

Version No. 055
Equal Opportunity Act 1995
No. 42 of 1995

Version incorporating amendments as at 1 December 2008

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Equal Opportunity Act 1995
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The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1 Purposes

The purposes of this Act are—

- (a) to re-enact and extend the law relating to equal opportunity and discrimination;
- (b) to remove compulsory retirement provisions from Acts;
- (c) to repeal the **Equal Opportunity Act 1984** and make consequential amendments to other Acts.

2 Commencement

- (1) Part 1 comes into operation on the day on which this Act receives the Royal Assent.

* * * * *

S. 2(2)
repealed by
No. 84/1997
s. 40(a).

- (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 referred to in subsection (3) does not come into operation within a period of 12 months beginning on, and including, the day on which this Act receives the Royal Assent, it comes into operation on the first day after the end of that period.

3 Objectives

The objectives of this Act are—

- (a) to promote recognition and acceptance of everyone's right to equality of opportunity;
- (b) to eliminate, as far as possible, discrimination against people;
- (c) to eliminate, as far as possible, sexual harassment;
- (d) to provide redress for people who have been discriminated against or sexually harassed.

S. 3(b)
amended by
No. 1/2008
s. 4.

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 Commission means a member of the Commission other than the Chief Conciliator;

attribute means an attribute in section 6;

S. 4
amended by
No. 27/2001
s. 9(Sch. 7
item 1.2) (ILA
s. 39B(1)).

breastfeeding includes the act of expressing milk;

S. 4(1)
def. of *breast-feeding*
inserted by
No. 21/2000
s. 3(1).

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;

Chief Conciliator means the Chief Conciliator of the Commission;

child means a person under the age of 18 years;

club, except in section 78, means a social, recreational, sporting or community service club, or a community service organisation—

- (a) that occupies any Crown land; or
- (b) that directly or indirectly receives any financial assistance from the State or a municipal council;

Commission means the Victorian Equal Opportunity and Human Rights Commission continued in existence by section 160;

S. 4(1) def. of *Commission*
amended by
No. 43/2006
s. 47(Sch.
item 1.1).

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

complaint means a complaint lodged under section 105;

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S. 4(1) def. of
de facto
spouse
repealed by
No. 27/2001
s. 9(Sch. 7
item 1.1(b)).

* * * * *

S. 4(1) def. of
Deputy
President
repealed by
No. 52/1998
s. 47(a).

* * * * *

S. 4(1) def. of
domestic
partner
inserted by
No. 27/2001
s. 9(Sch. 7
item 1.1(a)),
substituted by
No. 12/2008
s. 73(1)(Sch. 1
item 20.1).

detriment includes humiliation and denigration;

discrimination has the meaning given in Part 2;

domestic partner of a person means—

- (a) a person who is in a registered 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;

S. 4(1) def. of
employee
amended by
Nos 22/1996
s. 11(1)(a),
84/1997
s. 19(a),
46/1998
s. 7(Sch. 1),
108/2004
s. 117(1)
(Sch. 3
item 69.1(a)),
79/2006
s. 18(1)(a).

employee includes—

- (a) a person employed under a contract of service, whether or not under a workplace agreement, employment agreement or award within the meaning of the Workplace Relations Act 1996 of the Commonwealth;
- (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—

but does not include an unpaid worker or volunteer;

employer includes—

S. 4(1) def. of *employer* amended by Nos 22/1996 s. 11(1)(b), 84/1997 s. 19(b), 79/2006 s. 18(1)(b).

- (a) a person who employs another person under a contract of service, whether or not under a workplace agreement, employment agreement or award within the meaning of the Workplace Relations Act 1996 of the Commonwealth;
- (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—

but does not include a person who employs another person on an unpaid or voluntary basis;

employment includes—

S. 4(1) def. of *employment* amended by Nos 22/1996 s. 11(1)(c), 84/1997 s. 19(c), 46/1998 s. 7(Sch. 1), 108/2004 s. 117(1) (Sch. 3 item 69.1(b)), 79/2006 s. 18(1)(c).

- (a) employment under a contract of service, whether or not under a workplace agreement, employment agreement or award within the meaning of the Workplace Relations Act 1996 of the Commonwealth;
- (b) employment under the **Public Administration Act 2004** or under a statutory appointment;

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

but does not include work on a voluntary or unpaid basis;

S. 4(1) def. of *employment activity* inserted by No. 16/2007 s. 3.

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;

S. 4(1) def. of *employment entitlements* inserted by No. 16/2007 s. 3.

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

- (a) contract of service, including a workplace agreement, employment agreement or award within the meaning of the Workplace Relations Act 1996 of the Commonwealth; or
- (b) contract for services; or

- (c) Act or enactment; or
- (d) 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;

expedited complaint means a complaint that has been expedited under section 119 or 121;

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

gender identity means—

S. 4(1) def. of *gender identity* inserted by No. 52/2000 s. 4(1).

- (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;

guide dog means a dog that is trained to assist a person who has a visual, hearing or mobility impairment;

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

impairment means—

- (a) total or partial loss of a bodily function;
- (b) the presence in the body of organisms that may cause disease;
- (c) total or partial loss of a part of the body;
- (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;
- (e) malformation or disfigurement of a part of the body;

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;
- (b) establishing or being involved in establishing an industrial organisation or forming or being involved in forming an industrial association;
- (c) organising or promoting or proposing to organise or promote a lawful activity on behalf of an industrial organisation or industrial association;

S. 4(1) def. of *industrial activity* substituted by No. 79/2006 s. 18(2).

-
- (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;
 - (e) not participating in or refusing to participate in a lawful activity organised or promoted by an industrial organisation or industrial association;
 - (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;

S. 4(1) def. of *industrial association* inserted by No. 79/2006 s. 18(3).

industrial organisation means—

- (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—

S. 4(1) def. of *industrial organisation* substituted by No. 79/2006 s. 18(4).

registered or recognised under a State or Commonwealth enactment;

lawful sexual activity means engaging in, not engaging in or refusing to engage in a lawful sexual activity;

S. 4(1) def. of *lawyer* substituted by No. 18/2005 s. 18(Sch. 1 item 38).

lawyer means an Australian lawyer within the meaning of the **Legal Profession Act 2004**;

S. 4(1) def. of *marital status* amended by No. 27/2001 s. 9(Sch. 7 item 1.1(c)).

marital status means a person's status of being—

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

S. 4(1) def. of *member* repealed by No. 52/1998 s. 47(a).

* * * * *

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

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

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;

S. 4(1) def. of *parental status* inserted by No. 84/1997 s. 20(1).

party, in relation to a complaint, means the complainant or the respondent;

S. 4(1) def. of *party* substituted by No. 52/1998 s. 47(b).

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;

President means the President of the Tribunal;

* * * * *

S. 4(1) def. of *proceedings* repealed by No. 52/1998 s. 47(a).

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;

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- (e) if 2 or more distinct races are collectively referred to as a race—
 - (i) each of those distinct races;
 - (ii) that collective race;

S. 4(1) def. of Registrar repealed by No. 52/1998 s. 47(a).

* * * * *

S. 4(1) def. of relative amended by No. 27/2001 s. 9(Sch. 7 item 1.1(d)).

relative, in relation to a person, means—

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

respondent means a person about whom a complaint has been lodged under section 105;

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;

S. 4(1) def. of *sexual orientation* inserted by No. 52/2000 s. 4(2).

S. 4(1) def. of
spouse
inserted by
No. 27/2001
s.9(Sch. 7
item 1.1(a)).

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;

S. 4(1) def. of
Tribunal
substituted by
No. 52/1998
s. 47(c).

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

S. 4(1) def. of
work arrangements
inserted by
No. 1/2008
s. 5.

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 (within the meaning of section 15), arrangements applying to the contract worker or the workplace of the principal (within the meaning of that section); or
- (d) in the case of a person invited to become a partner, 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, 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 relationship* has the same meaning as in the **Relationships Act 2008**; and
- (b) in determining whether persons who are not in a registered 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* or *employment* in subsection (1) to a workplace agreement within the meaning of the Workplace Relations Act 1996 of the Commonwealth includes a reference to an Australian Workplace Agreement or a certified agreement within the meaning of that Act as in force immediately before 27 March 2006.

S. 4(2)
inserted by
No. 27/2001
s. 9(Sch. 7
item 1.2),
substituted by
No. 12/2008
s. 73(1)(Sch. 1
item 20.2).

S. 4(3)
inserted by
No. 79/2006
s. 18(5).

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 PROHIBITED 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 3—

S. 6(ab)
inserted by
No. 21/2000
s. 3(2).

- (a) age;
- (ab) breastfeeding;

S. 6(ac)
inserted by
No. 52/2000
s. 5(1).

- (ac) gender identity;

S. 6(ca)
inserted by
No. 16/2007
s. 4.

- (b) impairment;
- (c) industrial activity;
- (ca) employment activity;

S. 6(ea)
inserted by
No. 52/2000
s. 5(2).

- (d) lawful sexual activity;
- (e) marital status;
- (ea) parental status or status as a carer;

- (f) physical features;
- (g) political belief or activity;
- (h) pregnancy;
- (i) race;
- (j) religious belief or activity;
- (k) sex;

(l) sexual orientation;

S. 6(l)
substituted by
Nos 84/1997
s. 20(2),
52/2000
s. 5(3).

(m) 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 direct or indirect discrimination on the basis of an attribute or a contravention of section 13A, 14A, 15A, 31A, 51 or 52.

S. 7(1)
amended by
No. 1/2008
s. 6.

(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.

8 Direct discrimination

(1) Direct discrimination occurs if a person treats, or proposes to treat, someone with an attribute less favourably than the person treats or would treat someone without that attribute, or with a different attribute, in the same or similar circumstances.

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- (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 less favourable;
 - (b) whether or not the attribute is the only or dominant reason for the treatment, as long as 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 someone with an attribute does not or cannot comply with; and
 - (b) that a higher proportion of people without that attribute, or with a different attribute, do or can comply with; and
 - (c) that is not reasonable.
- (2) Whether a requirement, condition or practice is reasonable depends on all the relevant circumstances of the case, including—
- (a) the consequences of failing to comply with the requirement, condition or practice;
 - (b) the cost of alternative requirements, conditions or practices;
 - (c) the financial circumstances of the person imposing, or proposing to impose, the requirement, condition or practice.
- (3) In determining whether a person indirectly discriminates it is irrelevant whether or not that person is aware of the discrimination.

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 Exceptions and exemptions

This Act does not prohibit discrimination if an exception in Part 3 (whether or not in the same Division as the provision prohibiting the discrimination) or Part 4 or an exemption under Part 4 applies.

PART 3—WHEN IS DISCRIMINATION PROHIBITED?

Division 1—Discrimination in employment

13 Discrimination against job applicants

An employer must not discriminate against a person—

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

13A 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—

S. 13A
inserted by
No. 1/2008
s. 7.

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- (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 on offer; 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.

14 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;
 - (b) by dismissing the employee or otherwise terminating his or her employment;
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- (c) by denying the employee access to a guidance program, an apprenticeship training program or other occupational training or retraining program;
- (d) by subjecting the employee to any other detriment.

