/2009.
LawToday:
www.
legislation.
vic.gov.au

In section 1 of the **Racial and Religious
Tolerance Act 2001**—

- (a) in paragraph (b), for "vilification;"
substitute "vilification.";
- (b) paragraph (c) is **repealed**.

198 Definitions

In section 3 of the **Racial and Religious
Tolerance Act 2001**—

- (a) **insert** the following definitions—

"dispute means a dispute about an alleged
contravention of Part 2;

dispute resolution means dispute resolution
conducted by the Commissioner under
Division 1 of Part 8 of the **Equal
Opportunity Act 2010**";

- (b) in the definition of *Commissioner*, for
"section 170 of the **Equal Opportunity Act
1995**" **substitute** "section 169 of the **Equal
Opportunity Act 2010**";

(c) in the definitions of *employee*, *employer* and *impairment*, for "Equal Opportunity Act 1995" substitute "Equal Opportunity Act 2010";

(d) the definition of *complaint* is repealed.

199 Objects of Act

In section 4(1)(c) of the **Racial and Religious Tolerance Act 2001**, for "conciliation" substitute "dispute resolution".

200 What is victimisation?

(1) In section 14(1) of the **Racial and Religious Tolerance Act 2001**—

(a) for paragraph (a) substitute—

"(a) has brought a dispute against any person to the Commissioner for dispute resolution;

(ab) has made a complaint against any person;"

(b) for paragraph (d) substitute—

"(d) has attended a compulsory conference or mediation at the Tribunal in any proceedings under this Act;"

(2) After section 14(3) of the **Racial and Religious Tolerance Act 2001** insert—

"(4) In this section, *complaint* means a complaint lodged under section 20, as in force before its repeal."

201 Liability of person who authorises or assists

For section 16 of the **Racial and Religious Tolerance Act 2001** substitute—

"16 Liability of person who authorises or assists

If, as a result of a person doing any of the things specified in section 15, the other person contravenes a provision of this Part, a person may—

- (a) bring a dispute to the Commissioner for dispute resolution; or
- (b) make an application to the Tribunal—

against either the person who authorises or assists or the person who contravenes a provision of this Part or both of those persons."

202 Vicarious liability of employers and principals

For section 17 of the **Racial and Religious Tolerance Act 2001** substitute—

"17 Vicarious liability of employers and principals

If a person in the course of employment or while acting as an agent—

- (a) contravenes a provision of this Part; or
- (b) engages in any conduct that would, if engaged in by the person's employer or principal, contravene a provision of this Part—

both the person and the employer or principal must be taken to have contravened the provision and a person may bring a dispute to the Commissioner for dispute

resolution or make an application to the
Tribunal against either or both of them."

203 Part 3 substituted

For Part 3 of the **Racial and Religious Tolerance
Act 2001 substitute—**

"PART 3—DISPUTES

**Division 1—Dispute resolution by the
Commissioner**

19 Who may bring a dispute?

- (1) The following persons may bring a dispute to the Commissioner for dispute resolution—
 - (a) a person who claims that another person has contravened a provision of Part 2 in relation to that person;
 - (b) if that person is unable to bring a dispute because of impairment—
 - (i) a person authorised by that person to act on his or her behalf; or
 - (ii) if that person is unable to authorise another person, any other person on his or her behalf;
 - (c) if that person is a child—
 - (i) the child; or
 - (ii) a parent of the child on the child's behalf; or
 - (iii) if the Commissioner is satisfied that the child or a parent of the child consents, any other person on the child's behalf.

- (2) A person may bring a dispute on behalf of the person and another person or persons if the Commissioner is satisfied that—
 - (a) each person—
 - (i) is entitled to bring a dispute under subsection (1)(a); and
 - (ii) has consented to the dispute being brought on the person's behalf;
and
 - (b) the alleged contravention arises out of the same conduct.
- (3) An authorisation under subsection (1)(b)(i) may be given—
 - (a) in writing; or
 - (b) in any other manner approved by the Commissioner.
- (4) Two or more people may jointly bring a dispute to the Commissioner for dispute resolution.
- (5) It is not necessary for the alleged contravention to relate exclusively to the person bringing the dispute.

