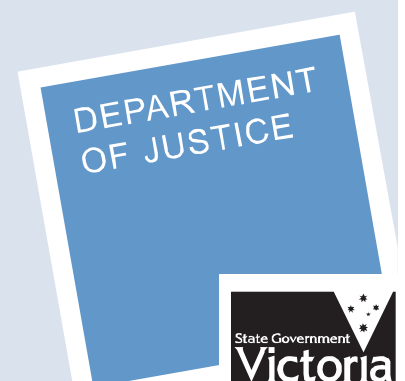


Guide to the *Equal Opportunity Act 2010*

August 2011



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NEW EQUAL OPPORTUNITY ACT FOR VICTORIA

A new *Equal Opportunity Act 2010* (the new Act) came into force on 1 August 2011. On commencement, the new Act replaced the *Equal Opportunity Act 1995* (the 1995 Act).

The new Act aims to provide effective equal opportunity laws that fairly balance competing rights and obligations, proactively promote the right to equality of opportunity and provide fair, effective and accessible remedies for those whose rights have been breached.

Purpose of the Guide

The purpose of this document, the *Guide to the Equal Opportunity Act 2010* (the Guide), is to highlight the main changes between the 1995 Act and the new Act. Provisions in the 1995 Act that were not significantly changed by the new Act have not been discussed in detail in the Guide and the Guide does not reproduce each section of the new Act in its entirety. Further, the Guide does not provide a comprehensive overview of equal opportunity law in Victoria.

Scope of the new Act

Like the 1995 Act, the new Act protects people from discrimination on the basis of their individual attributes in certain areas of public life such as employment, education and the provision of goods and services. There are no new attributes protected in the new Act: it continues to protect people on the basis of actual or assumed attributes such as age, race, sex and disability.

The new Act prohibits both direct and indirect discrimination on the basis of an attribute. It also prohibits discrimination as a result of a contravention of the requirements to:

- not unreasonably refuse to accommodate parental or carer responsibilities in employment
- make reasonable adjustments for people with disabilities in employment, education and the provision of goods and services
- not refuse to provide accommodation to a person with a disability because they have an assistance dog or to require the person to pay an extra charge or to keep the dog elsewhere
- allow reasonable alterations to accommodation or common property to meet the special needs of a person with a disability.

Key reforms in the new Act

Key reforms in the new Act as it commenced on 1 August 2011 include:

- a new structure for the Victorian Equal Opportunity and Human Rights Commission (the Commission) that provides for governance by a Board with an independent Chair and a which will appoint a Commissioner (with the Attorney-General's approval) to carry out the Commission's day to day operations
- encouraging best practice and proactive compliance by duty holders through:
 - a positive duty to take reasonable and proportionate measures to eliminate discrimination, sexual harassment and victimisation as far as possible
 - the provision of information, education, training and advisory services by the Commission
 - the development of practice guidelines and action plans

- allowing the Commission to conduct investigations where there is evidence of serious systemic discrimination that cannot reasonably be expected to be resolved by dispute resolution at the Commission or by complainants making an application to the Victorian Civil and Administrative Tribunal (VCAT), and enabling the Commission to take any action it thinks fit at the end of the investigation, including referring a matter to VCAT for inquiry or making reports on its investigation to the Attorney-General or to Parliament
- encouraging people to resolve their own disputes (for example, by seeking information from the Commission) and providing a more effective dispute resolution system that places the focus on early and flexible dispute resolution at the Commission, whilst also allowing complainants to go directly to VCAT to have their matter determined
- removing legal and technical barriers to the elimination of discrimination by simplifying definitions of discrimination, extending prohibitions against sexual harassment to protect unpaid workers and volunteers, and clarifying duties to make reasonable adjustments for people with disabilities.