S. 14A
inserted by
No. 1/2008
s. 8.

14A 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

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- (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.

15 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;
 - (b) by not allowing the contract worker to work or continue to work;
 - (c) by denying or limiting access by the contract worker to any benefit connected with the work;
 - (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.

(3) In this section—

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

principal means a person who contracts with another person for work to be done by employees of the other person.

S. 15A
inserted by
No. 1/2008
s. 9.

15A 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

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- (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.
- (3) In this section *contract worker* and *principal* have the same meanings as in section 15.

16 Exception—domestic or personal services

An employer may discriminate in determining who should be offered employment in relation to the provision of domestic or personal services in, or in relation to, any person's home.

S. 16
amended by
No. 84/1997
s. 21.

17 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
 - (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—
- (a) to people of a particular age, sex or race;
 - (b) to people with or without a particular impairment—
- in relation to a dramatic or an artistic performance, entertainment, photographic or modelling work or any other employment, 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.

18 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.

19 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 the promotion of the welfare or advancement of people with the same attribute, if those services can be provided most effectively by people with that attribute.

20 Exception—family employment

- (1) An employer may limit the offering of employment, in a business carried on by him or her, to people who are his or her relatives.
- (2) For the purposes of this section a person who holds a controlling interest in a body corporate is to be taken to be—
 - (a) carrying on the business; and
 - (b) the employer of the employees—
of the body corporate.

21 Exception—small business

- (1) An employer may discriminate in determining who should be offered employment if the employer employs no more than the equivalent of 5 people on a full-time basis (including the people to whom employment is offered).

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- (2) In ascertaining the number of people employed for the purposes of subsection (1), the following people are not included—
- (a) relatives of the employer; and
 - (b) people employed to provide domestic or personal services in, or in relation to, the employer's home.
- (3) For the purposes of this section—
- (a) a person who holds a controlling interest in a body corporate is to be taken to be the employer of the employees of the body corporate;
 - (b) a body corporate is to be taken to be the employer of the employees of any of its related bodies corporate (within the meaning of section 9 of the Corporations Act);
 - (c) *full-time basis* means a minimum of 30 hours a week.

S. 21(3)(b)
amended by
No. 44/2001
s. 3(Sch.
item 38).

22 Exception—special services or facilities

- (1) An employer may discriminate against another person on the basis of impairment in any of the areas specified in section 13 or 14 if—
- (a) in order to perform the genuine and reasonable requirements of the employment—
 - (i) the other person requires or would require special services or facilities; and
 - (ii) it is not reasonable in the circumstances for those special services or facilities to be provided; or

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- (b) the other person cannot or could not adequately perform the genuine and reasonable requirements of the employment even after the provision of special services or facilities.
- (2) In determining whether or not a person can or could adequately perform the requirements of the employment, all relevant factors and circumstances must be considered, including—
- (a) the person's training, qualifications and experience;
 - (b) the person's current performance in the employment, if applicable.

23 Exception—reasonable terms of employment

An employer may set reasonable terms or requirements of employment, or make reasonable variations to those terms or requirements, to take into account—

- (a) the reasonable and genuine requirements of the employment;
- (b) any special limitations that a person's impairment or physical features imposes on his or her capacity to undertake the employment;
- (c) any special services or facilities that are required to enable him or her to undertake the employment or to facilitate the conduct of the employment.

24 Exception—standards of dress and behaviour

An employer may set and enforce standards of dress, appearance and behaviour for employees that are reasonable having regard to the nature and circumstances of the employment.

25 Exception—care of children

- (1) Nothing in section 13 or 14 applies to discrimination by an employer against an employee or prospective employee if—
 - (a) the employment involves the care, instruction or supervision of children; and
 - (b) the employer genuinely believes that the discrimination is necessary to protect the physical, psychological or emotional well-being of the children; and
 - (c) having regard to all the relevant circumstances, including, if applicable, the conduct of the employee or prospective employee, the employer has a rational basis for that belief.
- (2) Sub-section (1) does not apply to employment by a post-secondary education provider (within the meaning of the **Education and Training Reform Act 2006**) or a TAFE institute.

S. 25(2)
substituted by
No. 24/2006
s. 6.1.2(Sch. 7
item 16.1).

26 Exception—compulsory retirement of judicial officers

Nothing in this Division applies to the compulsory retirement on the basis of age of, or the failure to appoint a person on the basis of age as—

- (a) a judge of the Supreme Court or the County Court; or
- (b) a magistrate or bail justice.

27 Exception—youth wages

An employer may pay an employee who is under the age of 21 years according to the employee's age.

27A Exception—early retirement schemes

- (1) 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.
- (2) Subsection (1) applies, and is deemed always to have applied, to anything done by an employer on or after 1 January 1996.

S. 27A
inserted by
No. 82/1996
s. 76.

27B Exception—gender identity

- (1) An employer may discriminate against another person on the basis of gender identity in any of the areas specified in section 13 or 14 if—
 - (a) the person does not give the employer adequate notice of the person's gender identity; or
 - (b) the person gives the employer adequate notice of the person's gender identity but it is unreasonable in the circumstances for the employer not to discriminate against the person.
- (2) In determining whether or not it is unreasonable for the employer not to discriminate against the person, all relevant facts and circumstances must be considered, including—
 - (a) the cost to the employer of not discriminating;
 - (b) the feasibility of the employer not discriminating;
 - (c) the financial impact on the employer of not discriminating;
 - (d) the financial circumstances of the employer;

S. 27B
inserted by
No. 52/2000
s. 6.

- (e) the impact of the proposed discrimination on the person;
- (f) any other relevant factors.

28 Exemption—single sex accommodation

The Tribunal, by granting an exemption under section 83, may authorise an employer to limit the offering of employment to people of one sex if they will be required to live in communal accommodation provided by the employer that is not suitable for occupation by people of both sexes.

S. 29
repealed by
No. 42/1995
s. 225.

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Division 2—Discrimination in employment-related areas

30 Discrimination in establishing firms

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.

31 Discrimination by firms

- (1) This section applies to firms comprising 5 or more partners.
- (2) A firm to which this section applies must not discriminate against a person—
 - (a) in deciding who should be invited to become a partner;
 - (b) in the terms on which the person is invited to become a partner.

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- (3) A firm to which this section applies 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;
 - (b) by expelling the partner from the firm;
 - (c) by subjecting the partner to any other detriment.

31A Firm must accommodate responsibilities as parent or carer of person invited to become a partner or of a partner

S. 31A
inserted by
No. 1/2008
s. 10.

- (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

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- (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;
 - (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.

32 Exception—special services or facilities

- (1) A firm, or a person intending to establish a firm, may discriminate against a person seeking admission to the firm as a partner or against a partner in the firm on the basis of impairment if—
 - (a) in order to perform the genuine and reasonable requirements of partnership in the firm—
 - (i) the person or partner requires or would require special services or facilities; and
 - (ii) it is not reasonable in the circumstances for those special services or facilities to be provided; or
 - (b) the person or partner cannot or could not adequately perform the genuine and reasonable requirements of partnership in the firm even after the provision of special services or facilities.

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- (2) In determining whether or not a person can or could adequately perform the requirements of partnership, all relevant factors and circumstances must be considered, including—
- (a) the person's training, qualifications and experience;
 - (b) the person's current performance as a partner, if applicable.

33 Exception—reasonable terms of partnership

A firm, or a person intending to establish a firm, may set reasonable terms or requirements of partnership, or make reasonable variations to those terms or requirements, to take into account—

- (a) the reasonable and genuine requirements of partnership in the firm;
- (b) any special limitations that a person's impairment or physical features imposes on his or her capacity to undertake the obligations of partnership in the firm;
- (c) any special services or facilities that are required to enable him or her to undertake those obligations or to facilitate the performance of those obligations.

34 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;
 - (b) by refusing or failing to accept the person's application for membership;
 - (c) in the terms on which it admits the person to membership.
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- (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;
 - (b) by depriving the member of membership;
 - (c) by varying the terms of membership;
 - (d) by subjecting the member to any other detriment.

35 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;
 - (b) in the terms on which it confers, renews or extends an occupational qualification;
 - (c) by varying the terms on which an occupational qualification is held;
 - (d) by revoking or withdrawing an occupational qualification;
 - (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.

36 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 take into account any special limitations that a person's impairment or physical features imposes on his or

her capacity to practise the profession, carry on the trade or business or engage in the occupation or employment to which the qualification relates.

Division 3—Discrimination in education

37 Discrimination by educational authorities

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

38 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—

- (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—

from that institution or program.

39 Exception—special services or facilities

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

- (a) in order to participate or continue to participate in, or to derive or continue to derive substantial benefit from, the educational program of the authority—
 - (i) the person requires or would require special services or facilities; and
 - (ii) it is not reasonable in the circumstances for those special services or facilities to be provided; or
- (b) the person could not participate or continue to participate in, or derive or continue to derive substantial benefit from, the educational program even after the provision of special services or facilities.

40 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, a standard must be taken to be reasonable if the educational authority administering the school has taken into account the views of the school community in setting the standard.

41 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

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- (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

42 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;
 - (b) in the terms on which goods or services are provided to the other person;
 - (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.

43 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 the Sex Discrimination Act 1984 or the Disability Discrimination Act 1992 of the Commonwealth; or
 - (b) the discrimination is based on—
 - (i) actuarial or statistical data on which it is reasonable for the insurer to rely; or

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- (ii) if there is no such data, on other data on which it is reasonable to rely—
and is reasonable having regard to that data and any other relevant factors; or
- (c) if neither of the above paragraphs applies, the discrimination is reasonable having regard to any 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.

44 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 on the terms on which credit is provided, if the criteria for refusal or the terms imposed—
- (a) are based on—
- (i) actuarial or statistical data on which it is reasonable for the credit provider to rely; or
- (ii) if there is no such data, on other data on which it is reasonable to rely; and
- (b) are reasonable having regard to that data and 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.

45 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;
- (b) endanger himself or herself or any other person.

46 Exception—special manner of providing a service

A person may refuse to provide a service, or set reasonable terms for the provision of a service, to another person if the service would be required to be provided in a special manner because of the other person's impairment or physical features and—

- (a) the person cannot reasonably provide the service in that manner; or
- (b) the person can only reasonably provide the service in that manner on more onerous terms than the person could reasonably provide the service to a person without that impairment or those physical features.

47 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;
 - (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.

S. 47(3)(c)
amended by
No. 69/2006
s. 224(Sch. 3
item 4).

- (3) The provisions of this section apply despite anything to the contrary—
- (a) in any Act, other than this Act;
 - (b) in any document affecting or relating to the land;
 - (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.

48 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

49 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;
- (b) in the way in which the other person's application for accommodation is processed;
- (c) in the terms on which accommodation is offered to the other person.

50 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;
- (b) by denying or limiting access by the other person to any benefit associated with the accommodation;
- (c) by evicting the other person from the accommodation;
- (d) by refusing to extend or renew the provision of accommodation to the other person;
- (e) in the terms on which the provision of accommodation to the other person is extended or renewed;
- (f) by subjecting the other person to any other detriment in connection with the provision of accommodation to that person.