20 Representative body may bring a dispute to the Commissioner

- (1) A representative body may bring to the Commissioner for dispute resolution a dispute on behalf of a named person or persons if the Commissioner is satisfied that—

- (a) each person—
 - (i) is entitled to bring a dispute under section 19(1)(a); and
 - (ii) has consented to the dispute being brought by the body on the person's behalf; and
 - (b) the representative body has a sufficient interest in the dispute; and
 - (c) if the dispute is brought on behalf of more than one person, the alleged contravention arises out of the same conduct.
- (2) A representative body has sufficient interest in a dispute if the conduct that constitutes the alleged contravention is a matter of genuine concern to the body because of the way conduct of that nature adversely affects or has the potential to adversely affect the interests of the body or the interests or welfare of the persons it represents.

21 Proceedings against unincorporated associations

- (1) A dispute or other proceeding under this Act against an unincorporated association may be instituted and carried on against the association in the name of its president, secretary or other similar officer.
- (2) The death, resignation or removal of the person against whom the proceeding was instituted does not affect the continuity of the proceeding and it may be continued against the association in the name of that person's replacement.

22 Application of Equal Opportunity Act 2010 to a dispute

- (1) Division 1 of Part 8 of the **Equal Opportunity Act 2010** applies to a dispute brought to the Commissioner for dispute resolution under this Act as if it were a dispute brought under that Act.
- (2) To avoid doubt, Division 3 of Part 11, Divisions 1 and 3 of Part 12 and section 189 of the **Equal Opportunity Act 2010** apply to disputes brought to the Commissioner for dispute resolution under this Act.

Division 2—Applications to the Tribunal

23 Application may be made to Tribunal in respect of dispute

A person may make an application to the Tribunal in respect of an alleged contravention of Part 2, whether or not the person has brought a dispute to the Commissioner for dispute resolution.

23A Who can apply?

- (1) The following persons may make an application to the Tribunal under section 23—
 - (a) a person who claims that another person has contravened a provision of Part 2 in relation to that person;
 - (b) if that person is unable to make an application because of impairment—
 - (i) a person authorised by that person to act on his or her behalf; or

-
- (ii) if that person is unable to authorise another person, any other person on his or her behalf;
 - (c) if that person is a child—
 - (i) the child; or
 - (ii) a parent of the child on the child's behalf; or
 - (iii) if the Tribunal is satisfied that the child or a parent of the child consents, any other person on the child's behalf.
 - (2) A person may make an application on behalf of the person and another person or persons if the Tribunal is satisfied that—
 - (a) each person—
 - (i) is entitled to make an application under subsection (1)(a); and
 - (ii) has consented to the application being made on the person's behalf; and
 - (b) the alleged contravention arises out of the same conduct.
 - (3) An authorisation under subsection (1)(b)(i) may be given—
 - (a) in writing; or
 - (b) in any other manner approved by the Tribunal.
 - (4) It is not necessary for the alleged contravention to relate exclusively to the person making the application.
-

23B Representative body may apply to Tribunal

- (1) A representative body may make an application to the Tribunal on behalf of a named person or persons if the Tribunal is satisfied that—
 - (a) each person—
 - (i) is entitled to make an application under section 23A(1)(a); and
 - (ii) has consented to the application being made by the body on the person's behalf; and
 - (b) the representative body has a sufficient interest in the application; and
 - (c) if the application is made on behalf of more than one person, the alleged contravention arises out of the same conduct.
- (2) A representative body has sufficient interest in an application if the conduct that constitutes the alleged contravention is a matter of genuine concern to the body because of the way conduct of that nature adversely affects or has the potential to adversely affect the interests of the body or the interests or welfare of the persons it represents.

23C What may the Tribunal decide?

