

Authorised Version
Equal Opportunity Amendment Act 2011
No. 26 of 2011

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Authorised Version



Victoria

Equal Opportunity Amendment Act 2011[†]

No. 26 of 2011

[Assented to 21 June 2011]

The Parliament of Victoria enacts:

PART 1—PRELIMINARY

1 Purposes

The main purposes of this Act are to—

- (a) amend the **Equal Opportunity Act 2010**
to—
 - (i) alter the governance arrangements for
the Commission and the powers and
functions of the Commissioner; and

- (ii) remove the Commission's power to conduct public inquiries and amend the Commission's powers to conduct investigations; and
 - (iii) alter the exceptions relating to religious bodies and schools and standards of dress and behaviour in schools; and
 - (iv) insert exceptions relating to youth wages, accommodation that is unsuitable for children and clubs established principally for political purposes; and
 - (v) clarify the relationship between reasonable adjustments and disability standards made under the Disability Discrimination Act 1992 of the Commonwealth and determinations made under section 160B of the **Building Act 1993**; and
 - (vi) make miscellaneous amendments to improve the operation of the Act; and
- (b) amend the **Electoral Act 2002** to permit the Victorian Electoral Commission to discriminate on the basis of political belief or activity in relation to employment.

2 Commencement

- (1) This Act (except for Part 3) comes into operation on the day after the day on which it receives the Royal Assent.
- (2) Part 3 comes into operation on 1 August 2011.

3 Principal Act

In this Act, the **Equal Opportunity Act 2010** is called the Principal Act.

See:
Act No.
16/2010.
Law Today:
[www.
legislation.
vic.gov.au](http://www.legislation.vic.gov.au)

**PART 2—AMENDMENTS TO THE EQUAL OPPORTUNITY
ACT 2010**

4 Amendment to commencement

Section 2(2) of the Principal Act is **repealed**.

5 Definitions

In section 4(1) of the Principal Act—

(a) **insert** the following definition—

"*disability* means—

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

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

- (b) in the definition of *Commissioner*, for "section 169" **substitute** "section 170";
- (c) the definitions of *appointed member* and *impairment* are **repealed**.

6 Duty to eliminate discrimination, sexual harassment or victimisation

In section 15(4) of the Principal Act, **omit** "or a public inquiry".

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

- (1) In section 20(3) of the Principal Act—
 - (a) in paragraph (j), for "section; and" **substitute** "section.";
 - (b) paragraph (k) is **repealed**.
- (2) After section 20(4) of the Principal Act **insert**—
 - "(5) An employer is not required to make an adjustment under subsection (2) to the extent that the employer has complied with, or has been exempted from compliance with, a relevant disability standard made under the Disability Discrimination Act 1992 of the Commonwealth in relation to the subject matter of that adjustment.
 - (6) An employer is not required to make an adjustment under subsection (2) that relates to a building or land to the extent that—
 - (a) a determination has been made under section 160B of the **Building Act 1993** in relation to that building or land, in relation to the subject matter of that adjustment; and
 - (b) the employer complies with the determination."

8 New section 28A inserted

After section 28 of the Principal Act **insert—**

"28A Exception—youth wages

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

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

(1) In section 33(3) of the Principal Act—

(a) in paragraph (i), for "section; and" **substitute** "section.";

(b) paragraph (j) is **repealed**.

(2) After section 33(4) of the Principal Act **insert—**

"(5) A firm is not required to make an adjustment under subsection (2) to the extent that the firm has complied with, or has been exempted from compliance with, a relevant disability standard made under the Disability Discrimination Act 1992 of the Commonwealth in relation to the subject matter of that adjustment.

(6) A firm is not required to make an adjustment under subsection (2) that relates to a building or land to the extent that—

(a) a determination has been made under section 160B of the **Building Act 1993** in relation to that building or land, in relation to the subject matter of that adjustment; and

(b) the firm complies with the determination."

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

- (1) In section 40(3) of the Principal Act—
 - (a) in paragraph (h), for "section; and" **substitute** "section.";
 - (b) paragraph (i) is **repealed**.
- (2) After section 40(3) of the Principal Act **insert**—
 - "(4) An educational authority is not required to make an adjustment under subsection (2) to the extent that the educational authority has complied with, or has been exempted from compliance with, a relevant disability standard made under the Disability Discrimination Act 1992 of the Commonwealth in relation to the subject matter of that adjustment.
 - (5) An educational authority is not required to make an adjustment under subsection (2) that relates to a building or land to the extent that—
 - (a) a determination has been made under section 160B of the **Building Act 1993** in relation to that building or land, in relation to the subject matter of that adjustment; and
 - (b) the educational authority complies with the determination."

11 Exception—standards of dress and behaviour

For section 42(2) of the Principal Act **substitute**—

- "(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."

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

(1) In section 45(3) of the Principal Act—

(a) in paragraph (h), for "section; and"
substitute "section.";

(b) paragraph (i) is **repealed**.

(2) After section 45(3) of the Principal Act **insert**—

"(4) A service provider is not required to make an adjustment under subsection (2) to the extent that the service provider has complied with, or has been exempted from compliance with, a relevant disability standard made under the Disability Discrimination Act 1992 of the Commonwealth in relation to the subject matter of that adjustment.