51 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**.

52 Discrimination by refusing to allow guide dogs

(1) A person must not refuse to provide accommodation to a person with a visual, hearing or mobility impairment because that person has a guide dog.

(2) A person must not require, as a term of providing accommodation to a person with a visual, hearing or mobility impairment who has a guide dog—

(a) that the dog be kept elsewhere;

(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 guide dog for any damage caused by the dog.

53 Exception—accommodation unsuitable for children

A person may refuse to provide accommodation to a child or a person with a child if the premises, because of their design or location, are unsuitable or inappropriate for occupation by a child.

54 Exception—shared accommodation

A person may discriminate in deciding who is to occupy residential accommodation—

(a) in which the person or a relative of the person lives and intends to continue to live; and

- (b) that is for no more than 6 people in addition to the people referred to in paragraph (a).

55 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.

56 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.

57 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.

58 Application of this Division

- (1) The provisions of this Division apply despite anything to the contrary—
(a) in any Act, other than this Act;
(b) in any document affecting or relating to the land;

S. 58(1)(c)
amended by
No. 69/2006
s. 224(Sch. 3
item 4).

- (c) 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

59 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;
- (b) in the arrangements made for deciding who should be offered membership;
- (c) by refusing, or failing to accept, the person's application for membership;
- (d) in the way in which the person's application is processed;
- (e) in the terms on which the person is admitted as a member.

60 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;
- (b) by denying or limiting access to any benefit provided by the club;
- (c) by varying the terms of membership;
- (d) by depriving the member of membership;
- (e) by subjecting the member to any other detriment.

61 Exception—clubs for disadvantaged people or 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—

- (a) to prevent or reduce disadvantage suffered by people of that group; or
- (b) to preserve a minority culture.

62 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.

63 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.

Division 7—Discrimination in sport

64 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;
- (b) the umpiring or refereeing of a sporting activity;

- (c) the administration of a sporting activity;
 - (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.

65 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;
- (b) by excluding the other person from participating in a sporting activity.

66 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;
 - (b) to people of a specified age or age group;
 - (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.

S. 66(1)
amended by
No. 52/2000
s. 7.

Division 8—Discrimination in local government

67 Discrimination by councillors

A councillor of a municipal council must not discriminate against—

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

in the performance of his or her public functions.

68 Exception—political belief or activity

Section 67 does not apply to discrimination on the basis of political belief or activity.

**PART 4—GENERAL EXCEPTIONS TO AND EXEMPTIONS
FROM THE PROHIBITION OF DISCRIMINATION**

69 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;
 - (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) Section 47(3) and 58(1) prevail over this section to the extent of any inconsistency between them.

70 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;
- (b) an order of any other tribunal or any court.

71 Pensions

Nothing in Part 3 affects discriminatory provisions relating to pensions.

72 Superannuation—existing fund conditions

- (1) A person may discriminate by retaining an existing superannuation fund condition in relation to a person who—
- (a) is a member of that fund at the commencement of this section; or

(b) becomes a member of that fund within a period of 12 months after the commencement of this section.

(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 is in operation at the commencement of this section.

73 Superannuation—new fund conditions

(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 Entities (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 based on—

(i) actuarial or statistical data on which it is reasonable to rely; or

(ii) if there is no such data, on other data on which it is reasonable to rely—

and is reasonable having regard to that data and any other relevant factors; or

(d) if none of the above paragraphs applies, the discrimination is reasonable having regard to any 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;
 - (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.

74 Charities

- (1) Nothing in Part 3 (including sections 47 and 58)—
- (a) affects a provision of a deed, will or other instrument that confers charitable benefits, or enables charitable benefits to be conferred;
 - (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.

75 Religious bodies

- (1) Nothing in Part 3 applies to—
- (a) the ordination or appointment of priests, ministers of religion or members of a religious order;
 - (b) the training or education of people seeking ordination or appointment as priests, ministers of religion or members of a religious order;

- (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 3 applies to anything done by a body established for religious purposes that—
 - (a) conforms with the doctrines of the religion; or
 - (b) is necessary to avoid injury to the religious sensitivities of people of the religion.
- (3) Without limiting the generality of its application, subsection (2) includes anything done in relation to the employment of people in any educational institution under the direction, control or administration of a body established for religious purposes.

76 Religious schools

- (1) This section applies to a person or body (other than a body established for religious purposes) that—
 - (a) establishes an educational institution to be conducted in accordance with religious beliefs or principles; or
 - (b) directs, controls or administers an educational institution conducted in accordance with religious beliefs or principles.
- (2) Nothing in Part 3 applies to anything done by a person or body to which this section applies in the course of establishing, directing, controlling or administering the educational institution (including the employment of people in the institution) that is in accordance with the relevant religious beliefs or principles.

77 Religious beliefs or principles

Nothing in Part 3 applies to discrimination by a person against another person if the discrimination is necessary for the first person to comply with the person's genuine religious beliefs or principles.

78 Private clubs

- (1) Nothing in Part 3 applies to the exclusion of people from a private club or from any part of the activities or premises of a private club.
- (2) In this section, *private club* means a social, recreational, sporting or community service club or a community service organisation, other than one that—
 - (a) occupies any Crown land; or
 - (b) directly or indirectly receives any financial assistance from the State or a municipal council.

79 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 who is subject to a legal incapacity that is relevant to the transaction or activity in which they are involved.

80 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;

- (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).

81 Age benefits and concessions

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

82 Welfare measures and special needs

- (1) Nothing in Part 3 applies to anything done in
relation to the provision to people with a
particular attribute of special services, benefits or
facilities that are designed—
 - (a) to meet the special needs of those people; or
 - (b) to prevent or reduce a disadvantage suffered
by those people in relation to their education,
accommodation, training or welfare.
- (2) 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.

83 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) in the circumstances referred to in section 28; or
 - (c) 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 3 years, that is specified in the notice.
- (3) The Tribunal, by notice published in the Government Gazette—
 - (a) may renew an exemption from time to time for the period, not exceeding 3 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.

S. 83(4)
substituted by
No. 52/1998
s. 48.

S. 83(5)
substituted by
Nos 84/1997
s. 22, 52/1998
s. 48.

s. 84

S. 84
amended by
No. 22/1996
s. 11(2).

84 Exemptions to allow compulsory retirement in the public sector

On the application of any Minister, the Minister, in writing, may grant an exemption from Part 3 to allow the compulsory retirement on the basis of age of any class of people employed—

S. 84(a)
amended by
Nos 46/1998
s. 7(Sch. 1),
108/2004
s. 117(1)
(Sch. 3
item 69.2).

(a) under the **Public Administration Act 2004**;

S. 84(b)
amended by
No. 24/2006
s. 6.1.2(Sch. 7
item 16.2).

(b) under Part 2.4 of the **Education and Training Reform Act 2006**;

(c) under the **Police Regulation Act 1958**;

(d) by a public hospital within the meaning of the **Health Services Act 1988**.

PART 5—PROHIBITION OF SEXUAL HARASSMENT

85 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.

86 Harassment by employers and employees

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

87 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.

88 Harassment by partners

A partner in a firm must not sexually harass—

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

89 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;
- (b) another member of that organisation;
- (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;
- (b) a member of that organisation.

90 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;
- (b) another member of that qualifying body;
- (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;
- (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.

91 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;
 - (b) a student at that institution.
- (2) A student at an educational institution must not sexually harass—
- (a) another student at that institution;
 - (b) an employee of that institution;
 - (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;
 - (b) a student at that institution.

92 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.

93 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.

94 Harassment in clubs

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

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

95 Harassment in local government

A councillor of a municipal council must not sexually harass—

- (a) another councillor of that council;
 - (b) a member of a committee of that council who is not a councillor of that council.
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**PART 6—PROHIBITION OF OTHER CONDUCT AND
VICARIOUS LIABILITY FOR DISCRIMINATION**

Division 1—Victimisation

96 Prohibition of victimisation

A person must not victimise another person.

97 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 made a complaint against any person;
- (b) has brought any other proceedings under this Act against any person;
- (c) has given evidence or information, or produced a document, in connection with any proceedings under this Act;
- (d) has attended a compulsory conference at the Tribunal;
- (e) has otherwise done anything in accordance with this Act in relation to any person;
- (f) has alleged that any person has contravened a provision of Part 3, 5 or 6, unless the allegation is false and was not made in good faith;
- (g) has refused to do anything that would contravene a provision of Part 3, 5 or 6—

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

S. 97(1)(d)
amended by
No. 47/2001
s. 29.

- (2) It is sufficient for subsection (1)(f) 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 as long as it is a substantial reason;
 - (b) whether the person acts alone or in association with any other person.

Division 2—Authorising or assisting discrimination

98 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 3, 5 or 6.

99 Liability of person who authorises or assists

If, as a result of a person doing any of the things specified in section 98, the other person contravenes a provision of Part 3, 5 or 6, both persons must be taken to have contravened the provision and a complaint about the contravention may be lodged against either or both of them.

Division 3—Discriminatory requests for information

100 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.

101 Exception—information required for non-discriminatory purposes

A person does not contravene section 100 if the information is reasonably requested or required for a purpose that does not or would not involve or lead to a contravention of this Act.

Division 4—Vicarious liability

102 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 3, 5 or 6; or
- (b) engages in any conduct that would, if engaged in by the person's employer or principal, contravene a provision of Part 3, 5 or 6—

both the person and the employer or principal must be taken to have contravened the provision, and a complaint about the contravention may be lodged against either or both of them.

103 Exception to vicarious liability

An employer or principal is not vicariously liable for a contravention of a provision of Part 3, 5 or 6 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 the Act.

PART 7—COMPLAINTS AND THEIR RESOLUTION

Division 1—Making a complaint

104 Who may complain?

- (1) The following may complain to the Commission—
- (a) a person who claims that another person has contravened a provision of Part 3, 5 or 6 in relation to that person;
 - (b) if that person is unable to complain 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 Commission is satisfied that the child or a parent of the child so consents, any other person on the child's behalf.

S. 104(1A)
inserted by
No. 79/2006
s. 19.

- (1A) A person may complain on behalf of the person and another person or persons if the Commission is satisfied that—
- (a) each person named in the complaint—
 - (i) is entitled to complain under subsection (1)(a); and

-
- (ii) has consented to the complaint being made on the person's behalf; and
- (b) the alleged contravention arises out of the same conduct.
- (1B) A representative body may complain to the Commission on behalf of a named person or persons if the Commission is satisfied that—
- (a) each person named in the complaint—
- (i) is entitled to complain under subsection (1)(a); and
- (ii) has consented to the complaint being made by the body on the person's behalf; and
- (b) the representative body has a sufficient interest in the complaint; and
- (c) the alleged contravention arises out of the same conduct.
- (1C) A representative body has sufficient interest in a complaint 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 adversely to affect the interests of the body or the interests or welfare of the persons it represents.
- (2) An authorisation under subsection (1)(b)(i) may be given—
- (a) in writing; or
- (b) in any other manner approved by the Commission.
- (3) Two or more people may complain jointly.
- S. 104(1B) inserted by No. 79/2006 s. 19.**
- S. 104(1C) inserted by No. 79/2006 s. 19.**
- S. 104(3) re-numbered as s. 104(2) by No. 22/1996 s. 11(3)(a).**
- S. 104(4) re-numbered as s. 104(3) by No. 22/1996 s. 11(3)(b).**

s. 105

S. 104(5)
re-numbered
as s. 104(4) by
No. 22/1996
s. 11(3)(c).

- (4) It is not necessary for the alleged contravention to relate exclusively to the complainant.