PART 1 – PRELIMINARY

Objectives of the new Act

Section 3 sets out the objectives of the new Act, which build on the objectives in the 1995 Act. The objectives of the new Act are to:

- eliminate discrimination, sexual harassment and victimisation, to the greatest possible extent
- further promote and protect the right to equality set out in the *Charter of Human Rights and Responsibilities Act 2006* (the Charter Act)
- encourage the identification and elimination of systemic causes of discrimination, sexual harassment and victimisation
- promote and facilitate the progressive realisation of equality, as far as reasonably practicable by recognising that:
 - discrimination can cause social and economic disadvantage and that access to opportunities is not equitably distributed throughout society
 - equal application of a rule to different groups can have unequal results or outcomes
 - the achievement of substantive equality may require the making of reasonable adjustments, reasonable accommodation and the taking of special measures
- enable the Commission to encourage best practice and compliance with the new Act by undertaking research, educative and enforcement functions, which involve the Commission carrying out education and training, publishing practice guidelines, conducting compliance reviews upon request, advising on organisational action plans, and investigating serious systemic discrimination
- enable the Commission to resolve disputes about discrimination, sexual harassment and victimisation in a timely and effective manner and to provide direct access to VCAT for the resolution of such disputes.

Changes to definitions

The majority of the definitions in the 1995 Act have been re-enacted in the new Act in **section 4**. However, for consistency with more common terminology used in human rights and discrimination law nationally and internationally, the new Act uses the term “disability” rather than “impairment”. Other important changes have also been made to the definitions of “disability” and “guide dog”, and the new Act includes a new definition of “club”.

Disability

Under the new Act, the definition of “disability” now also includes a future disability (including because of a genetic predisposition to the disability) and, to avoid doubt, behaviour that is a symptom or manifestation of a disability.

Guide dogs

The definition of “guide dog” in the 1995 Act has been replaced with a definition of “assistance dog” in the new Act. An assistance dog is no longer limited to a dog assisting a person with a visual, hearing or mobility impairment but applies to a dog trained to perform tasks or functions that assist a person with any disability to alleviate the effects of the disability. For example, a dog trained to assist a person with a psychiatric or seizure disorder would fall within the definition of “assistance dog”. The definition refers specifically to a dog that is trained to perform tasks or functions as it is not intended to

apply to companion or comfort dogs. However, the definition may include assistance with navigating social interactions where the nature of a person's disability is such that this helps to alleviate the effects of the disability.

The new definition of assistance dog is relevant to the new meaning of discrimination in **section 7**, which provides that if a person with a disability is accompanied by or possesses an assistance aid (which includes an assistance dog), that is taken to be a characteristic of a person with that attribute. It is also relevant to **section 54**, which makes it unlawful to discriminate by refusing to provide accommodation to a person with a disability because that person has an assistance dog.

Clubs

The new Act includes a new definition of "club" that means an association of more than 30 persons associated together for social, literary, cultural, political, sporting, athletic or other lawful purposes that has a liquor licence (other than a temporary limited licence or a major event liquor licence), and that operates its facilities wholly or partly from its own funds.

Clubs that have a liquor licence and more than 30 members cannot discriminate against a person who applies for membership of the club or against a member of the club, unless an exception applies. For more detail on these exceptions, see Part 5 of this Guide (Exceptions to and Exemptions from the Prohibition of Discrimination).

PART 2 – WHAT IS DISCRIMINATION?

The new Act protects people from discrimination on the basis of the same actual or presumed attributes that are protected in the 1995 Act. They are:

- age
- breastfeeding
- employment activity
- gender identity
- disability
- industrial activity
- lawful sexual activity
- marital status
- parental status or status as a carer
- physical features
- political belief or activity
- pregnancy
- race
- religious belief or activity
- sex
- sexual orientation
- personal association (whether as a relative or otherwise) with a person who is identified by reference to any of the above attributes.