After hearing the evidence and representations that the parties to an application desire to adduce or make, the Tribunal may—

- (a) find that a person has contravened a provision of Part 2 and make any one or more of the following orders—
-

- (i) an order that the person refrain from committing any further contravention of this Act;
 - (ii) an order that the person pay to the applicant, within a specified period, an amount the Tribunal thinks fit to compensate the applicant for loss, damage or injury suffered in consequence of the contravention;
 - (iii) an order that the person do anything specified in the order with a view to redressing any loss, damage or injury suffered by the applicant as a result of the contravention; or
- (b) find that a person has contravened a provision of Part 2 but decline to take any further action; or
 - (c) find that a person has not contravened a provision of Part 2 and make an order that the application or part of the application be dismissed.

23D Commission may apply to enforce order of Tribunal

- (1) This section applies if—
 - (a) the Tribunal has made an order referred to in section 23C(a); and
 - (b) a person has failed to comply with the order.
- (2) If the applicant consents, the Commission may enforce the order on behalf of the applicant in accordance with section 121(1) or 122(1) of the **Victorian Civil and Administrative Tribunal Act 1998**.

Note

If the Commission enforces the order in accordance with section 121(1) or 122(1) of the **Victorian Civil and Administrative Tribunal Act 1998**, the applicant may subsequently enforce that order as an order of the court. See sections 121(3) and 122(3) of the **Victorian Civil and Administrative Tribunal Act 1998**.

_____".

204 Part 5 substituted

For Part 5 of the **Racial and Religious Tolerance Act 2001** substitute—

"PART 5—TRANSITIONAL PROVISIONS

29 Definitions

In this Part—

commencement day means the day that Division 1 of Part 14 of the **Equal Opportunity Act 2010** comes into operation;

complainant means a person who lodges a complaint or on whose behalf a complaint is lodged;

complaint means a complaint lodged under section 20, as in force before the commencement day;

old EO Act means the **Equal Opportunity Act 1995**, as in force immediately before the commencement day.

30 Complaints lodged before commencement day

- (1) This section applies to a complaint that was lodged with the Commissioner, but not finally dealt with before the commencement day.
- (2) Part 3 of this Act as in force immediately before the commencement day and the old EO Act continue to apply to the complaint if the respondent was notified of the complaint under section 107 of the old EO Act before the commencement day, unless the parties to the complaint consent in writing to the complaint being dealt with as a dispute.
- (3) If the parties to a complaint consent to the complaint being dealt with as a dispute—
 - (a) the complaint is taken to be a dispute; and
 - (b) the complainant is taken to have brought a dispute to the Commissioner for dispute resolution under Part 3; and
 - (c) anything done under Part 3 of this Act as in force immediately before the commencement day or the old EO Act in relation to the complaint is taken, to the extent it could have been done under Part 3, to have been done under Part 3.
- (4) If the respondent had not been notified of the complaint under section 107 of the old EO Act before the commencement day—
 - (a) the complaint is taken to be a dispute; and

- (b) the complainant is taken to have brought a dispute to the Commissioner under Part 3 for dispute resolution.

31 Court or Tribunal may make orders of a transitional nature

- (1) If any difficulty arises in a proceeding because of the operation of this Part, the court or the Tribunal may make any order it considers appropriate to resolve the difficulty.
- (2) The court or the Tribunal may make such an order on the application of any party to the proceeding or on its own initiative.

_____".

**Division 2—Consequential amendments to the Victorian
Civil and Administrative Tribunal Act 1998**

205 Definitions

See:
Act No.
53/1998.
Reprint No. 6
as at
1 January
2009
and
amending
Act Nos
48/2008,
76/2008,
6/2009,
14/2009,
68/2009 and
69/2009.
LawToday:
www.
legislation.
vic.gov.au

In section 3 of the **Victorian Civil and
Administrative Tribunal Act 1998**—

- (a) for the definition of *inquiry substitute*—
"*inquiry* means an inquiry conducted by the
Tribunal under an enabling
enactment";
- (b) for the definition of *proceeding substitute*—
"*proceeding* means a proceeding in the
Tribunal, including—
(a) an inquiry conducted by the
Tribunal; or

- (b) a compulsory conference under section 83; or
- (c) a mediation under section 88; or
- (d) a rehearing or reassessment under Part 6 of the **Guardianship and Administration Act 1986**;