105 How to complain

- (1) A person complains to the Commission by lodging a written complaint with the Commission by hand, facsimile or other electronic transmission or post.
- (2) A complaint must set out details of the alleged contravention.

106 Commission must assist complainants

The Commission must assist a complainant in formulating his or her complaint.

Division 2—Procedure after a complaint is made

107 Commission must notify respondent

The Commission must notify the respondent in writing of the complaint as soon as practicable after receiving it.

108 Commission may decline to entertain some complaints

S. 108(1)
amended by
No. 84/1997
s. 23(1)(b).

- (1) If the Commission considers that a complaint—

- (a) is frivolous, vexatious, misconceived or lacking in substance; or
- (b) involves subject matter that would be more appropriately dealt with by a tribunal (other than the Tribunal) or a court; or

S. 108(1)(ba)
inserted by
No. 84/1997
s. 23(1)(a).

- (ba) involves subject matter that has been adequately dealt with by a tribunal or court; or

(c) relates to an alleged contravention of the Act that took place more than 12 months before the complaint was lodged—

the Commission may decline to entertain the complaint by notifying the complainant and the respondent in writing within 60 days after the day the complaint was lodged.

(1A) Before declining to entertain a complaint, the Commission may, by written notice, require any person—

S. 108(1A) inserted by No. 84/1997 s. 23(2), amended by No. 25/2006 s. 3(1)(a).

(a) to attend before the Commission, or a member or member of staff of the Commission, for the purpose of discussing the subject matter of the complaint at a reasonable time set out in the notice;

S. 108(1A)(a) amended by No. 25/2006 s. 3(1)(b).

(b) to produce any documents specified in the notice on or before a reasonable time set out in the notice.

S. 108(1A)(b) amended by No. 25/2006 s. 3(1)(c).

Note

See section 201 which makes it an offence not to comply with a requirement under this subsection.

Note to s. 108(1A) inserted by No. 25/2006 s. 3(2).

(1AB) The Commission may give a notice under subsection (1A) only if it is reasonably necessary for the purpose of determining whether to decline to entertain a complaint.

S. 108(1AB) inserted by No. 25/2006 s. 3(3).

(1AC) Nothing in subsection (1A) or (1AB) prevents the Commission from inviting any person to attend before the Commission, or a member or member of staff of the Commission, for the purpose of discussing the complaint or to produce any documents.

S. 108(1AC) inserted by No. 25/2006 s. 3(3).

Equal Opportunity Act 1995
No. 42 of 1995
Part 7—Complaints and their Resolution

s. 109

S. 108(1B)
inserted by
No. 84/1997
s. 23(2).

- (1B) The period of 60 days referred to in subsection (1) is suspended while any application to the Tribunal under section 109 in relation to the complaint is pending.
- (2) Within 60 days after receiving the Commission's notice declining to entertain a complaint, the complainant, by written notice, may require the Commission to refer the complaint to the Tribunal for hearing under Division 7.
- (3) The Commission must comply with a notice under subsection (2).
- (4) If the complainant does not notify the Commission under subsection (2), the Commission may dismiss the complaint and the complainant may take no further action under this Act in relation to the subject matter of the complaint.
- (5) As soon as possible after a dismissal under subsection (4), the Commission must, by written notice, notify the complainant and the respondent of the dismissal.
- (6) The Commission may, by notice in writing given to the complainant and the respondent, extend the period of 60 days referred to in subsection (1) by a period not exceeding 10 days if the Commission considers it necessary or desirable to do so in the interests of justice or fairness.

S. 108(5)
inserted by
No. 84/1997
s. 23(3).

S. 108(6)
inserted by
No. 84/1997
s. 23(3).

109 Respondent may apply to Tribunal to strike out complaint or any part of complaint

S. 109(1)
amended by
No. 84/1997
s. 24(1).

- (1) A respondent may apply in writing to the Tribunal to have a complaint or any part of it struck out on the grounds that it is frivolous, vexatious, misconceived or lacking in substance.

- (2) The application may be made at any time—
- (a) before the respondent has been given a notice to attend under section 114(2)(a) or has otherwise been notified by the Commission or the Chief Conciliator of a date for conciliation; or
 - (b) after the conciliation has been completed but before the complaint has been referred to the Tribunal¹.
- (3) The Tribunal must begin to hear the application within 14 days after receiving it and must determine it as expeditiously as possible.
- (4) The complainant is a party to a proceeding on an application under subsection (1).
- * * * * *
- S. 109(2) substituted by No. 84/1997 s. 24(2).
- S. 109(2)(b) substituted by No. 52/1998 s. 49(1).
- S. 109(4) substituted by No. 52/1998 s. 49(2).
- S. 109(5) substituted by No. 84/1997 s. 24(3), repealed by No. 52/1998 s. 49(3).

110 Commission may dismiss a stale complaint

- (1) The Commission may dismiss a complaint if the Commission has had no substantive response from the complainant in the period of 12 months following a request by the Commission for a response in relation to the complaint.
- (1A) As soon as possible after a dismissal under subsection (1), the Commission must, by written notice, notify the complainant and the respondent of the dismissal.
- (2) A complainant may take no further action under this Act in relation to the subject matter of a complaint dismissed under this section.
- S. 110(1A) inserted by No. 84/1997 s. 25.

s. 111

S. 111
amended by
No. 52/1998
s. 49(4) (ILA
s. 39B(1)).

111 Minister may refer a complaint direct to Tribunal

- (1) If the Minister considers that the subject matter of a complaint raises an issue of important public policy, the Minister may refer the complaint direct to the Tribunal to be heard under Division 7, whether or not the Commission has considered it or the complaint is in the process of being conciliated.
- (2) The Minister is not a party to a proceeding on a complaint referred to the Tribunal under subsection (1) unless joined by the Tribunal.

S. 111(2)
inserted by
No. 52/1998
s. 49(4).

112 Commission to refer complaints for conciliation

- (1) If the Commission considers it reasonably possible that a complaint may be conciliated successfully the Commission must refer the complaint to the Chief Conciliator.
- (2) Subsection (1) does not apply to a complaint—
 - (a) that the Commission has declined to entertain under section 108 or dismissed under section 110;
 - (b) that the Minister has referred to the Tribunal under section 111;
 - (c) if an application to the Tribunal by a respondent under section 109 is pending.

113 What happens if conciliation is inappropriate?

S. 113(1)
amended by
No. 84/1997
s. 26(1).

- (1) If the Commission does not consider it reasonably possible that a complaint may be conciliated successfully it must notify the complainant and the respondent in writing.
- (2) Within 60 days after receiving the Commission's notice under subsection (1), the complainant, by written notice, may require the Commission to refer the complaint to the Tribunal for hearing under Division 7.

- (3) The Commission must comply with a notice from the complainant under subsection (2).
- (4) If the complainant does not notify the Commission under subsection (2), the Commission may dismiss the complaint and the complainant may take no further action under this Act in relation to the subject matter of the complaint.
- (5) As soon as possible after a dismissal under subsection (4), the Commission must, by written notice, notify the complainant and the respondent of the dismissal.

S. 113(5)
inserted by
No. 84/1997
s. 26(2).

Division 3—Conciliation of complaints

114 Conciliation by the Chief Conciliator

- (1) The Chief Conciliator must make all reasonable endeavours to conciliate a complaint referred to him or her under section 112 or 122.
- (2) If it is reasonably necessary for the purpose of conciliating a complaint, the Chief Conciliator may, by written notice, require any person—
 - (a) to attend before him or her for the purpose of discussing the subject matter of the complaint at a reasonable time set out in the notice;
 - (b) to produce any documents specified in the notice on or before a reasonable time set out in the notice.

S. 114(2)
amended by
No. 25/2006
s. 4(1)(a).

S. 114(2)(a)
amended by
No. 25/2006
s. 4(1)(b).

S. 114(2)(b)
amended by
No. 25/2006
s. 4(1)(c).

Note

See section 201 which makes it an offence not to comply with a requirement under this subsection.

Note to
s. 114(2)
inserted by
No. 25/2006
s. 4(2).

s. 115

S. 114(3)
inserted by
No. 25/2006
s. 4(3).

- (3) Nothing in subsection (2) prevents the Chief Conciliator from inviting any person to attend before him or her for the purpose of discussing the complaint or to produce any documents.

115 Conciliation agreements

S. 115(1)(a)
amended by
No. 84/1997
s. 27(1).

- (1) If, following conciliation, the parties to the complaint reach agreement with respect to the subject matter of the complaint—
- (a) at the request of any party made within 30 days after agreement is reached, a written record of the agreement is to be prepared by the parties or the Chief Conciliator; and
 - (b) the record must be signed by or on behalf of each party and certified by the Chief Conciliator; and
 - (c) the Chief Conciliator must give each party a copy of the signed and certified record.

S. 115(2)
substituted by
No. 84/1997
s. 27(2),
amended by
No. 52/1998
s. 49(5)(a).

- (2) Any party, after notifying in writing the other party, may lodge a copy of the signed and certified record with the Tribunal for registration.

S. 115(3)
substituted by
No. 84/1997
s. 27(2),
amended by
No. 52/1998
s. 49(5)(b).

- (3) Subject to subsection (4), the Tribunal must register the record and give a certified copy of the registered record to each party.

S. 115(4)
inserted by
No. 84/1997
s. 27(2),
amended by
No. 52/1998
s. 49(5)(c)(i)(ii).

- (4) If the Tribunal, constituted by a presidential member, considers that it may not be practicable to enforce, or to supervise compliance with, a conciliation agreement, the Tribunal may refuse to register the record of agreement.

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- (5) On registration, the record must be taken to be an order of the Tribunal in accordance with its terms and may be enforced accordingly.
 - (6) The refusal of the Tribunal to register the record does not affect the validity of the agreement.

S. 115(5)
inserted by
No. 84/1997
s. 27(2).

S. 115(6)
inserted by
No. 84/1997
s. 27(2),
amended by
No. 52/1998
s. 49(5)(d).

116 Evidence of conciliation is inadmissible

Evidence of anything said or done in the course of a conciliation is not admissible in proceedings before the Tribunal or any other legal proceedings relating to the subject matter of the complaint.

117 What happens if conciliation fails or is inappropriate?

- (1) If the Chief Conciliator—
 - (a) does not consider it reasonably possible that a complaint may be conciliated successfully;
or
 - (b) has attempted unsuccessfully to conciliate the complaint—

S. 117(1)
amended by
No. 84/1997
s. 28(1).

he or she must notify the complainant and the respondent in writing and the Commission.