The new Act prohibits both direct and indirect discrimination on the basis of an attribute. It also prohibits discrimination that is a contravention of the requirements to:

- not unreasonably refuse to accommodate parental or carer responsibilities in employment (**sections 17, 19, 22 and 32**)
- make reasonable adjustments for people with disabilities in employment (**sections 20 and 33**), education (**section 40**) and the provision of goods and services (**section 45**)
- not refuse to provide accommodation to a person with a disability because he or she has an assistance dog or to require the person to pay an extra charge or to keep the assistance dog elsewhere (**section 54**)
- allow reasonable alterations to accommodation or common property to meet the special needs of a person with a disability (**sections 55 and 56**).

Like the 1995 Act, a person's motive is irrelevant in determining whether they have discriminated against another person (**section 10**). For example, an employer who refuses to employ a person because of their race, not because the employer dislikes people of that race but because the employer believes that the person would be mistreated by other staff members who are prejudiced against people of that race, still discriminates against the person.

Direct discrimination

The new Act includes a new, simpler definition of “direct discrimination”. Under the new Act, direct discrimination occurs if a person treats, or proposes to treat, someone with an attribute unfavourably because of that attribute (**section 8**). Like under the 1995 Act, the attribute (or presumed attribute) must be a substantial reason for the treatment, though it does not have to be the only or dominant reason.

The definition in the new Act is a change from the 1995 Act, which required a person claiming direct discrimination to show that they had been treated less favourably when compared with another person without their attribute in the same or similar circumstances. The new definition focuses instead on whether a person has been treated unfavourably because of their attribute.

However, like the 1995 Act, the new definition provides that, in determining whether a person directly discriminates, it is irrelevant whether the person is aware of the discrimination or considers the treatment to be unfavourable.

Indirect discrimination

The new Act also includes a new, simpler definition of indirect discrimination (**section 9**). Under the new Act, indirect discrimination occurs if:

- a person imposes or proposes to impose, a requirement, condition or practice that has, or is likely to have, the effect of disadvantaging people with an attribute
- the requirement, condition or practice is not reasonable.

A person claiming indirect discrimination needs to show that the requirement, condition or practice causes, or is likely to cause, them disadvantage. However, it is the person who imposes or proposes to impose the requirement, condition or practice who must now show that the requirement, condition or practice is reasonable. This change was made because the person who has imposed a requirement, condition or practice is more likely to have the necessary information to make an assessment of what is reasonable than the person claiming discrimination. Whether a requirement, condition or practice is reasonable depends on all the relevant circumstances of the case and some of these circumstances are set out in the new Act (**section 9**).

This is a change from the definition of “indirect discrimination” in the 1995 Act, which required a person claiming indirect discrimination to show that they could not comply with the requirement, condition or practice, and to show that a substantially higher proportion of people without their attribute could comply with the requirement, condition or practice. The new definition aims to remove technical difficulties associated with these legal tests and to provide more guidance for duty holders by setting out factors to be considered in determining whether a requirement, condition or practice is reasonable.

However, like the 1995 Act, the new definition provides that, in determining whether a person indirectly discriminates, it is irrelevant whether the person is aware of the discrimination.

Special measures

Section 12 of the new Act makes it clear that taking measures for the purposes of promoting or realising substantive equality for members of a group with a particular attribute is not discrimination. Special measures are designed to overcome the barriers to realising substantive equality that can result from the ongoing effects of discrimination and disadvantage.

For something to be a special measure, it must be undertaken in good faith for the purpose of promoting or realising substantive equality for members of a group with a particular attribute. The measure must also be reasonably likely to achieve that purpose and be a proportionate means of achieving the purpose. Lastly, the measure must also be justified because the members of the group have a particular need for advancement or assistance.

A measure will cease to be a special measure once the purpose of promoting or realising substantive equality for members of a group with a particular attribute has been achieved, unless removing the special measure would result in the group again becoming disadvantaged. Special measures are therefore a balancing mechanism. They facilitate equality but do not advance one group over another once the playing field is even.