206 New section 164 inserted

After section 163 of the **Victorian Civil and Administrative Tribunal Act 1998** insert—

"164 Transitional provision—Equal Opportunity Act 2010

Despite the amendments made by the **Equal Opportunity Act 2010**, this Act as in force immediately before the commencement of Division 1 of Part 14 of that Act, continues to apply to—

- (a) proceedings in respect of complaints referred to in section 193(2) of the **Equal Opportunity Act 2010**, other than a complaint that the parties consent to being dealt with as a dispute; and
- (b) proceedings in respect of applications referred to in section 195(2) of the **Equal Opportunity Act 2010**; and
- (c) proceedings in respect of complaints referred to in section 30(2) of the **Racial and Religious Tolerance Act 2001**, other than a complaint that the parties consent to being dealt with as a dispute."

207 Part 7 of Schedule 1 substituted

For Part 7 of Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998** substitute—

"PART 7—EQUAL OPPORTUNITY ACT 2010

13 Meaning of *Commissioner*

In this Part—

Commissioner means the Commissioner appointed under section 169 of the **Equal Opportunity Act 2010**.

14 Unincorporated associations can be parties

- (1) Section 61(1) does not apply to a proceeding under the **Equal Opportunity Act 2010**.

Note

Section 187 of the **Equal Opportunity Act 2010** contains provisions for unincorporated associations in proceedings under that Act.

- (2) An unincorporated association that is a party to a proceeding under the **Equal Opportunity Act 2010** has the same right to representation in the proceeding as a body corporate.

15 Notification of commencement in certain section 89 matters

- (1) If the Tribunal proposes to grant, renew or revoke an exemption under section 89 of the **Equal Opportunity Act 2010** on its own initiative, it must notify, in any manner it thinks fit, all persons whose interests, in the opinion of the Tribunal, may be affected by the proposed grant, renewal or revocation.

- (2) For the purposes of subclause (1)—
- (a) *interests* means interests of any kind and is not limited to proprietary, economic or financial interests;
 - (b) a reference to interests affected includes a reference to interests that are directly or indirectly affected and whether or not any other person's interests are also affected by the proposed grant, renewal or revocation.

16 Notification in proceedings for interim orders

- (1) If an application is made under section 121 of the **Equal Opportunity Act 2010** for an interim order, the principal registrar must notify the Commissioner.
- (2) Subclause (1) does not apply in the case of an application by the Commissioner under section 121 of the **Equal Opportunity Act 2010**.

17 Withdrawal of proceeding

- (1) Despite section 74(1), an applicant is not required to obtain the leave of the Tribunal to withdraw an application under the **Equal Opportunity Act 2010**.
- (2) Nothing in subclause (1) affects the Tribunal's power to award costs in any proceeding that is withdrawn.

18 Summary dismissal of application more than 12 months old

The Tribunal may make an order under section 76 summarily dismissing an application under the **Equal Opportunity Act 2010** in respect of an alleged contravention of Part 4, 6 or 7 of that Act if

the alleged contravention occurred more than 12 months before the application was made.

19 Commissioner may apply for interim injunction

The Commissioner may apply for an order granting an interim injunction under section 123 in a proceeding under the **Equal Opportunity Act 2010** whether or not the Commissioner is a party to that proceeding.

20 Exemptions under section 89

- (1) The Tribunal may determine to grant an exemption under section 89 of the **Equal Opportunity Act 2010** without a hearing whether or not the parties agree to dispense with the hearing.
- (2) For the avoidance of doubt, an exemption under section 89 of the **Equal Opportunity Act 2010** is not an order of the Tribunal.

21 Evidence of mediation not admissible even if parties agree

- (1) Evidence of anything said or done in the course of a mediation in a proceeding under the **Equal Opportunity Act 2010** is not admissible in any hearing before the Tribunal in the proceeding, whether or not the parties agree to the giving of the evidence.
- (2) Section 92 does not apply to a proceeding under the **Equal Opportunity Act 2010**.

22 Settlement offers

Sections 112 to 115 do not apply to a proceeding under the **Equal Opportunity Act 2010**."