(5) A service provider is not required to make an adjustment under subsection (2) that relates to a building or land to the extent that—

(a) a determination has been made under section 160B of the **Building Act 1993** in relation to that building or land, in relation to the subject matter of that adjustment; and

(b) the service provider complies with the determination."

13 Exception—access to or use of public premises unreasonable

(1) For section 58(1) of the Principal Act **substitute—**

"(1) A person may discriminate against another person on the basis of the other person's disability in relation to any premises or facilities in the premises that the public or a section of the public is entitled or allowed to enter or use (whether or not for payment) if—

- (a) the person could not reasonably be expected to avoid the discrimination; or
- (b) the discrimination is permitted under subsection (3)."

(2) In section 58(2) of the Principal Act—

- (a) in paragraph (e), for "discrimination; and" **substitute** "discrimination.";
- (b) paragraph (f) is **repealed**.

(3) After section 58(2) of the Principal Act **insert—**

"(3) A person may discriminate against another person on the basis of the other person's disability in relation to any premises or facilities in the premises that the public or a section of the public is entitled or allowed to enter or use (whether or not for payment) to the extent that—

- (a) the premises or facilities comply with, or are exempted from compliance with, a relevant disability standard made under the Disability Discrimination Act 1992 of the Commonwealth in relation to the subject matter of the discrimination; or

- (b) if the discrimination relates to a building or land on which the premises or facilities are situated—
- (i) a determination has been made under section 160B of the **Building Act 1993** in relation to that building or land, in relation to the subject matter of discrimination; and
 - (ii) the person complies with the determination."

14 New section 58A inserted

After section 58 of the Principal Act **insert—**

"58A 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."

15 New section 66A inserted

After section 66 of the Principal Act **insert—**

"66A Exception—clubs for political purposes

A club, or a member of the committee of management or other governing body of a club, may exclude a person from membership on the basis of political belief or activity if the club was established principally for a political purpose."

16 Exception—separate access to benefits for men and women

At the end of section 69 of the Principal Act
insert—

- "(2) In determining any matter relating to the application of subsection (1), the following must be considered—
- (a) the purposes for which the club is established;
 - (b) the membership of the club, including any class or type of membership;
 - (c) the nature of the benefits provided by the club;
 - (d) the opportunities for the use and enjoyment of those benefits by men and women;
 - (e) any other relevant circumstances."

17 Exception—competitive sporting activities

(1) After section 72(1) of the Principal Act **insert—**

- "(1A) A person may exclude people of one sex from participating in a competitive sporting activity if—
- (a) participation in the activity is necessary for progression to an elite level competition; and
 - (b) the exclusion is necessary to enable participants in the activity to progress to national or international elite level competition.
- (1B) A person may exclude people of one sex from participating in a competitive sporting activity or restrict participation in a

competitive sporting activity to people of one sex if—

- (a) the exclusion or restriction is intended to facilitate participation in the activity by people of a particular sex; and
 - (b) the exclusion or restriction is reasonable having regard to—
 - (i) the nature and purpose of the activity; and
 - (ii) the consequences of the exclusion or restriction for people of the excluded or restricted sex; and
 - (iii) whether there are other opportunities for people of the excluded or restricted sex to participate in the activity."
- (2) In section 72(3) of the Principal Act, for "Subsection (1) does not" **substitute** "Subsections (1), (1A) and (1B) do not".

18 Religious bodies

- (1) In section 82(2) of the Principal Act, **omit** "(except in relation to employment)".
- (2) Section 82(3) and (4) of the Principal Act are **repealed**.

19 Religious schools

- (1) In section 83(2) of the Principal Act, **omit** "(except in relation to employment)".
- (2) Section 83(3) and (4) of the Principal Act are **repealed**.

20 What is victimisation?

In section 104(1)(d)(ii) of the Principal Act, **omit** "or public inquiry".

21 Part 9 substituted

For Part 9 of the Principal Act **substitute**—

"PART 9—INVESTIGATIONS

Division 1—Commission may conduct investigation

127 When investigation may be conducted

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

- (a) the matter—
 - (i) raises an issue that is serious in nature; and
 - (ii) relates to a class or group of persons; and
 - (iii) cannot reasonably be expected to be resolved by dispute resolution or by making an application to the Tribunal under section 122; and
- (b) there are reasonable grounds to suspect that one or more contraventions of this Act have occurred; and
- (c) the investigation would advance the objectives of this Act.

Example

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

128 Matters referred by Tribunal for investigation

The Tribunal may refer a matter (other than a matter that is the subject of proceedings before the Tribunal) to the Commission for the Commission to consider whether the Commission should conduct an investigation.

Division 2—Conduct of investigations

129 Commission to conduct investigation as it thinks fit

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

130 Commission may ask for information

If it is reasonably necessary for the purpose of conducting an investigation, the Commission may ask any party to provide information in relation to an investigation.