The types of programs that would be facilitated by section 12 of the new Act include:

- setting up a scholarship for Indigenous students undertaking studies in a field in which Indigenous people are under-represented
- establishing a program to encourage more women in management in workplaces where women are under-represented at the management level
- developing programs to increase employment opportunities for people with disabilities.

It is not necessary to seek an exemption from VCAT to put a special measure into effect because a special measure is not discrimination. However, if a measure is challenged as being discriminatory, a person or organisation who undertakes a special measure will have the burden of proving that the measure is a special measure.

PART 3 – DUTY TO ELIMINATE DISCRIMINATION, SEXUAL HARASSMENT AND VICTIMISATION

Part 3 of the new Act requires people and organisations that have a duty not to engage in discrimination, sexual harassment and victimisation, to also take reasonable and proportionate measures to eliminate discrimination, sexual harassment and victimisation as far as possible. The purpose of this Part is to encourage people and organisations that are already required to comply with the Act, to take active steps to eliminate discrimination as far as possible, rather than to wait for a complaint to be made before considering these issues.

A requirement to take positive steps to eliminate discrimination, sexual harassment and discrimination was implied in the 1995 Act. For example, section 103 of the 1995 Act provided an employer or principle would not be vicariously liable for a contravention of the Act if they could prove that, on the balance of probabilities, that they took reasonable precautions to prevent the contravention from occurring. The vicarious liability provisions continue in the new Act (**sections 109 and 110**).

In addition to taking steps to avoid vicarious liability, the duty in the new Act may require people and organisations to do such things as:

- **conducting a baseline assessment** or audit of current policies and practices to identify actual or potential discrimination, sexual harassment and victimisation - this may involve, for example, monitoring the handling and outcomes of complaints, as well as things such as hiring, promotion, dismissal, resignations and absenteeism
- **consulting and involving affected parties** – these might include people who have complained, customers, and groups you would expect to require goods or services but who may not be accessing them
- **developing an action plan** that includes the proposed reasonable and proportionate measures and a timescale for implementation. These steps may include incorporating anti-discrimination aims, objectives and goals in strategic plans and key performance indicators, or introducing anti-discrimination or anti-sexual harassment policies and training, or implementing special measures to overcome inequality
- **assessing the potential impact** of new policies or practices where initial screening suggests that there may be a discriminatory impact
- **monitoring and making public** the baseline assessment and annual progress in the elimination of discrimination, sexual harassment and victimisation.

However, the duty only requires people and organisations to take steps that are reasonable in the context of their size or resources. The duty requires an assessment of whether measures are reasonable and proportionate, and **section 15(6)** sets out specific considerations that are relevant to this assessment. The considerations include factors such as the nature of the organisation, its resources and its business and operational priorities. These considerations recognise that different duty holders have different capacities to eliminate discrimination, sexual harassment and victimisation and what may be possible for one person or organisation will not be possible for another. Complying with the duty may involve taking gradual steps and progressively improving policies and procedures over time.

In addition, the duty only requires measures to be taken to eliminate discrimination, sexual harassment and victimisation *as far as possible*. These words, as well as the requirement to assess whether measures are reasonable and proportionate, ensure that compliance with the duty is achievable for the duty holder.

An individual will not be able to bring a dispute to the Commission or to VCAT about an alleged contravention of section 15. However, a serious contravention of the duty may form the basis upon which the Commission takes action to investigate allegations of serious systemic discrimination.

PART 4 – WHEN IS DISCRIMINATION PROHIBITED?

Like the 1995 Act, **Part 4** of the new Act prohibits discrimination when it occurs in:

- employment
- education
- the provision of goods and services
- land sales or transfers
- accommodation and access to premises
- clubs
- sport
- local government.

The new Act includes the same prohibitions against discrimination as in the 1995 Act. It also includes new protections for people with a disability, including:

- requiring the making of reasonable adjustments in employment, education and the provision of goods and services to enable the person with a disability to participate
- requiring owners corporations to allow reasonable alterations to common property to meet the special needs of the person with a disability
- prohibiting discrimination by refusing or restricting access to a person with a disability to public premises or facilities.