- (2) Within 60 days after receiving a notice under subsection (1), the complainant, by written notice, may require the Commission to refer the complaint to the Tribunal for hearing under Division 7.
- (3) The Commission must comply with a notice from the complainant under subsection (2).

S. 117(5)
inserted by
No. 84/1997
s. 28(2).

- (4) If the complainant does not notify the Commission under subsection (2), the Commission may dismiss the complaint and the complainant may take no further action under this Act in relation to the subject matter of the complaint.
- (5) As soon as possible after a dismissal under subsection (4), the Commission must, by written notice, notify the complainant and the respondent of the dismissal.

118 Complaints about the conduct of conciliation

- (1) Any party to a conciliation may make a written complaint to the Commission about the method of conducting the conciliation, either during the course of the conciliation or after the conciliation has been completed.
- (2) If the complaint is made during the conciliation, the Commission may—
 - (a) investigate the complaint;
 - (b) issue directions about how to proceed with the conciliation.
- (3) If the complaint is made after the conciliation has been completed, the Commission may—
 - (a) investigate the complaint;
 - (b) issue directions about how to conduct any future conciliation—
but the Commission may not interfere with the outcome of the conciliation.

Division 4—Expedited complaints

119 Application to have a complaint expedited

- (1) A complainant or respondent may apply in writing to the Commission for a determination that the complaint be expedited.
- (2) Within 10 days after receiving an application for expedition, the Commission must—
 - (a) determine the application;
 - (b) give a copy of the determination to the complainant and the respondent.

S. 119(2)
amended by
No. 84/1997
s. 29.

120 Grounds for expediting a complaint

- (1) The Commission may determine that a complaint be expedited only if the Commission considers it reasonably possible that the complaint may be conciliated successfully and—
 - (a) if the application for expedition is made by a complainant, that there are special circumstances requiring a speedy resolution of the complaint;
 - (b) if the application for expedition is made by a respondent, that the complaint relates to a policy decision of the respondent, the implementation or proposed implementation of which is alleged to be discriminatory.
- (2) Without limiting the generality of subsection (1)(a), special circumstances must be taken to exist if the complaint—
 - (a) relates to an emergency health matter;
 - (b) relates to sexual harassment in employment and that employment is continuing in the same or similar circumstances.

S. 120(1)
amended by
No. 84/1997
s. 40(b).

121 Review of Commission's determination

- (1) A respondent or complainant may apply in writing to the Tribunal for review of the Commission's determination under section 119.
- (2) The application must be made within 7 days after the applicant is given a copy of the determination.
- (3) The Tribunal must begin to hear the application within 14 days after receiving it and must determine it as expeditiously as possible.
- (4) The parties to a proceeding on an application under subsection (1) are the complainant and the respondent.

S. 121(4)
substituted by
No. 52/1998
s. 49(6).

S. 121(5)
repealed by
No. 84/1997
s. 30.

* * * * *

122 Time limits for conciliation of expedited complaints

- (1) The Commission must refer an expedited complaint to the Chief Conciliator, and the Chief Conciliator must commence conciliation of the complaint, as soon as practicable after the Commission or the Tribunal has determined that it is an expedited complaint.
- (2) Subject to this section, if the conciliation has not been successfully completed within 30 days after that determination, the Chief Conciliator must notify the Commission and the parties.
- (3) If the Chief Conciliator receives notice of an application under section 124, he or she must cease to deal with the complaint until the Tribunal has determined the application.

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- (4) If the Tribunal refuses the application, the Chief Conciliator must—
- (a) commence, or resume, conciliation as soon as practicable after the refusal; and
 - (b) notify the Commission and the parties if the conciliation has not been successfully completed within 30 days after the refusal.
- (5) If the Tribunal makes an interim order under section 131, the Chief Conciliator must—
- (a) commence, or resume, conciliation as soon as practicable after the making of the order; and
 - (b) notify the Commission and the parties if the conciliation has not been successfully completed within 30 days after the making of the order.
- (6) The time period in subsection (2) is suspended from the time an application referred to in subsection (4) or (5) is made until the time the Tribunal determines it.

123 Time limit for referring expedited complaints to Tribunal

- (1) Within 30 days after receiving notice under section 122(2), (4) or (5), the complainant, by written notice, may require the Commission to refer the complaint to the Tribunal for hearing under Division 7.
 - (2) The Commission must comply with a notice from the complainant under subsection (1).
 - (3) If the complainant does not notify the Commission under subsection (1), the Commission may dismiss the complaint and the complainant may take no further action under this Act in relation to the subject matter of the complaint.
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s. 124

S. 123(4)
inserted by
No. 84/1997
s. 31.

- (4) As soon as possible after a dismissal under subsection (3), the Commission must, by written notice, notify the complainant and the respondent of the dismissal.

124 Party may apply for referral to Tribunal without conciliation

- (1) A complainant or respondent may apply in writing to the Tribunal to have an expedited complaint referred to the Tribunal for hearing under Division 7 without the complaint going to conciliation.
- (2) The application must be made within 7 days after the applicant is given notice under section 114(2) to attend the conciliation.
- (3) The Tribunal must begin to hear the application within 14 days after receiving it and must determine it as expeditiously as possible.
- (4) The parties to a proceeding on an application under subsection (1) are the complainant and the respondent.

S. 124(4)
substituted by
No. 52/1998
s. 49(7).

S. 124(5)
repealed by
No. 84/1997
s. 30.

* * * * *

Division 5—Special complaints

S. 125
amended by
No. 52/1998
s. 50 (LA
s. 39B(1)).

125 What is a special complaint?

- (1) A special complaint is—
- (a) a complaint that has been referred to the Tribunal by the Minister under section 111;
or

- (b) a complaint the resolution of which may have significant social, economic or financial effects on the community or a section of the community; or
- (c) a complaint the subject matter of which involves issues of a particular complexity and the resolution of which may establish important precedents in the interpretation or application of this Act.

- (2) The question of whether or not a complaint is a special complaint is to be determined by the President.

S. 125(2)
inserted by
No. 52/1998
s. 50.

126 Factors to be considered by Tribunal in proceedings involving special complaints

S. 126
substituted by
No. 52/1998
s. 51.

- (1) In making an order in a proceeding in respect of a special complaint, the Tribunal must have regard to—
 - (a) the extent to which the complaint involves complex issues of policy, administration or resource allocation (whether in the private or public sector) that are unsuitable for resolution by an order requiring particular action to be taken or not taken; and
 - (b) the extent to which an order would require continued supervision by the Tribunal or would tend to promote the taking of further proceedings for its enforcement.
- (2) Nothing in subsection (1) limits the power of the Tribunal to order the respondent to pay compensation in accordance with section 136(a)(ii).

* * * * *

Ss 127–130
repealed by
No. 52/1998
s. 52.

Pt 7 Div. 6
(Heading)
amended by
No. 52/1998
s. 53(1).

Division 6—Interim orders

131 Tribunal may make interim orders before hearing

- (1) A complainant or the Commission may apply to the Tribunal for an interim order to prevent any party to the complaint from acting in a manner prejudicial to negotiations or conciliation or to any decision or order the Tribunal might subsequently make.
- (2) An application may be made at any time before the complaint is referred to the Tribunal or before an application for leave is made under section 23A of the **Racial and Religious Tolerance Act 2001**.
- (3) In making an interim order, the Tribunal must have regard to—
 - (a) whether or not the complainant has established a prima facie case with respect to the complaint; and
 - (b) any possible detriment or advantage to the public interest in making the order; and
 - (c) any possible detriment to the complainant's case if the order is not made.
- (4) 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.
- (5) The party against whom the interim order is sought is a party to the proceeding on an application under subsection (1).

S. 131(2)
amended by
No. 25/2006
s. 5.

S. 131(5)
repealed by
No. 84/1997
s. 30,
new s. 131(5)
inserted by
No. 52/1998
s. 53(2).

- (6) 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 in respect of a complaint.

S. 131(6)
inserted by
No. 52/1998
s. 53(2).

* * * * *

Ss 132,133
repealed by
No. 52/1998
s. 53(3).

Division 7—Jurisdiction of the Tribunal

134 When may the Tribunal hear a complaint?

- (1) The Tribunal may hear a complaint—
- (a) referred to it by the Commission under section 108, 113, 117 or 123;
 - (b) referred to it by the Minister under section 111;
 - (c) that it has determined under section 124 to hear without conciliation having occurred;
 - (d) on an application under section 23A of the **Racial and Religious Tolerance Act 2001**, if the Tribunal has given leave for that application.
- (2) The Tribunal also has the jurisdiction conferred by sections 109, 121, 124, 131 and 159.

S. 134(1)(c)
amended by
No. 25/2006
s. 6(1).

S. 134(1)(d)
inserted by
No. 25/2006
s. 6(2).

S. 134(2)
amended by
No. 52/1998
s. 53(4).

134A Who are the parties to a proceeding?

- (1) The complainant and the respondent are parties to a proceeding in respect of a complaint referred to in section 134(1).

S. 134A
inserted by
No. 52/1998
s. 54.

- (2) The Commission is not a party to a proceeding in respect of a complaint referred to in section 134(1)(a) unless joined by the Tribunal.

135 Time limits for expedited complaints

- (1) The Tribunal must commence hearing a complaint within 30 days after its referral to the Tribunal if—
- (a) the complaint was referred to it by the Minister under section 111; or
 - (b) the complaint is an expedited complaint.
- (2) The Tribunal must commence to hear an expedited complaint that it has determined under section 124 to hear without conciliation within 30 days after making that determination.
- (3) The Tribunal, constituted by a presidential member, may extend the period of 30 days under subsection (1) or (2) by one further period of not more than 30 days.

S. 135(3)
amended by
No. 52/1998
s. 55.

136 What may the Tribunal decide?

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

- (a) find the complaint or any part of it proven and make any one or more of the following orders—
- (i) an order that the respondent refrain from committing any further contravention of this Act in relation to the complainant;
 - (ii) an order that the respondent pay to the complainant within a specified period an amount the Tribunal thinks fit to compensate the complainant for loss,

damage or injury suffered in
consequence of the contravention;

(iii) an order that the respondent do
anything specified in the order with a
view to redressing any loss, damage or
injury suffered by the complainant as a
result of the contravention; or

(b) find the complaint or any part of it proven
but decline to take any further action in the
matter; or

(c) find the complaint or any part of it not
proven and make an order that the complaint
or part be dismissed.

*	*	*	*	*	S. 137 amended by No. 84/1997 s. 32, repealed by No. 52/1998 s. 56(1).
*	*	*	*	*	S. 138 amended by No. 35/1996 s. 453(Sch. 1 item 27), repealed by No. 52/1998 s. 56(1).
*	*	*	*	*	S. 139 repealed by No. 52/1998 s. 56(1).
*	*	*	*	*	S. 140 amended by No. 84/1997 s. 33(a)(b), repealed by No. 52/1998 s. 56(1).