131 Tribunal order compelling production of information or documents

- (1) The Commission may apply to the Tribunal for an order requiring a person to provide information or a document or both to the Commission.
- (2) The Tribunal may make an order referred to in subsection (1) if it is satisfied that—
 - (a) a person is in possession of information or a document that is relevant to an investigation; and

-
- (b) the information or document is necessary for the conduct of the investigation.
- (3) In making an order referred to in subsection (1), the Tribunal must have regard to—
- (a) any evidence of the impact that making the order would be likely to have on the person's business or other activities; and
- (b) the extent of disruption or inconvenience that is likely to be caused to the person if the order were made.
- (4) In making an order referred to in subsection (1), the Tribunal is not required to consider whether the Commission may conduct the investigation under section 127.
- (5) An order referred to in subsection (1) must specify that the person must do either or both of the following within a reasonable period specified in the order, or on a reasonable date and at a reasonable time specified in the order—
- (a) give the Commission a document containing information required by the order;
- (b) produce to the Commission the documents specified in the order.
- (6) The Tribunal may give directions prohibiting the disclosure of the identity of a person or information that would be reasonably likely to identify a person if the Tribunal considers that preservation of the person's anonymity is necessary—

- (a) to protect the person's security of employment, privacy or any right protected by the **Charter of Human Rights and Responsibilities Act 2006**; or
 - (b) to protect the person from victimisation.
- (7) A document referred to in subsection (5)(a) must be signed by the person or, if the person is a body corporate, an officer of the body corporate.
- (8) The person against whom an order is sought is a party to the proceeding on an application under subsection (1).

132 Creation of documents

An order under section 131 must not require a person to create a document unless—

- (a) it can be produced by the use of a computer or other equipment that is ordinarily available to the person for retrieving or collating stored information; or
- (b) it would contain factual information that is ordinarily available to the person and the Tribunal considers that—
 - (i) the document would significantly assist the investigation; and
 - (ii) it would not be unreasonably disruptive or inconvenient for the person to produce the document.

133 Documents produced to the Commission

- (1) If a document is produced to the Commission in accordance with an order under section 131, the Commission may—

-
- (a) take possession of the document; and
 - (b) make copies of the document or take extracts from the document; and
 - (c) retain possession of the document for as long as is necessary for the purposes of the investigation to which the document relates.
- (2) The Commission must allow a document retained under this section to be inspected, at all reasonable times, by any person who would be entitled to inspect the document if it were not in the possession of the Commission.

134 Power to compel attendance

- (1) The Commission may apply to the Tribunal for an order that a person attend before the Commission, at a reasonable time and place, to answer questions.
- (2) The Tribunal may make an order referred to in subsection (1) if it is satisfied that—
- (a) a person has information that is relevant to an investigation; and
 - (b) the information is necessary for the conduct of the investigation.
- (3) In making an order referred to in subsection (1), the Tribunal must have regard to—
- (a) any evidence of the impact that making the order would be likely to have on the person's business or other activities; and
 - (b) the extent of disruption or inconvenience that is likely to be caused to the person if the order were made.

- (4) In making an order referred to in subsection (1), the Tribunal is not required to consider whether the Commission may conduct the investigation under section 127.
- (5) The Tribunal may give directions prohibiting the disclosure of the identity of a person, or information that would be reasonably likely to identify a person, ordered to attend before the Commission, if the Tribunal considers that preservation of the person's anonymity is necessary—
- (a) to protect the person's security of employment, privacy or any right protected by the **Charter of Human Rights and Responsibilities Act 2006**;
or
 - (b) to protect the person from victimisation.
- (6) A person who is required by an order referred to in subsection (1) to attend before the Commission—
- (a) is entitled to be paid a reasonable sum for his or her attendance; and
 - (b) is entitled to have a legal or personal representative present.
- (7) The person against whom an order is sought is a party to the proceeding on an application under subsection (1).

135 Disclosure of identity of persons who give information or documents

- (1) This section applies to a person who has given or who will give evidence, information or documents to the Commission as part of an investigation, whether or not the person is compelled to do so under section 131 or 134.

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- (2) The Commission may give directions prohibiting the disclosure of the identity of the person or prohibiting the disclosure of information that would be reasonably likely to identify the person if the Commission considers that preservation of the person's anonymity is necessary—
- (a) to protect the person's security of employment, privacy or any right protected by the **Charter of Human Rights and Responsibilities Act 2006**; or
 - (b) to protect the person from victimisation.
- (3) A direction under this section must not be inconsistent with any direction of the Tribunal prohibiting the disclosure of the identity of a person, or information that would be reasonably likely to identify a person, given under section 131(6) or 134(5).

136 Publication of evidence, information or documents

- (1) The Commission may give directions prohibiting or limiting the publication of—
- (a) any evidence given before the Commission or any information given to the Commission as part of an investigation; or
 - (b) the contents of any document produced to the Commission as part of an investigation.
- (2) Subsection (1) applies whether or not a person was compelled to give the evidence or produce the information or document under section 131 or 134.