Further detail of these new prohibitions is set out below.

Duty to make reasonable adjustments for people with disabilities

Sections 20, 33, 40, and 45 of the new Act place positive duties on employers, firms, educational authorities and service providers to make reasonable adjustments for people with disabilities so that they can participate in the employment, education or service provision. Such duties were previously implied in the 1995 Act (see sections 22, 32, 39 and 46 of the 1995 Act).

Making reasonable adjustments involves balancing the need for the adjustment to be made and the consequences of not making the adjustment with the expense or effort involved. The sections in the new Act include a list of factors to consider when determining whether an adjustment is reasonable. If an adjustment requires disproportionately high expenditure or disruption, then it may not be reasonable.

The duties in the new Act are consistent with obligations under the Commonwealth *Disability Discrimination Act 1992*, which require reasonable adjustments to be made unless this would cause unjustifiable hardship, and the test of reasonableness in the new Act involves similar considerations as the test of unjustifiable hardship in the Commonwealth Act.

The new Act takes into account that under the Disability Discrimination Act, statutory disability standards may be made to deal with reasonable adjustments, unjustifiable hardship and exemptions from the standards. The new Act provides that employers, firms, educational authorities and service providers in Victoria will not be required to make a reasonable adjustment to the extent that they have already complied with, or have been exempted from compliance with, a relevant disability standard under the Disability Discrimination Act.

The new Act also takes into account that certain duty holders may be exempt from having to comply with disability standards under the Disability Discrimination Act by virtue of a determination made under section 160B of the *Building Act 1993*. The new Act makes it clear that employers, firms, educational authorities and service providers will not be required to make an adjustment that relates to a building or land when a determination in relation to that adjustment has already been made under section 160B of the Building Act and the determination has been complied with.

Lastly, the new Act includes exceptions that allow duty holders to discriminate where the adjustments required to be made to accommodate a person with a disability are not reasonable or where the person with the disability could not participate in the employment, education or service provision even if the adjustments were made (**sections 23, 34, 41 and 46**).

Employment

Under **section 20**, if a person offered employment or an employee has a disability and requires adjustments in order to perform the genuine and reasonable requirements of the employment, the employer must make reasonable adjustments unless the person could not or cannot adequately perform the genuine and reasonable requirements of the employment even after the adjustments are made. A contravention of section 20 will be discrimination.

An employer may be able to make adjustments such as:

- providing a ramp for access to the workplace or particular computer software packages
- modifying work instructions or reference manuals
- allowing an employee to be absent during work hours for rehabilitation or treatment
- allowing an employee to take more frequent breaks during work hours.

In determining whether an adjustment is reasonable, all relevant facts and circumstances must be considered, including:

- the particular employment role and the nature of the person's disability
- the nature of the adjustment required to accommodate the disability
- the effect of making the adjustment on the workplace and the employer's business.

In determining whether a person could or can adequately perform the genuine and reasonable requirements of the employment, all relevant factors and circumstances must be considered, including the person's training, qualifications, experience and, if applicable, current job performance.

However, an employer will not be required to make a reasonable adjustment to the extent that they have already complied with, or have been exempted from compliance with, a relevant disability standard under the Commonwealth Disability Discrimination Act. Further, an employer will not be required to make an adjustment that relates to a building or land when a determination in relation to the subject matter of that adjustment has already been made under section 160B of the Building Act and the employer has complied with that determination.

Section 23 also allows an employer to discriminate against a person on the basis of disability if the person requires adjustments in order to perform the genuine and reasonable requirements of the employment and the adjustments are not reasonable, or the person could not perform the genuine and reasonable requirements of the employment even if the adjustments were made. The employer must first consider if there is a duty under section 20 to make reasonable adjustments for the person before taking any further action that could otherwise amount to unlawful discrimination, such as dismissing the person or limiting their access to training.