208 New Part 16C of Schedule 1 inserted

After Part 16B of Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998** insert—

"PART 16C—RACIAL AND RELIGIOUS TOLERANCE ACT 2001

66H Meaning of *Commissioner*

In this Part—

Commissioner means the Commissioner appointed under section 169 of the **Equal Opportunity Act 2010**.

66I Unincorporated associations can be parties

- (1) Section 61(1) does not apply to a proceeding under the **Racial and Religious Tolerance Act 2001**.

Note

Section 21 of the **Racial and Religious Tolerance Act 2001** contains provisions for unincorporated associations in proceedings under that Act.

- (2) An unincorporated association that is a party to a proceeding under the **Racial and Religious Tolerance Act 2001** has the same right to representation in the proceeding as a body corporate.

66J Withdrawal of proceeding

- (1) Despite section 74(1), an applicant is not required to obtain the leave of the Tribunal to withdraw an application under the **Racial and Religious Tolerance Act 2001**.
- (2) Nothing in subclause (1) affects the Tribunal's power to award costs in any proceeding that is withdrawn.

66K Summary dismissal of application more than 12 months old

The Tribunal may make an order under section 76 summarily dismissing an application under the **Racial and Religious Tolerance Act 2001** in respect of an alleged contravention of Part 2 of that Act if the alleged contravention occurred more than 12 months before the application was made.

66L Commissioner may apply for interim injunction

The Commissioner may apply for an order granting an interim injunction under section 123 in a proceeding under the **Racial and Religious Tolerance Act 2001** whether or not the Commissioner is a party to that proceeding.

66M Evidence of mediation not admissible even if parties agree

- (1) Evidence of anything said or done in the course of a mediation in a proceeding under the **Racial and Religious Tolerance Act 2001** is not admissible in any hearing before the Tribunal in the proceeding, whether or not the parties agree to the giving of the evidence.
- (2) Section 92 does not apply to a proceeding under the **Racial and Religious Tolerance Act 2001**.

Division 3—Consequential amendments to other Acts

209 Consequential amendments to other Acts

An Act specified in the heading to an item in the Schedule is amended, on the commencement of that item or a provision of that item, as set out in that item or provision.

Division 4—Repeal of Part and Schedule

210 Repeal of Part and the Schedule

This Part and the Schedule are **repealed** on
1 August 2012.

Note

The repeal of this Part and the Schedule does not affect the operation of the amendments made by them (see section 15(1) of the **Interpretation of Legislation Act 1984**).

**PART 16—AMENDMENT OF EQUAL OPPORTUNITY
ACT 1995 AND STATUTE LAW REVISION**

Division 1—Amendment of Equal Opportunity Act 1995

211 Appointment and role of Commissioner

(1) After section 170(1) of the **Equal Opportunity Act 1995** insert—

"(1A) The Commissioner has the powers, functions and duties of the Commission under this or any other Act."

(2) At the end of section 170 of the **Equal Opportunity Act 1995** insert—

"(3) The exercise of a power or the performance of a duty or function by the Commissioner is subject to the exercise of the Board's powers and functions under section 163."

Division 2—Statute Law Revision

212 Statute Law Revision—Equal Opportunity Act 1995

In section 178(1)(c) of the **Equal Opportunity Act 1995**, for "a other person" substitute "another person".

213 Statute Law Revision—Racial and Religious Tolerance Act 2001

In sections 23A(2) and 23A(7)(a) of the **Racial and Religious Tolerance Act 2001**, for "Commission's" substitute "Commissioner's".

Equal Opportunity Act 2010
No. 16 of 2010

Part 16—Amendment of Equal Opportunity Act 1995 and Statute Law
Revision

s. 214

Division 3—Repeal of Part 16

214 Repeal of Part 16

This Part is **repealed** on 1 August 2012.

Note

The repeal of this Part does not affect the operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

**PART 17—AMENDMENTS TO THE EQUAL OPPORTUNITY
ACT 2010**

215 Section 179 amended

- (1) For the heading to section 179 of the **Equal Opportunity Act 2010** substitute—
"Report of operations".
- (2) In section 179 of the **Equal Opportunity Act 2010**, for "Part 7 of the **Financial Management Act 1994**" substitute "Part 5 of the **Public Finance and Accountability Act 2010**".