Equal Opportunity Act 1995
No. 42 of 1995
Part 7—Complaints and their Resolution

s. 141

**Pt 7
Divs 8–10
(Headings
and ss 141–
155)
amended by
No. 84/1997
s. 34,
repealed by
No. 52/1998
s. 56(1).**

* * * * *

PART 8—INVESTIGATIONS BY THE COMMISSION AND TRIBUNAL

156 How may an investigation be initiated?

- (1) If the Tribunal becomes aware of circumstances where a contravention of Part 3, 5 or 6 of this Act or Part 2 of the **Racial and Religious Tolerance Act 2001** may have occurred (other than an alleged contravention that is the subject of proceedings before the Tribunal), the Tribunal may refer the matter to the Commission for investigation. **S. 156(1) amended by No. 47/2001 s. 30(1).**
- (2) If, in the course of performing its functions under section 162, the Commission becomes aware of circumstances where a contravention of Part 3, 5 or 6 of this Act or Part 2 of the **Racial and Religious Tolerance Act 2001** may have occurred, the Commission may, with the consent of the Minister, investigate the matter. **S. 156(2) amended by No. 47/2001 s. 30(1).**
- (3) If, in the course of dealing with a complaint or investigating a matter under subsection (1) or (2), the Commission becomes aware of circumstances where a contravention of Part 3, 5 or 6 of this Act or Part 2 of the **Racial and Religious Tolerance Act 2001** may have occurred (other than the contravention alleged in the complaint or the contravention being investigated), the Commission may investigate those circumstances. **S. 156(3) amended by No. 47/2001 s. 30(1).**

157 What matters may be investigated?

- (1) A matter may be investigated under section 156(1) or (2) only if—
- (a) it is of such a serious nature that it warrants the investigation; and
 - (b) it concerns a possible contravention in relation to a class or group of people; and

(c) the circumstances are such that the lodging of a complaint by one person only would not be appropriate.

(2) Any matter may be investigated under section 156(3).

158 How is an investigation conducted?

(1) The Commission is to conduct an investigation under this Part in the same manner, as nearly as practicable, as if it were a complaint.

(2) If the Commission, after investigation, is satisfied that a person has contravened Part 3, 5 or 6 of this Act or Part 2 of the **Racial and Religious Tolerance Act 2001**, the Commission must make all reasonable endeavours to conciliate the matter.

(3) If the Commission—

(a) does not consider it reasonably possible that the matter may be conciliated successfully;
or

(b) has attempted unsuccessfully to conciliate the matter—

the Commission must refer the matter to the Tribunal.

(4) Evidence of anything said or done in the course of conciliation under this section is not admissible in proceedings before the Tribunal, or any other proceedings, relating to the matter.

159 Inquiries and orders by the Tribunal

(1) If a matter has been referred to the Tribunal under section 158(3), the Tribunal must conduct an inquiry into the matter and, if satisfied that a person has contravened Part 3, 5 or 6 of this Act or Part 2 of the **Racial and Religious Tolerance Act 2001**, may make either or both of the following orders—

S. 158(2)
amended by
No. 47/2001
s. 30(2).

S. 159(1)
amended by
Nos 52/1998
s. 56(2),
47/2001
s. 30(3).

-
- (a) an order that the person refrain from acting in contravention of this Act;
- (b) an order that the person do anything specified in the order with a view to eliminating future contravention of this Act or redressing circumstances that have arisen from the contravention.
- (2) In addition to any other party, a person who is alleged to have contravened Part 3, 5 or 6 of this Act or Part 2 of the **Racial and Religious Tolerance Act 2001** in relation to the subject-matter of the inquiry is a party to the inquiry.
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S. 159(2)
substituted by
No. 52/1998
s. 56(3),
amended by
No. 47/2001
s. 30(3).

PART 9—ADMINISTRATION

Division 1—The Commission

160 Continuation of Commission

S. 160(1)
amended by
No. 43/2006
s. 47(Sch.
item 1.2).

- (1) There continues to be an Equal Opportunity Commission under the name of the Victorian Equal Opportunity and Human Rights Commission.
- (2) The Commission—
 - (a) is a body corporate with perpetual succession;
 - (b) has a common seal;
 - (c) may sue and be sued in its corporate name;
 - (d) may acquire, hold and dispose of real and personal property;
 - (e) may do and suffer all acts and things that a body corporate may, by law, do and suffer.
- (3) The common 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.
- (5) The Commission is the same body as that established by section 6 of the **Equal Opportunity Act 1984**.
- (6) Despite the change in the name of the Commission made by item 1 of the Schedule to the Charter of Human Rights and Responsibilities, the Commission continues to be the same body

S. 160(6)
inserted by
No. 43/2006
s. 47(Sch.
item 1.3).

after as before that change and that change does not affect any act, matter or thing.

161 Functions and powers of Commission

- (1) The Commission has the following functions—
- (a) to establish policies and issue guidelines and directions on the manner in which conciliation procedures under this Act should be conducted;
 - (b) to receive and investigate complaints on the manner in which conciliation procedures under this Act have been or are being conducted;
 - (c) to establish and undertake information and education programs;
 - (d) 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.

S. 161(1)(b)
amended by
No. 84/1997
s. 35.

S. 161(1)(d)
amended by
No. 43/2006
s. 47(Sch.
item 1.4).

162 Commission's educative and research functions

- (1) The Commission must undertake programs for the dissemination of information for the education of the public with respect to—
- (a) the elimination of discrimination, sexual harassment and vilification on the ground of race or religious belief or activity;
 - (b) the promotion of equality of opportunity;
 - (c) any other matters relevant to the provisions of this Act.
- (2) The Commission may undertake research into any matter arising from, or incidental to, the operation of this Act.

S. 162(1)(a)
amended by
No. 47/2001
s. 31.

- (3) 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 the Minister responsible for administering that provision or Act as soon as practicable.
- (4) The Commission may, at any time, submit a report to the Minister on any matter arising from the performance of the Commission's functions under this section.

163 Membership of Commission

The Commission consists of 5 members, of whom—

- (a) one is the Chief Conciliator;
- (b) the other 4 are persons appointed by the Governor in Council on the nomination of the Minister.

164 Terms of office

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

S. 164(3)
amended by
No. 46/1998
s. 7(Sch. 1),
substituted by
Nos 108/2004
s. 117(1)
(Sch. 3
item 69.3),
80/2006
s. 26(Sch.
item 34.1).

165 Resignation and removal

- (1) An appointed member of the Commission ceases to be a member if he or she is absent, without leave having been granted by the Commission, from 3 consecutive meetings of which reasonable notice has been given to the member, either personally or by post.
- (2) An appointed member of the Commission may resign the office of member by writing signed by him or her and addressed to the Governor in Council.
- (3) The Governor in Council may at any time remove an appointed member of the Commission from office.

166 Filling casual vacancies

- (1) If an appointed member of the Commission ceases to hold office before his or her term of appointment expires, the Governor in Council, in accordance with this Act on the recommendation of the Minister, may fill the vacant office.
- (2) A member appointed under this section holds office for the rest of the term of appointment of the member whose place he or she fills.

167 Chairperson

- (1) The Governor in Council may appoint an appointed member of the Commission to be the chairperson of the Commission.
- (2) A person appointed as chairperson holds that office for the term specified in the instrument of appointment and is eligible for reappointment.
- (3) A person appointed as chairperson may resign that office by writing signed by the person and addressed to the Governor in Council.

s. 168

- (4) The Governor in Council may at any time remove a person from the office of chairperson.
- (5) A person appointed as chairperson ceases to hold that office on ceasing to be a member of the Commission.

168 Acting members

- (1) If an appointed member of the Commission is unable to perform the duties or functions of the office, the Governor in Council may appoint a person to act as the member during the period of inability.
- (2) 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.
- (3) 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.

169 Payment of members

- (1) An appointed member of the Commission or acting member, 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 Commission or acting member is entitled to receive the allowances that are fixed from time to time by the Governor in Council.

S. 169(1)
amended by
No. 46/1998
s. 7(Sch. 1).

S. 169(3)
repealed by
No. 46/1998
s. 7(Sch. 1).

* * * * *

170 Procedure of Commission

- (1) The chairperson must preside at a meeting of the Commission at which he or she is present.
- (2) If the chairperson 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 Commission currently holding office constitutes a quorum.
- (5) Subject to this Act, the Commission may regulate its own proceedings.

171 Effect of vacancy or defect

An act or decision by the Commission 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.

172 Delegation by Commission

- (1) The Commission may, in writing, delegate to a member of the Commission any of its powers or functions under this Act, or the Charter of Human Rights and Responsibilities, other than this power of delegation.
- (2) The Commission may, in writing, delegate to a member of staff of the Commission any of its powers or functions under sections 108, 110, 112, 113, 117, 119, 120, 122 and 123.

S. 172
amended by
No. 79/2006
s. 20 (ILA
s. 39B(1)).

S. 172(1)
amended by
No. 43/2006
s. 47(Sch.
item 1.5).

S. 172(2)
inserted by
No. 79/2006
s. 20.

s. 172A

S. 172A
inserted by
No. 52/1998
s. 57,
amended by
Nos 46/1998
s. 7(Sch. 1),
108/2004
s. 117(1)
(Sch. 3
item 69.4),
43/2006
s. 47(Sch.
item 1.6).

172A Staff of Commission

Any staff that are necessary for the purposes of administering this Act or the Charter of Human Rights and Responsibilities are to be employed under Part 3 of the **Public Administration Act 2004**.

Division 2—Chief Conciliator

173 Appointment of Chief Conciliator

There is to be a Chief Conciliator of the Commission appointed by the Governor in Council.

174 Term of office

- (1) The Chief Conciliator holds office for the period, not exceeding 5 years, specified in his or her instrument of appointment.
- (2) The Chief Conciliator is eligible for reappointment.
- (3) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to the Chief Conciliator in respect of the appointment.

S. 174(3)
amended by
No. 46/1998
s. 7(Sch. 1),
substituted by
Nos 108/2004
s. 117(1)
(Sch. 3
item 69.5),
80/2006
s. 26(Sch.
item 34.2).

175 Resignation and removal

- (1) The Chief Conciliator may resign that office by writing signed by him or her and addressed to the Governor in Council.
- (2) The Governor in Council may at any time remove the Chief Conciliator from office.

176 Acting Chief Conciliator

- (1) If the Chief Conciliator is unable to perform his or her duties or functions, the Governor in Council may appoint a person to act as Chief Conciliator during the period of inability.
- (2) The Governor in Council—
 - (a) subject to this Act, may determine the terms of appointment of an acting Chief Conciliator;
 - (b) may at any time terminate the appointment.
- (3) While his or her appointment remains in force, the acting Chief Conciliator has and may exercise all the powers and perform all the duties and functions of the Chief Conciliator.

177 Payment of Chief Conciliator

- (1) The Chief Conciliator is entitled to receive the remuneration and allowances that are fixed from time to time by the Governor in Council.

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S. 177(2)
repealed by
No. 46/1998
s. 7(Sch. 1).

178 Functions, powers and duties of Chief Conciliator

- (1) The Chief Conciliator is the chief executive officer of the Commission and has the functions, powers and duties conferred on him or her by this Act.

s. 179

- (2) In addition to all other functions, powers and duties, the Chief Conciliator is to administer the affairs of the Commission in accordance with the policies and directions of the Commission.