Education

Under **section 40**, if a person with a disability requires adjustments in order to participate in or derive any substantial benefit from an educational program, the educational authority must make reasonable adjustments unless the person could not participate in or derive any substantial benefit from the educational program even after the adjustments are made. A contravention of section 40 is discrimination.

An educational authority may be able to make adjustments such as providing a teacher's aide or particular software packages for computers or relocating a particular course or event from an inaccessible venue to an accessible one.

In determining whether an adjustment is reasonable, all relevant facts and circumstances must be considered, including:

- the nature of the person's disability and the adjustment required to accommodate the disability
- the effect of making the adjustment on the person's ability to achieve learning outcomes, to participate in courses or programs or to work independently
- the effect on the educational authority, staff and other students of making the adjustment.

However, an educational authority is not required to make a reasonable adjustment to the extent that it has already complied with, or has been exempted from compliance with, a relevant disability standard under the Commonwealth Disability Discrimination Act. Further, an educational authority will not be required to make an adjustment that relates to a building or land when a determination in relation to that adjustment has already been made under section 160B of the Building Act and the educational authority has complied with that determination.

Section 41 also allows an educational authority to discriminate against a person on the basis of disability if the person requires adjustments in order to participate in, or to derive substantial benefit from, an educational program and the adjustments are not reasonable or the person could not participate in, or derive any substantial benefit from, the program even after reasonable adjustments are made. The educational authority must first apply the duty to make reasonable adjustments under section 40 before taking any further action that could otherwise amount to unlawful discrimination, such as refusing to accept the person's application for admission as a student.

Provision of goods and services

Under **section 45**, if a person with a disability requires adjustments to be made to the provision of a service in order to participate in, access the service or derive any substantial benefit from the service, the service provider must make reasonable adjustments unless the person could not participate in or access the service, or derive substantial benefit from the service even after the adjustments are made. This applies whether or not the services are provided for payment. A contravention of section 45 is discrimination.

A service provider may be able to make adjustments such as providing a ramp to enable access to a shop or including subtitles on recorded audio-visual presentations.

In determining whether an adjustment is reasonable, all relevant facts and circumstances must be considered, including:

- the nature of the person's disability and the adjustment required to accommodate the disability
- the effect on the service provider of making the adjustment, including the financial impact of doing so and the number of people who would benefit from or be disadvantaged by doing so

- the consequences for the person with the disability if the adjustment is not made and the consequences for the service provider of making the adjustment.

However, a service provider will not be required to make a reasonable adjustment to the extent that they have already complied with, or have been exempted from compliance with, a relevant disability standard under the Commonwealth Disability Discrimination Act. Further, a service provider will not be required to make an adjustment that relates to a building or land when a determination in relation to that adjustment has already been made under section 160B of the Building Act and the service provider has complied with that determination.

Section 46 also allows a service provider to discriminate against a person on the basis of their disability if the person requires adjustments to be made to the provision of a service in order to participate in or access the service or derive any substantial benefit from the service, and the adjustments are not reasonable or the person with the disability could not participate in or access the service, or derive any substantial benefit from the service even after reasonable adjustments to the service are made. The service provider must first apply the duty to make reasonable adjustments under section 45 before taking any further action that could otherwise amount to unlawful discrimination, such as refusing to provide services.

Duty on owners corporations to allow reasonable adjustments to common property

As is the case under the 1995 Act, **section 55** of the new Act requires a person who has provided accommodation to another person with a disability to allow the other person to make reasonable alterations to the accommodation in order to meet that person's special needs, provided conditions set out in section 55 are met. These conditions include:

- the alterations are at the expense of the person seeking the alteration
- the alterations do not require any alterations to the premises of another occupier
- the action required to restore the accommodation to the condition it was in before the alterations is reasonably practicable in the circumstance
- the person seeking the alteration agrees to restore the accommodation to its previous condition before leaving it and it is reasonably likely that they will do so.