- (3) In deciding whether or not to give a direction under subsection (1), the Commission must have regard to the need to prevent any of the following as are relevant to the circumstances—
- (a) prejudice to the relations between the Government and the Commonwealth Government or between the Government and the Government of another State or a Territory;
 - (b) the disclosure of deliberations or decisions of the Cabinet, or of a Committee of the Cabinet;
 - (c) prejudice to the proper functioning of the Government;
 - (d) the disclosure, or the ascertaining by a person, of the existence or identity of a confidential source of information in relation to the enforcement of the criminal law;
 - (e) the endangering of the life or physical safety of any person;
 - (f) prejudice to the proper enforcement of the law or the protection of public safety;
 - (g) the disclosure of information the disclosure of which is prohibited, absolutely or subject to qualifications, by or under another Act;
 - (h) the unreasonable disclosure of the personal affairs of any person;
 - (i) the unreasonable disclosure of confidential commercial information.

137 Tribunal may make interim orders to prevent prejudice to investigation

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

138 Investigation when other proceedings commenced

- (1) The Commission may commence or continue to conduct an investigation despite the fact that proceedings have commenced in any court or tribunal that relate to or are otherwise connected with the subject matter of the investigation.
- (2) If the Commission is or becomes aware that proceedings referred to in subsection (1) have commenced, the Commission must take all reasonable steps to ensure that the conduct of the investigation does not prejudice those proceedings.

Division 3—Outcomes of investigations

139 Outcome of an investigation

- (1) After conducting an investigation, the Commission may take any action it thinks fit.
- (2) Without limiting subsection (1), the Commission may—
 - (a) take no further action;
 - (b) enter into an agreement with a person about action required to comply with this Act;
 - (c) refer a matter to the Tribunal;
 - (d) make a report with respect to the matter to the Attorney-General;
 - (e) make a report with respect to the matter to the Parliament.

140 Registration of agreements

- (1) If—
 - (a) the Commission enters into an agreement with a person under section 139(2)(b); and
 - (b) the agreement provides for registration under this section—any party to that agreement may lodge a copy of the signed agreement with the Tribunal for registration.
- (2) Subject to subsection (3), the Tribunal must register the agreement and give a certified copy of the agreement to each party.

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- (3) If the Tribunal, constituted by a presidential member, considers that it may not be practicable to enforce, or to supervise compliance with, an agreement or part of an agreement the Tribunal—
- (a) in the case of an agreement, may refuse to register the agreement; or
 - (b) in the case of part of an agreement, may refuse to register the part of the agreement that it considers may not be practicable to enforce, or to supervise compliance with.
- (4) On registration, the registered agreement or registered part of the agreement must be taken to be an order of the Tribunal in accordance with its terms and may be enforced accordingly.
- (5) The refusal of the Tribunal to register the agreement or any part of the agreement does not affect the validity of the agreement.

141 Inquiries by the Tribunal

- (1) If a matter has been referred to the Tribunal under section 139(2)(c), the Tribunal must conduct an inquiry into the matter and, if satisfied that a person has contravened this Act in respect of the referred matter, may make either or both of the following orders—
- (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) Subject to this Act, the Tribunal may conduct an inquiry into a matter referred to it under section 139(2)(c) in the manner it thinks fit.
- (3) The Commission may be a party to any proceeding referred to the Tribunal under section 139(2)(c).
- (4) In addition to any other party, a person who is alleged to have contravened this Act in relation to the subject matter of the inquiry is a party to the inquiry.

142 Report of an investigation

- (1) If the Commission makes a report of an investigation to the Attorney-General under section 139(2)(d), the Attorney-General may cause a copy of that report to be laid before each House of Parliament.
- (2) If the Commission makes a report of an investigation to the Parliament under section 139(2)(e), the Commission must cause a copy of that report to be given to the clerk of each House of Parliament.
- (3) If a report is received under subsection (2), the clerk must cause the report to be laid before the House on the day on which it is received or on the next sitting day of the House.
- (4) The Commission may publish a report on an investigation, whether or not a report has been made to the Attorney-General or Parliament.

143 Content of reports

- (1) If the Commission believes there are grounds for making adverse findings about a person in the report of an investigation, the Commission must give the person a reasonable opportunity to comment on the subject matter of the investigation and respond to the grounds for making the adverse findings before—
 - (a) providing the report to the Attorney-General or the Parliament; or
 - (b) publishing the report.
- (2) The Commission may exclude from the report any matter if it considers it desirable to do so, having regard to the factors set out in section 135(2) and 136(3).
- (3) If the Commission provides the report to the Attorney-General, the Commission must advise the Attorney-General about any matter excluded from the report under subsection (2) and the reasons for its exclusion.

144 Report on investigation not prohibited disclosure

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

_____".

22 Commission may conduct review of compliance

- (1) In section 151(1) of the Principal Act, after "Commission may" **insert** "enter into an agreement with the person to".

(2) After section 151(1) of the Principal Act **insert**—

"(1A) An agreement to review may provide for payment of the Commission's reasonable costs of undertaking the review."

23 Register of action plans

For section 153(2) of the Principal Act **substitute**—

"(2) The Commission may include the action plan in a Register of Action Plans."

24 Commission's research functions

In section 157(2) of the Principal Act, before "data" **insert** "information and".