179 Delegation by Chief Conciliator

The Chief Conciliator may, in writing, delegate to an officer of the Commission any of his or her powers or functions under this Act other than this power of delegation.

Pt 9 Div. 3
(Heading and
ss 180–190)
amended by
Nos 84/1997
s. 36, 46/1998
s. 7(Sch. 1),
repealed by
No. 52/1998
s. 58(a).

* * * * *

Pt 9 Div. 4
(Heading)
amended by
No. 52/1998
s. 58(b).

Division 4—General provisions

S. 191
amended by
No. 84/1997
s. 37(1)(2)
(ILA s. 39B(1)),
substituted by
No. 46/1998
s. 7(Sch. 1),
repealed by
No. 52/1998
s. 58(c).

* * * * *

192 Secrecy

- (1) This section applies to every person who is or has been—

S. 192(1)(a)
repealed by
No. 52/1998
s. 58(d)(i).

* * * * *

(b) an appointed member or acting member of the Commission;

(c) the Chief Conciliator;

* * * * *

S. 192(1)(d) repealed by No. 52/1998 s. 58(d)(i).

(e) a member of staff of the Commission;

S. 192(1)(e) amended by No. 52/1998 s. 58(d)(ii).

(f) any other person acting under the authority of the Commission;

S. 192(1)(f) amended by No. 52/1998 s. 58(d)(ii).

(g) a person to whom section 15 of the old Act applied immediately before its repeal.

(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 the old Act; or

(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 the old Act.

Penalty: 10 penalty units.

s. 193

(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 the 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 the **Equal Opportunity Act 1984** as in force immediately before its repeal;

produce includes permit access to.

193 Protection from liability

(1) This section applies to every person who is or has been—

S. 193(1)(a)
repealed by
No. 52/1998
s. 58(e)(i).

* * * * *

(b) an appointed member or acting member of the Commission;

(c) the Chief Conciliator;

S. 193(1)(d)
repealed by
No. 52/1998
s. 58(e)(i).

* * * * *

S. 193(1)(e)
amended by
No. 52/1998
s. 58(e)(ii).

(e) a member of staff of the Commission;

(f) any other person acting under the authority of the Commission.

S. 193(1)(f)
amended by
No. 52/1998
s. 58(e)(ii).

- (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 thing done or omitted to be done 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.

194 Annual reports

- (1) 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, research and the review of Acts undertaken under section 162 during that financial year;
 - (b) may contain any recommendations the Commission considers appropriate for the elimination or modification of discriminatory provisions of Acts.

* * * * *

S. 194(2)(3)
repealed by
No. 52/1998
s. 58(f).

PART 10—OFFENCES

Division 1—Discriminatory advertising

195 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 3, 5 or 6.

Penalty: 20 penalty units.

196 Defence

It is a defence to a charge under section 195 if the defendant proves that the defendant took reasonable precautions and exercised due diligence to prevent the publication or display.

197 Proceedings for the offence of discriminatory advertising

- (1) Proceedings for an offence under section 195 may be brought by the Commission.
- (2) For the purpose of those proceedings, the Commission may, by written notice, require any person to produce any documents specified in the notice to the Commission.
- (3) A person must not refuse, without reasonable excuse, to produce a document referred to in subsection (2) to the Commission.

Penalty: 20 penalty units.

Division 2—Other offences

* * * * * S. 198
amended by
No. 84/1997
s. 38(a)(b),
repealed by
No. 52/1998
s. 59.

* * * * * Ss 199, 200
repealed by
No. 52/1998
s. 59.

201 Compliance with notice requiring attendance or production of documents

S. 201
substituted by
No. 25/2006
s. 7.

A person must not, without reasonable excuse, fail to comply with a notice of the Commission under section 108(1A) or of the Chief Conciliator under section 114(2).

Penalty: 20 penalty units.

202 Obstruction of Commission

S. 202
substituted by
No. 52/1998
s. 60.

A person must not—

- (a) hinder or obstruct a member or member of staff of the Commission or the Chief Conciliator in the exercise of powers or the performance of functions under this Act; or
- (b) use insulting language towards a member or member of staff of the Commission or the Chief Conciliator when the member or Chief Conciliator is exercising powers or performing functions under this Act.

Penalty: 20 penalty units.

S. 203
substituted by
No. 52/1998
s. 61.

203 False or misleading information

A person must not give any information or make any statement to the Commission, the Chief Conciliator or a person acting on behalf of the Commission or the Chief Conciliator 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: 20 penalty units.

204 Protection against self-incrimination

A person may 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.

205 Offences are to be dealt with summarily

An offence against this Act is to be prosecuted summarily.

206 Who may bring proceedings for offences?

Proceedings for an offence under this Division or the regulations may be brought by the Commission.

PART 11—GENERAL

207 Review of Victorian legislation

The Minister must cause a review of all Acts and enactments (other than municipal council by-laws or local laws) to be undertaken for the purpose of identifying provisions which discriminate, or may lead to discrimination, against any person.

208 Proceedings against unincorporated associations

- (1) A complaint 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.

209 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.

210 Protection of people giving evidence and information

If—

- (a) a complaint has been lodged; or

s. 211

S. 210(b)
amended by
No. 52/1998
s. 62.

- (b) a document or any information or evidence has been produced or given to the Commission or the Chief conciliator under this Act—

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

211 Supreme Court—limitation of jurisdiction

It is the intention of this section to alter or vary section 85 of the **Constitution Act 1975** to the extent necessary to prevent the bringing before the Supreme Court of—

- (a) any action in respect of a person's liability in relation to a matter, if section 47(4), 58(2), 193(2) or 210 provides that the person is not liable in relation to that matter; or
- (b) any action in relation to a complaint dismissed by the Commission under section 108, 110, 113, 117 or 123; or
- (c) any action relating to a complaint where a person has chosen another avenue of review under section 103 of the **Public Sector Management Act 1992** in relation to the same subject matter.

212 Regulations

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

S. 212(a)
amended by
No. 52/1998
s. 63.

- (a) prescribing matters in connection with the exercise of powers by the Commission or the Chief Conciliator;
- (b) prescribing forms for the purposes of this Act;

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- (c) prescribing penalties, not exceeding 2 penalty units, for breaches 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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s. 213

PART 12—REPEALS, AMENDMENTS AND TRANSITIONAL PROVISIONS

213 Definitions

In this Part—

Board means the Equal Opportunity Board established by section 8 of the old Act;

old Act means the **Equal Opportunity Act 1984** as in force immediately before its repeal.

S. 214
repealed by
No. 84/1997
s. 40(c).

* * * * *

215 Commission members to continue in office

- (1) An appointed member of the Commission who is in office immediately before the commencement of section 214 continues to be a member of the Commission after that commencement for the balance of his or her term of appointment, subject to the terms and conditions of that appointment, but may resign or be removed by the Governor in Council.
- (2) The Chief Conciliator appointed under section 7J of the old Act who is in office immediately before the commencement of section 214 continues to be the Chief Conciliator of the Commission after that commencement for the balance of his or her term of appointment, subject to the terms and conditions of that appointment, but may resign or be removed by the Governor in Council.

S. 216
repealed by
No. 52/1998
s. 64.

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217 Dealing with complaints already lodged

- (1) Subject to this section, any complaint that has been lodged under section 44 of the old Act but not finally disposed of must continue to be dealt with according to the old Act, as if the old Act had not been repealed.
 - (2) Any proceeding in relation to a complaint that is awaiting hearing by the Board at the commencement of this section, or that is referred to the Board after the commencement of this section, is to be heard by the Tribunal, applying the provisions of the old Act, and for that purpose the Tribunal has all the powers, functions and duties of the Board under the old Act.
 - (3) If—
 - (a) the Board has begun hearing a proceeding in relation to a complaint but has not made a final order in that proceeding; or
 - (b) the Board has made a final order in a proceeding relating to a complaint but, on appeal, the matter is referred back to the Board for a rehearing—the proceeding or matter is to continue to be heard, or to be reheard, by the Board as if this Act had not been enacted.
 - (4) For the purpose of subsection (3) the Board continues in existence until all proceedings in relation to the complaint, including any appeals from an order of the Board, any re-hearings as a result of such appeals and any action to enforce an order of the Board, have been completed.
 - (5) If any difficulty arises in any proceeding or matter because of the operation of this section, the President of the Board or Tribunal (as the case may be) may make any order he or she considers appropriate to resolve the difficulty.
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- (6) The President may make such an order on the application of any party to the proceeding or matter, or on his or her own initiative.

218 Dealing with new complaints

- (1) A complaint may not be lodged with the Commission in respect of an alleged contravention of the old Act.
- (2) If an alleged contravention of the old Act, if proven, would also have been a contravention of this Act had this Act been in operation at the time, a person may lodge a complaint with the Commission under this Act in relation to the alleged contravention as if this Act had been in operation at the time.
- (3) Subsection (2) does not apply—
- (a) if the person had lodged a complaint under the old Act in relation to the same subject matter; or
 - (b) if the Commission had refused to extend the time for the lodging of a complaint under the old Act in relation to the same subject matter.
- (4) This section applies despite anything to the contrary in section 14 of the **Interpretation of Legislation Act 1984**.

219 Current investigations and inquiries

- (1) Any matter that is under investigation by the Commission under section 41 of the old Act must continue to be dealt with according to the old Act, as if—
- (a) the old Act had not been repealed; and
 - (b) a reference in the old Act to the Board were a reference to the Tribunal.

- (2) Any matter that has been referred to the Board under section 42 of the old Act but has not been finally determined must continue to be dealt with according to the old Act, as if—
- (a) the old Act had not been repealed; and
 - (b) a reference in the old Act to the Board were a reference to the Tribunal.
- (3) For the purpose of making an order in any inquiry of the Tribunal that had commenced before the Board, the Tribunal may take into account any evidence that had been given to the Board before the commencement of this section.

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S. 220
repealed by
No. 84/1997
s. 40(c).

221 Temporary exemptions continue

An exemption granted by the Board under section 40 of the old Act that is in force immediately before the commencement of section 214 continues in force in accordance with its terms until it expires, but may be sooner revoked by the Tribunal.

222 References to the Board

In—

- (a) an Act, other than this Act; or
- (b) an enactment; or
- (c) any other document—

a reference to the Board must be taken to be a reference to the Tribunal in relation to any act, matter or thing occurring on or after the commencement of this section, unless inconsistent with the context or subject matter.

s. 222A

S. 222A
inserted by
No. 84/1997
s. 39.

222A Transitional

- (1) Section 108(1) of the Principal Act, as amended by section 23 of the **Law and Justice Legislation (Further Amendment) Act 1997**, applies to complaints lodged on or after the commencement of that section 23.
- (2) Section 109 of the Principal Act, as amended by section 24(2) of the **Law and Justice Legislation (Further Amendment) Act 1997**, applies to applications made on or after the commencement of that section 24(2).
- (3) A conciliation agreement lodged with the Registrar before the commencement of section 27 of the **Law and Justice Legislation (Further Amendment) Act 1997** is deemed, unless the conciliation was completed before that commencement, to have been registered by the President.
- (4) Section 115 of the Principal Act, as amended by section 27 of the **Law and Justice Legislation (Further Amendment) Act 1997**, applies to agreements entered into on or after the commencement of that section 27.
- (5) Section 182 of the Principal Act, as in force before the commencement of section 36 of the **Law and Justice Legislation (Further Amendment) Act 1997**, continues to apply, despite its substitution by that section 36—
 - (a) to a referral made, or purported to have been made, by the Tribunal under section 156 of the Principal Act before that commencement; and
 - (b) to appeals or remittals under the Principal Act in relation to such a referral.