Section 56 of the new Act clarifies obligations of owners corporations where a person with a disability owns or occupies a lot affected by an owners corporation. It provides that an owners corporation must allow the person to make reasonable alterations to common property to meet the person's special needs, if certain specified conditions are met. These conditions include:

- the alterations are at the expense of the person seeking the alteration
- the alterations do not require any alterations to a lot occupied by another person
- the alterations do not adversely affect:
 - the interests of another occupier of a lot affected by the owners corporation
 - the interests of an owner of another lot affected by the owners corporation
 - the interests of the owners corporation
 - the use of common property by another occupier of a lot or an owner of another lot affected by the owners corporation
- the action required to restore the common property to the condition it was in before the alterations is reasonably practicable in the circumstances

- the person seeking the alteration agrees to restore the common property to its previous condition before vacating the lot and it is reasonably likely that they will do so.

A contravention of this section is discrimination. However, the section does not change or replace the mechanism for raising issues and resolving disputes for lot owners, occupiers and managers established under the *Owners Corporation Act 2006* or the mechanism for resolving disputes under the *Subdivision Act 1988*. The section is also in addition to, and does not affect or take away from, any requirements imposed by or under the Building Act.

Access to public premises

Section 57 of the new Act prohibits discrimination on the basis of disability in relation to the access to, or the use of, any premises that the public or a section of the public is entitled or allowed to enter or use (whether or not for payment). This includes, among other things, discrimination:

- by refusing to allow access to or use of the premises
- in the terms or conditions on which a person is allowed to access or use the premises, or facilities in the premises
- by refusing to allow the use of any facilities in the premises
- by requiring a person to leave the premises.

However, section 58 allows discrimination in relation to the access or use of public premises where the discrimination cannot reasonably be avoided or the discrimination is permitted because of the operation of a disability standard under the Disability Discrimination Act or by virtue of a determination under the Building Act.

In determining whether the discrimination can be reasonably avoided, all relevant facts and circumstances must be considered, including, among other things, the nature of the disability in question, the measures required to allow access to or use of the premises or facilities and the financial circumstances of the person required to allow access to the premises.

Under the section, discrimination will be permitted where the premises or facilities comply with, or are exempted from compliance with, a disability standard under the Disability Discrimination Act. Under the Disability Discrimination Act, statutory disability standards may be made to deal with reasonable adjustments, unjustifiable hardship and exemptions from the standards.

Discrimination will also be permitted where a determination has been made under section 160B of the Building Act, which exempts a person from having to comply with disability standards under the Disability Discrimination Act in relation to the building or land on which the relevant premises or facilities are situated.

For the purpose of both section 57 and section 58, “premises” includes a structure, building, aircraft, vehicle, vessel, a place and a part of premises.

PART 5 – EXCEPTIONS TO AND EXEMPTIONS FROM THE PROHIBITION OF DISCRIMINATION

The new Act continues to recognise that there are circumstances in which discrimination is justified. Like the 1995 Act, the new Act includes exceptions to unlawful discrimination that are specific to a particular area of public life and general exceptions that apply to discrimination in all areas of public life. The Act also allows VCAT to grant temporary exemptions from the Act. Discrimination is lawful if an exception or an exemption applies (**section 13**). This will be the case where an exception in the same Division as the prohibited conduct applies or if a general exception applies.

In cases where the conduct may be characterised as discrimination in more than one area of public life, and an exception specific to one of those areas applies, then the discriminatory conduct will not be prohibited.

As under the 1995 Act, an exception or exemption is a defence to discrimination and the person wishing to rely on the exception or exemption has the responsibility of showing that it applies.

Exceptions to discrimination

In general terms, the new Act includes exceptions that:

- allow measures to meet the special needs of people with a particular attribute
- allow a person to discriminate when employing someone to provide domestic or personal services in their home
- balance other important rights, such as freedom of religion and freedom of association
- are justified in the public interest, for example, in order to protect health and safety or facilitate participation in a competitive sporting activity by people of a particular sex.