25 Divisions 2 and 3 of Part 11 substituted

For Divisions 2 and 3 of Part 11 of the Principal Act **substitute**—

"Division 2—The Board

161 Constitution of the Board

- (1) There is established a Board of the Commission.
- (2) The Board consists of not more than 7 members appointed by the Governor in Council on the recommendation of the Minister.

162 Functions of the Board

- (1) The Board is responsible for—
 - (a) determining the Commission's strategic direction and the general nature of activities to be undertaken by the Commission in performing its functions; and

- (b) setting policies, priorities and strategies for the Commission in performing its functions; and
 - (c) ensuring that the Commission performs the functions and duties conferred on the Commission by or under this Act or any other Act; and
 - (d) deciding whether the Commission should conduct an investigation under section 127.
- (2) The Board has any other functions conferred on it by or under this or any other Act.
 - (3) The Board has all the powers necessary to enable it to perform its functions.

163 Terms of appointment of members

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

164 Resignation and removal

- (1) A member of the Board ceases to hold office if the member—
 - (a) has been convicted in Victoria or elsewhere of an indictable offence or an offence that, if committed in Victoria, would be an indictable offence; or

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

165 Chairperson

- (1) The Governor in Council, on the recommendation of the Minister, must appoint one of the members of the Board to be the chairperson of the Board.

- (2) A person appointed as chairperson of the Board holds that office for the period, not exceeding 5 years, specified in his or her instrument of appointment.
- (3) A person appointed as chairperson is eligible for reappointment.
- (4) A person appointed as chairperson of the Board may resign that office by writing delivered to the Governor in Council.
- (5) A person appointed as chairperson of the Board ceases to hold that office on ceasing to be a member of the Board.

166 Acting appointments

- (1) The Governor in Council, on the recommendation of the Minister, may appoint a member of the Board to act as chairperson of the Board if the chairperson—
 - (a) ceases to hold office before his or her term of appointment expires; or
 - (b) is unable to perform the duties or functions of the office.
- (2) The Governor in Council, on the recommendation of the Minister, may appoint a person to act as a member of the Board if a member—
 - (a) ceases to hold office before his or her term of appointment expires; or
 - (b) is unable to perform the duties or functions of the office.
- (3) An acting chairperson holds office—
 - (a) if appointed to act under subsection (1)(a), for the rest of the term of appointment of the chairperson; or

- (b) if appointed to act under subsection (1)(b), for the period that the chairperson is unable to perform the duties or functions of the office.
- (4) An acting member holds office—
 - (a) if appointed to act under subsection (2)(a), for the rest of the term of appointment of the member whose place he or she fills; or
 - (b) if appointed to act under subsection (2)(b), for the period that the member is unable to perform the duties or functions of the office.
- (5) The Governor in Council—
 - (a) subject to this Act, may determine the terms of appointment of an acting chairperson or acting member;
 - (b) may at any time terminate the appointment.
- (6) While the appointment of an acting chairperson or acting member remains in force, the acting chairperson or acting member has and may exercise all the powers and perform all the duties and functions of the chairperson or member.

167 Payment of members

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

168 Procedure of Board

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

169 Effect of vacancy or defect

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

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

Division 3—The Commissioner

170 Appointment and role of Commissioner

- (1) There is to be a Commissioner of the Victorian Equal Opportunity and Human Rights Commission appointed by the Board with the approval of the Minister.

(2) The Commissioner—

- (a) is responsible to the Board for control of the day-to-day administration of the affairs of the Commission in accordance with the policies, priorities and strategies determined by the Board; and
- (b) has any other functions, powers and duties delegated to the Commissioner by the Commission or the Board.

171 Payment of Commissioner

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

172 Acting Commissioner

- (1) The Board may, with the approval of the Minister, appoint a person to act as Commissioner if the Commissioner—
 - (a) ceases to hold office before his or her term of appointment expires; or
 - (b) is unable to perform the duties or functions of the office.
- (2) An acting Commissioner holds office—
 - (a) if appointed to act under subsection (1)(a), for the rest of the term of appointment of the Commissioner; or
 - (b) if appointed to act under subsection (1)(b), for the period that the Commissioner is unable to perform the duties or functions of the office.

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- (3) The Board—
- (a) subject to this Act, may determine the terms of appointment of an acting Commissioner;
 - (b) may at any time terminate the appointment.
- (4) While the appointment of an acting Commissioner remains in force, the acting Commissioner has and may exercise all the powers and perform all the duties and functions of the Commissioner."

26 Delegation

- (1) In section 175 of the Principal Act—
- (a) for "section 162(2)" (wherever occurring) **substitute** "section 162(1)(d)";
 - (b) for "an appointed member" (wherever occurring) **substitute** "a member".
- (2) In section 175(4) of the Principal Act, after "this Act" **insert** "(including any of the powers, functions or duties delegated to the Commissioner under subsection (1) or (2))".

27 New section 176A inserted

After section 176 of the Principal Act **insert**—

"176A Exceptions—court-ordered disclosure in criminal proceedings or disclosure with consent

- (1) Nothing in section 176(3) or (4) prevents a person to whom section 176 applies disclosing or communicating information or producing in a court any document containing information to which that section applies if the disclosure, communication or production is required by an order of a court for the purposes of a criminal proceeding.