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Ss 223–225
repealed by
No. 84/1997
s. 40(c).

**223 Transitional provisions—Equal Opportunity
(Breastfeeding) Act 2000**

New s. 223
inserted by
No. 21/2000
s. 4.

- (1) Subject to this Act, a complaint may be lodged after the commencement of the **Equal Opportunity (Breastfeeding) Act 2000** alleging a contravention of this Act constituted by discrimination on the basis of breastfeeding, whether the alleged contravention took place before or after that commencement.
- (2) A complaint cannot be lodged as provided by subsection (1) if the alleged contravention—
 - (a) took place before the commencement of the **Equal Opportunity (Breastfeeding) Act 2000**; and
 - (b) had been the subject matter of a complaint lodged with the Commission before that commencement.
- (3) A complaint lodged with the Commission before the commencement of the **Equal Opportunity (Breastfeeding) Act 2000** but not finally disposed of immediately before that commencement must continue to be dealt with under this Act as if section 3 of that Act had not come into operation.

**224 Transitional provisions—Equal Opportunity
(Gender Identity and Sexual Orientation) Act 2000**

New s. 224
inserted by
No. 52/2000
s. 8.

- (1) Subject to this Act, a complaint may be lodged after the commencement of section 5(3) of the **Equal Opportunity (Gender Identity and Sexual Orientation) Act 2000** alleging a contravention of this Act constituted by discrimination on the basis of sexual orientation,

whether the alleged contravention took place before or after that commencement.

- (2) A complaint cannot be lodged as provided by subsection (1) if the alleged contravention—
 - (a) took place before the commencement of section 5(3) of the **Equal Opportunity (Gender Identity and Sexual Orientation) Act 2000**; and
 - (b) had been the subject matter of a complaint lodged with the Commission before that commencement.
- (3) A complaint lodged with the Commission before the commencement of section 5(3) of the **Equal Opportunity (Gender Identity and Sexual Orientation) Act 2000** but not finally disposed of immediately before that commencement must continue to be dealt with under this Act as if section 5(3) of that Act had not come into operation.

New s. 225
inserted by
No. 25/2006
s. 8,
amended by
No. 43/2006
s. 47(Sch.
item 1.7).

225 Transitional provision—Equal Opportunity and Tolerance Legislation (Amendment) Act 2006

The amendments made to section 134 by section 6 of the **Equal Opportunity and Tolerance Legislation (Amendment) Act 2006** apply to complaints lodged with the Commission under section 105 of the **Equal Opportunity Act 1995** on or after the commencement of section 6 of the **Equal Opportunity and Tolerance Legislation (Amendment) Act 2006**.

226 Transitional provision—Justice Legislation (Further Amendment) Act 2006

New s. 226
inserted by
No. 79/2006
s. 21.

A complaint may be made by a person or body referred to in section 104(1A) or (1B) after the commencement of section 19 of the **Justice Legislation (Further Amendment) Act 2006**, whether the complaint relates to an alleged contravention of this Act that took place before or after that commencement.

* * * * *

Pt 13
(Heading and
s. 226)
repealed by
No. 84/1997
s. 40(c).

Equal Opportunity Act 1995
No. 42 of 1995

Sch. 1

Sch. 1
repealed by
No. 84/1997
s. 40(c).

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Sch. 2
amended by
Nos 79/1995
s. 37, 22/1996
s. 12,
repealed by
No. 84/1997
s. 40(c).

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ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 4 May 1995

Legislative Council: 30 May 1995

The long title for the Bill for this Act was "A Bill to re-enact and extend the law relating to equal opportunity and discrimination, to repeal the **Equal Opportunity Act 1984**, to make consequential amendments to other Acts and for other purposes."

Constitution Act 1975:

Section 85(5) statement:

Legislative Assembly: 4 and 25 May 1995

Legislative Council: 30 May 1995

Absolute majorities:

Legislative Assembly: 25 May 1995

Legislative Council: 1 June 1995

The **Equal Opportunity Act 1995** was assented to on 14 June 1995 and came into operation as follows:

Part 1 (sections 1–5) on 14 June 1995: section 2(1); section 224, Schedule 2 item 5 on 5 October 1995: Government Gazette 28 September 1995 page 2731; rest of Act (*except* sections 115, 225, Schedule 2 item 14) on 1 January 1996: Government Gazette 21 December 1995 page 3571; section 115, Schedule 2 item 14 on 14 June 1996: section 2(4); section 225 on 1 January 1997: section 2(2).

Equal Opportunity Act 1995
No. 42 of 1995

Endnotes

2. Table of Amendments

This Version incorporates amendments made to the **Equal Opportunity Act 1995** by Acts and subordinate instruments.

Electricity Industry (Further Amendment) Act 1995, No. 79/1995

Assent Date: 28.11.95
Commencement Date: S. 37 on 14.6.95: s. 2(2)
Current State: This information relates only to the provision/s amending the **Equal Opportunity Act 1995**

Miscellaneous Acts (Omnibus Amendments) Act 1996, No. 22/1996

Assent Date: 2.7.96
Commencement Date: S. 12 on 13.6.96: s. 2(3); s. 11 on 2.7.96: s. 2(1)
Current State: This information relates only to the provision/s amending the **Equal Opportunity Act 1995**

Legal Practice Act 1996, No. 35/1996

Assent Date: 6.11.96
Commencement Date: S. 453(Sch. 1 item 27) on 1.1.97: s. 2(3)
Current State: This information relates only to the provision/s amending the **Equal Opportunity Act 1995**

Superannuation Acts (Further Amendment) Act 1996, No. 82/1996

Assent Date: 23.12.96
Commencement Date: S. 76 on 23.12.96: s. 2(1)
Current State: This information relates only to the provision/s amending the **Equal Opportunity Act 1995**

Law and Justice Legislation (Further Amendment) Act 1997, No. 84/1997

Assent Date: 2.12.97
Commencement Date: Ss 18–40 on 8.12.97: Government Gazette 4.12.97 p. 3290
Current State: This information relates only to the provision/s amending the **Equal Opportunity Act 1995**

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s amending the **Equal Opportunity Act 1995**

Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998, No. 52/1998

Assent Date: 2.6.98
Commencement Date: Ss 46–64 on 1.7.98: Government Gazette 18.6.98 p. 1512
Current State: This information relates only to the provision/s amending the **Equal Opportunity Act 1995**

Equal Opportunity Act 1995
No. 42 of 1995

Endnotes

Equal Opportunity (Breastfeeding) Act 2000, No. 21/2000

Assent Date: 16.5.00
Commencement Date: 17.5.00: s. 2
Current State: All of Act in operation

Equal Opportunity (Gender Identity and Sexual Orientation) Act 2000, No. 52/2000

Assent Date: 12.9.00
Commencement Date: 9.10.00: Government Gazette 5.10.00 p. 2413
Current State: All of Act in operation

Statute Law Amendment (Relationships) Act 2001, No. 27/2001

Assent Date: 12.6.01
Commencement Date: S. 9(Sch. 7 item 1) on 28.6.01: Government Gazette 28.6.01 p. 1428
Current State: This information relates only to the provision/s amending the **Equal Opportunity Act 1995**

Corporations (Consequential Amendments) Act 2001, No. 44/2001

Assent Date: 27.6.01
Commencement Date: S. 3(Sch. item 38) on 15.7.01: s. 2
Current State: This information relates only to the provision/s amending the **Equal Opportunity Act 1995**

Racial and Religious Tolerance Act 2001, No. 47/2001

Assent Date: 27.6.01
Commencement Date: Ss 29–31 on 1.1.02: s. 2(2)
Current State: This information relates only to the provision/s amending the **Equal Opportunity Act 1995**

Public Administration Act 2004, No. 108/2004

Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 69) on 5.4.05: Government Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s amending the **Equal Opportunity Act 1995**

Legal Profession (Consequential Amendments) Act 2005, No. 18/2005

Assent Date: 24.5.05
Commencement Date: S. 18(Sch. 1 item 38) on 12.12.05: Government Gazette 1.12.05 p. 2781
Current State: This information relates only to the provision/s amending the **Equal Opportunity Act 1995**

Education and Training Reform Act 2006, No. 24/2006

Assent Date: 16.5.06
Commencement Date: S. 6.1.2(Sch. 7 item 16) on 1.7.07: Government Gazette 28.6.07 p. 1304
Current State: This information relates only to the provision/s amending the **Equal Opportunity Act 1995**

Equal Opportunity Act 1995
No. 42 of 1995

Endnotes

**Equal Opportunity and Tolerance Legislation (Amendment) Act 2006,
No. 25/2006**

Assent Date: 6.6.06
Commencement Date: Ss 3, 4, 7 on 7.6.06: s. 2(1); ss 5, 6, 8 on 30.6.06:
Government Gazette 29.6.06 p. 1314
Current State: This information relates only to the provision/s
amending the **Equal Opportunity Act 1995**

Charter of Human Rights and Responsibilities Act 2006, No. 43/2006

Assent Date: 25.7.06
Commencement Date: S. 47(Sch. item 1) on 1.1.07: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Equal Opportunity Act 1995**

Owners Corporations Act 2006, No. 69/2006

Assent Date: 19.9.06
Commencement Date: S. 224(Sch. 3 item 4) on 31.12.07: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Equal Opportunity Act 1995**

Justice Legislation (Further Amendment) Act 2006, No. 79/2006

Assent Date: 10.10.06
Commencement Date: S. 18(1)(5) on 27.3.06: s. 2(3); ss 18(2)(3)(4), 19–21
on 11.10.06: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Equal Opportunity Act 1995**

**Public Sector Acts (Further Workplace Protection and Other Matters) Act 2006,
No. 80/2006**

Assent Date: 10.10.06
Commencement Date: S. 26(Sch. item 34) on 11.10.06: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Equal Opportunity Act 1995**

Equal Opportunity Amendment Act 2007, No. 16/2007

Assent Date: 29.5.07
Commencement Date: 31.3.08: s. 2(2)
Current State: All of Act in operation

Equal Opportunity Amendment (Family Responsibilities) Act 2008, No. 1/2008

Assent Date: 11.2.08
Commencement Date: 1.9.08: s. 2(2)
Current State: All of Act in operation

Relationships Act 2008, No. 12/2008

Assent Date: 15.4.08
Commencement Date: S. 73(1)(Sch. 1 item 20) on 1.12.08: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Equal Opportunity Act 1995**

3. Explanatory Details

¹ S. 109(2)(b): Section 75 of the **Victorian Civil and Administrative Tribunal Act 1998** allows the Tribunal to strike out certain claims after they have been referred to it.