216 Repeal of Part

This Part is **repealed** on 1 July 2013.

Note

The repeal of this Part does not affect the operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

SCHEDULE

CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

1 Charter of Human Rights and Responsibilities

- 1.1 In section 3(1), in the definition of *Commission*, for "Equal Opportunity Act 1995" substitute "Equal Opportunity Act 2010".
- 1.2 In section 3(1), in the definition of *discrimination* and the note at the foot of that definition, for "Equal Opportunity Act 1995" substitute "Equal Opportunity Act 2010".

2 Guardianship and Administration Act 1986

- 2.1 In section 16(1)(j), for "Equal Opportunity Act 1995" substitute "Equal Opportunity Act 2010".

3 Information Privacy Act 2000

- 3.1 In section 27(4), for "Equal Opportunity Act 1995" substitute "Equal Opportunity Act 2010".

4 Local Government Act 1989

- 4.1 In clause 1 of Schedule 6, in the definition of *discrimination*, for "Part 3, 5 or 6 of the Equal Opportunity Act 1995" substitute "Part 4, 6 or 7 of the Equal Opportunity Act 2010".

5 Parliamentary Administration Act 2005

- 5.1 For section 19(3)(a)(v) substitute—
 - "(v) the matter is the subject of a proceeding in any court or tribunal initiated by the applicant, including a proceeding under Division 2 of Part 8 of the **Equal Opportunity Act 2010**; or".

5.2 For section 19(3)(a)(vi) **substitute**—

"(vi) the matter could more appropriately be the subject of a proceeding in any court or tribunal, including a proceeding under Division 2 of Part 8 of the **Equal Opportunity Act 2010**;"

6 Public Administration Act 2004

6.1 For section 64(3)(a)(v) **substitute**—

"(v) the matter is the subject of a proceeding in any court or tribunal initiated by the applicant, including a proceeding under Division 2 of Part 8 of the **Equal Opportunity Act 2010**; or"

6.2 For section 64(3)(a)(vi) **substitute**—

"(vi) the matter could more appropriately be the subject of a proceeding in any court or tribunal, including a proceeding under Division 2 of Part 8 of the **Equal Opportunity Act 2010**;"

7 Serious Sex Offenders (Detention and Supervision) Act 2009

7.1 For section 142(3)(b)(vi) **substitute**—

"(vi) the Commissioner of the Victorian Equal Opportunity and Human Rights Commission appointed under section 169 of the **Equal Opportunity Act 2010**;"

7.2 In section 142(8) the definition of *Equal Opportunity and Human Rights Commissioner* is repealed.

8 Sex Offenders Registration Act 2004

8.1 In section 3, in the definition of *disability*, for "Equal Opportunity Act 1995" **substitute** "Equal Opportunity Act 2010".

9 Transport Act 1983

9.1 In section 220DA(3), for "**Equal Opportunity Act 1995**" substitute "**Equal Opportunity Act 2010**".

10 Working with Children Act 2005

10.1 In section 10(2)(b)(ii), for "**Equal Opportunity Act 1995**" substitute "**Equal Opportunity Act 2010**".

11 Wrongs Act 1958

11.1 For section 24AG(2)(i) substitute—

"(i) a dispute or a proceeding under the **Equal Opportunity Act 2010**;"

11.2 In section 28C(2)(j), for "**Equal Opportunity Act 1995**" substitute "**Equal Opportunity Act 2010**".

ENDNOTES

- † *Minister's second reading speech—*
Legislative Assembly: 10 March 2010
Legislative Council: 25 March 2010

The long title for the Bill for this Act was "A Bill for an Act to re-enact and extend the law relating to equal opportunity and protection against discrimination, sexual harassment and victimisation, to repeal the **Equal Opportunity Act 1995**, to make consequential amendments to other Acts and for other purposes."

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Equal Opportunity Act 2010
No. 16 of 2010

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