- (2) Nothing in section 176(3) or (4) prevents a person to whom section 176 applies disclosing or communicating information or producing in a court any document containing information to which that section applies if the person to whose affairs the information relates consents to the disclosure, communication or production.
- (3) A person to whom section 176 applies does not commit an offence against section 176(3) if he or she discloses or communicates or produces information in the circumstances set out in subsection (1) or (2).
- (4) In subsection (2), *court* has the same meaning as in section 176(5)."

28 New section 188A inserted

After section 188 of the Principal Act **insert**—

"188A Protection against self-incrimination

A natural 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."

29 New sections 195A to 195C inserted

After section 195 of the Principal Act **insert**—

"195A Continuation of the Board of the Commission

The Board of the Commission continues to be the same body despite the change in its membership.

195B Interim chairperson

Despite section 168, if on the commencement day, a chairperson or acting chairperson has not been appointed, the members of the Board may elect a member to preside at meetings until a chairperson or acting chairperson is appointed.

195C Commissioner

- (1) The person who, immediately before the commencement day, held office as the Commissioner is taken, on and from the commencement day to be the Commissioner for the remainder of his or her term of appointment, subject to the same terms and conditions of appointment, as if he or she had been appointed under section 170.
- (2) Section 172 of the old Act continues to apply to the Commissioner, despite the repeal of the old Act.
- (3) On the commencement day, the person who, immediately before the commencement day, held office as the Commissioner ceases to be a member of the Board."

30 Consequential amendments to Victorian Civil and Administrative Tribunal Act 1998

- (1) For section 205(a) of the Principal Act **substitute—**
 - "(a) in the definition of *inquiry*, for "section 159 of the **Equal Opportunity Act 1995**" **substitute** "section 141 of the **Equal Opportunity Act 2010**";"

(2) In section 205(b) of the Principal Act, for paragraph (a) of the proposed definition of *proceeding* in section 3 of the **Victorian Civil and Administrative Tribunal Act 1998** substitute—

"(a) an inquiry conducted by the Tribunal, including an inquiry under section 141 of the **Equal Opportunity Act 2010**; or".

31 Part 7 of Schedule 1 substituted

In section 207 of the Principal Act, after proposed clause 22 of Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998** insert—

"23 Notification of commencement of inquiry under section 139(2)(c)

- (1) If a matter is referred to the Tribunal for inquiry under section 139(2)(c) of the **Equal Opportunity Act 2010**, the Tribunal may direct the principal registrar to notify any person who the Tribunal considers may have an interest in that matter.
- (2) The principal registrar must notify a person specified under subclause (1) in the manner specified by the Tribunal.
- (3) The Tribunal may direct that notification under subclause (1) be done by the publication of an advertisement in the manner specified by the Tribunal."

32 Repeal of Part 16

Part 16 of the Principal Act is **repealed**.

33 Repeal of Part 17

Part 17 of the Principal Act is **repealed**.

**34 References to *impairment* and *Commissioner* in
Principal Act**

The Principal Act is amended as set out in the
Schedule.

PART 3—AMENDMENTS TO THE ELECTORAL ACT 2002

35 New section 17A inserted in the Electoral Act 2002

See:
Act No.
23/2002.
Reprint No. 3
as at
20 August
2010.
LawToday:
www.
legislation.
vic.gov.au

After section 17 of the **Electoral Act 2002**
insert—

**"17A Application of the Equal Opportunity
Act 2010**

- (1) In accordance with section 75 of the **Equal Opportunity Act 2010**, the Commission may discriminate against a person in relation to offering employment or appointment as a member of the audit committee of the Commission on the basis of that person's political belief or activity.
 - (2) The Commission, by notice published in the Government Gazette, must issue guidelines setting out the criteria to be applied in relation to refusing employment or appointment under subsection (1).
 - (3) In this section, *employment* has the same meaning as it has in the **Equal Opportunity Act 2010**."
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PART 4—REPEAL OF AMENDING ACT

36 Repeal of amending Act

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

Note

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

SCHEDULE

FURTHER CONSEQUENTIAL AMENDMENTS TO PRINCIPAL ACT

1 Amendments to Part 1

1.1 In section 3(f), **omit** "Commissioner of the".

1.2 In section 4(1)—

(a) in the definition of *assistance dog*—

(i) for "an impairment" **substitute**
"a disability";

(ii) for "his or her impairment" **substitute**
"his or her disability";

(b) in the definition of *dispute resolution*, for
"Commissioner" **substitute** "Commission";

(c) in the definition of *party*, for
"Commissioner" (wherever occurring)
substitute "Commission".

2 Amendments to Part 2

2.1 In section 6(e), for "impairment" **substitute**
"disability".

2.2 In section 7(3) and (4), for "an impairment"
(wherever occurring) **substitute** "a disability".

2.3 In section 7(4), for "person's impairment"
substitute "person's disability".

3 Amendments to Part 4

3.1 In the heading to section 20, for "**an impairment**"
substitute "**a disability**".

3.2 In section 20(1) and (2) and in the example at the
foot of section 20(2), for "an impairment"
(wherever occurring) **substitute** "a disability".

3.3 In section 20(3), for "impairment" (wherever
occurring) **substitute** "disability".

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- 3.4 In the heading to section 23, for "**an impairment**" **substitute "a disability"**.
 - 3.5 In section 23, for "employee's impairment" **substitute "employee's disability"**.
 - 3.6 In section 26(3)(b), for "impairment" **substitute "disability"**.
 - 3.7 In the heading to section 33, for "**an impairment**" **substitute "a disability"**.
 - 3.8 In section 33(1) and (2) and in the example at the foot of section 33(2), for "an impairment" (wherever occurring) **substitute "a disability"**.
 - 3.9 In section 33(3), for "impairment" (wherever occurring) **substitute "disability"**.
 - 3.10 In the heading to section 34, for "**an impairment**" **substitute "a disability"**.
 - 3.11 In section 34, for "partner's impairment" **substitute "partner's disability"**.
 - 3.12 In section 37, for "an impairment" **substitute "a disability"**.
 - 3.13 In the example at the foot of section 37, for "her impairment" **substitute "her disability"**.
 - 3.14 In section 39, for "impairment" (wherever occurring) **substitute "disability"**.
 - 3.15 In the heading to section 40, for "**an impairment**" **substitute "a disability"**.
 - 3.16 In section 40(1) and (2) and in the example at the foot of section 40(2), for "an impairment" (wherever occurring) **substitute "a disability"**.
 - 3.17 In section 40(3), for "impairment" (wherever occurring) **substitute "disability"**.
 - 3.18 In section 41, for "impairment" **substitute "disability"**.

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- 3.19 In the heading to section 45, for "**an impairment**" **substitute "a disability"**.
- 3.20 In section 45(1) and (2) and in the example at the foot of section 45(2), for "an impairment" (wherever occurring) **substitute "a disability"**.
- 3.21 In section 45(3), for "impairment" (wherever occurring) **substitute "disability"**.
- 3.22 In section 46, for "impairment" **substitute "disability"**.
- 3.23 In section 54(1) and (2), for "an impairment" (wherever occurring) **substitute "a disability"**.
- 3.24 In section 55(1), for "an impairment" **substitute "a disability"**.
- 3.25 In section 56(1), for "an impairment" **substitute "a disability"**.
- 3.26 In section 57(1), for "an impairment" **substitute "a disability"**.
- 3.27 In section 58(2), for "impairment" (wherever occurring) **substitute "disability"**.
- 3.28 In section 61, for "impairment" (wherever occurring) **substitute "disability"**.
- 3.29 In section 72(2)(c), for "impairment" **substitute "disability"**.
- 4 Amendments to Part 5**
- 4.1 In section 79(2)(b), for "impairment" **substitute "disability"**.
- 4.2 In section 85(2)(a), for "impairment" **substitute "disability"**.
- 4.3 In section 86(1), for "impairment" **substitute "disability"**.

5 Amendments to Part 7

- 5.1 In section 104(1)(a), for "Commissioner"
substitute "Commission".
- 5.2 In section 106(a), for "Commissioner" **substitute**
"Commission".
- 5.3 In section 109, for "Commissioner" **substitute**
"Commission".

6 Amendments to Part 8

- 6.1 In the heading to Division 1 of Part 8, for
"Commissioner" **substitute** "Commission".
- 6.2 In the heading to section 111, for
"Commissioner" **substitute** "Commission".
- 6.3 In section 111, for "Commissioner" **substitute**
"Commission".
- 6.4 In the heading to section 112, for
"Commissioner" **substitute** "Commission".
- 6.5 In section 112, for "Commissioner" **substitute**
"Commission".
- 6.6 In the heading to section 113, for
"Commissioner" **substitute** "Commission".
- 6.7 In section 113, for "Commissioner" (wherever
occurring) **substitute** "Commission".
- 6.8 In section 113(1)(b), for "impairment" **substitute**
"disability".
- 6.9 In the heading to section 114, for
"Commissioner" **substitute** "Commission".
- 6.10 In section 114(1), for "Commissioner" (wherever
occurring) **substitute** "Commission".
- 6.11 In section 115, for "Commissioner" (wherever
occurring) **substitute** "Commission".
- 6.12 In section 116, for "Commissioner" (wherever
occurring) **substitute** "Commission".

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6.13 In section 118(1), for "Commissioner" **substitute** "Commission".

6.14 In section 119, for "Commissioner" (wherever occurring) **substitute** "Commission".

6.15 In section 121(2), for "Commissioner" (wherever occurring) **substitute** "Commission".

6.16 In section 122, for "Commissioner" **substitute** "Commission".

6.17 In section 123(1)(b), for "impairment" **substitute** "disability".

7 Amendments to Part 13

7.1 In section 189(a), for "Commissioner" **substitute** "Commission".

7.2 In section 189(b), **omit** "or the Commissioner".

7.3 In section 190(a), **omit** "or the Commissioner".

8 Amendments to Part 14

8.1 In section 193(3)(b) and (4)(b), for "Commissioner" **substitute** "Commission".

8.2 In section 194(1), for "Commissioner" **substitute** "Commission".

9 Amendments to Part 15

9.1 For section 198 **substitute**—

'198 Definitions

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

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

"disability has the same meaning as in the **Equal Opportunity Act 2010**;

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

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

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

(c) the definitions of *Commissioner*, *complaint* and *impairment* are repealed.!

9.2 In section 200(1)(a), in proposed section 14(1)(a) of the **Racial and Religious Tolerance Act 2001**, for "Commissioner" substitute "Commission".

9.3 In section 201, in proposed section 16 of the **Racial and Religious Tolerance Act 2001**, for "Commissioner" substitute "Commission".

9.4 In section 202, in proposed section 17 of the **Racial and Religious Tolerance Act 2001**, for "Commissioner" substitute "Commission".

9.5 In section 203—

(a) in the heading to Division 1 of proposed Part 3 of the **Racial and Religious Tolerance Act 2001**, for "Commissioner" substitute "Commission";

(b) in proposed section 19 of the **Racial and Religious Tolerance Act 2001**, for "Commissioner" (wherever occurring) substitute "Commission";

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- (c) in proposed section 19(1)(b) of the **Racial and Religious Tolerance Act 2001**, for "impairment" **substitute** "disability";
 - (d) in the heading to proposed section 20 of the **Racial and Religious Tolerance Act 2001**, for "Commissioner" **substitute** "Commission";
 - (e) in proposed section 20(1) of the **Racial and Religious Tolerance Act 2001**, for "Commissioner" (wherever occurring) **substitute** "Commission";
 - (f) in proposed section 22(1) and (2) of the **Racial and Religious Tolerance Act 2001**, for "Commissioner" **substitute** "Commission";
 - (g) in proposed section 23 of the **Racial and Religious Tolerance Act 2001**, for "Commissioner" **substitute** "Commission";
 - (h) in proposed section 23A(1)(b) of the **Racial and Religious Tolerance Act 2001**, for "impairment" **substitute** "disability".
- 9.6 In section 204, in proposed section 30(3)(b) and (4)(b) of the **Racial and Religious Tolerance Act 2001**, for "Commissioner" **substitute** "Commission".
- 9.7 In section 207, for proposed clause 13 of the Schedule to the **Victorian Civil and Administrative Tribunal Act 1998 substitute—**

"13 Meaning of *Commission*

In this Part—

Commission means the Victorian Equal Opportunity and Human Rights Commission."

9.8 In section 207—

- (a) in proposed clause 16 of the Schedule to the **Victorian Civil and Administrative Tribunal Act 1998**, for "Commissioner" (wherever occurring) **substitute** "Commission";
- (b) in proposed clause 19 of the Schedule to the **Victorian Civil and Administrative Tribunal Act 1998**, for "Commissioner" (wherever occurring) **substitute** "Commission".

9.9 In section 208, for proposed clause 66H of the Schedule to the **Victorian Civil and Administrative Tribunal Act 1998** **substitute—**

"66H Meaning of *Commission*

In this Part—

Commission means the Victorian Equal Opportunity and Human Rights Commission."

9.10 In section 208, in proposed clause 66L of the Schedule to the **Victorian Civil and Administrative Tribunal Act 1998**, for "Commissioner" (wherever occurring) **substitute** "Commission".

10 Amendments to the Schedule

10.1 For Item 1.2 **substitute—**

- '1.2 In section 3(1), in the definition of ***discrimination***, for "**Equal Opportunity Act 1995**" **substitute** "**Equal Opportunity Act 2010**".

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- 1.3 In section 3(1), in the note at the foot of the definition of *discrimination*—
- (a) for "**Equal Opportunity Act 1995**" substitute "**Equal Opportunity Act 2010**";
 - (b) for "impairment" substitute "disability".
- 10.2 For Item 3.1 substitute—
- '3.1 **Insert** the following heading to section 27—
- "Complaints by minors and people with a disability"**.
- 3.2 In section 27(3), for "impairment" substitute "a disability".
- 3.3 For subsection (4) substitute—
- "(4) In this section, *disability* has the same meaning as in the **Equal Opportunity Act 2010**."
- 3.4 In section 29(1)(i), for "an impairment" substitute "a disability".
- 10.3 For Item 8.1 substitute—
- '8.1 In section 3, for the definition of *disability* substitute—
- "*disability* has the same meaning as it has in the **Equal Opportunity Act 2010**;"**
- 10.4 For Item 10.1 substitute—
- '10.1 In section 10(2)(b)(ii)—
- (a) for "an impairment within the meaning of the **Equal Opportunity Act 1995**" substitute "a disability within the meaning of the **Equal Opportunity Act 2010**";

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- (b) in subparagraph (A), for "an impairment" **substitute** "a disability";
 - (c) in subparagraph (B), for "that impairment" **substitute** "that disability"'.

ENDNOTES

† *Minister's second reading speech—*

Legislative Assembly: 5 May 2011

Legislative Council: 14 June 2011

The long title for the Bill for this Act was "A Bill for an Act to amend the **Equal Opportunity Act 2010** and the **Electoral Act 2002** and for other purposes."