The new Act includes a significant number of the same exceptions that were in the 1995 Act, including:

- **section 75** (section 69 of the 1995 Act), which allows a person to discriminate on any grounds where it is necessary to comply with or is authorised by an Act or enactment
- **section 86** (section 80), which allows discrimination on the grounds of disability or physical features where this is reasonably necessary to protect the health, safety or property of any person, or the public, and also permits discrimination on the grounds of pregnancy where this is reasonably necessary to protect the health or safety of any person
- **section 87** (section 81), which allows benefits and concessions to be provided based on age
- **section 88** (section 82(1)(a) and (2)), which allows a person to establish services, benefits or facilities to meet the special needs of people with a particular attribute and to restrict eligibility for such services, benefits or facilities to people with the relevant attribute. Without limiting what might be covered by the exception, the section explicitly allows a person to grant a woman any right, privilege or benefit in relation to pregnancy or childbirth, and allows a person to provide or restrict the offering of holiday tours to people of a particular age or age group.

The following exceptions in the 1995 Act were not re-enacted in the new Act:

- section 20 – family employment (when offering employment)
- section 21 – small business (when offering employment)
- section 23 – reasonable terms of employment (set by employer)

- section 24 – standards of dress and behaviour (set by employer)
- section 26 – compulsory retirement of judicial officers
- section 27B – gender identity (in employment)
- section 28 – single sex accommodation (where authorised by a VCAT exemption)
- section 33 – reasonable terms of partnership (set by firm)
- section 78 – private clubs (exclusion from membership, activities or premises)
- section 84 – exemptions by a Minister to allow compulsory retirement in the public sector.

Specific exceptions to discrimination

Further details about some (but not all) of the specific exceptions in the new Act are set out below.

Employment

Division 1 of Part 4 of the new Act includes a number of exceptions for employers, which apply at different stages of the employment relationship. For the purposes of this Part, employment is defined broadly to include: employment under a contract of service, employment under the *Public Administration Act 2004* or under a statutory appointment, engagement under a contract for services and work that is remunerated wholly or partly on commission. The exceptions include:

- **section 25** (section 25 of the 1995 Act), which provides an exception for employment that involves the care, instruction or supervision of children. In these circumstances, an employer may discriminate against a job applicant or employee only if the discrimination is reasonably necessary to protect the physical, psychological or emotional wellbeing of the children. The exception does not apply to employment by post-secondary education providers.
- **section 26** (section 17), which allows employers to discriminate on the basis of sex where it is a genuine occupational requirement that employees be of that sex. Examples of genuine occupational requirements are included in section 26. The section also allows employers to discriminate on the basis of sex, age, race or disability if it is required for the authenticity or credibility of a dramatic or artistic performance, entertainment, photographic or modelling work or any other employment. Employers can also discriminate on the basis of physical features when offering employment in relation to a dramatic or artistic performance, photographic or modelling work, or any similar employment.
- **section 27** (section 18), which allows an employer to discriminate on the basis of political belief or activity when offering employment as a ministerial adviser, member of staff of a political party, member of a person's electorate staff or any similar employment.
- **section 28** (section 19), which allows an employer to limit an offer of employment to people with a particular attribute where the employment is to provide services that are special measures (under section 12 of the new Act) or meet the special needs of people with a particular attribute (under section 88) if those services can be provided most effectively by people with that attribute. For example, a support service for women who have experienced family violence may require that the counsellors it employs are female.
- **section 28A** (section 27), which allows an employer to pay an employee under the age of 21 years in accordance with their age.

Employment-related areas

Division 2 of Part 4 of the new Act includes exceptions that apply in employment-related areas, and includes:

- **section 37** (section 36 of the 1995 Act), which allows a qualifying body to set reasonable terms in relation to an occupational qualification, or to make reasonable variations to those terms, to enable a person with a disability to practise the profession, carry on the trade or business or engage in the occupation or employment to which the qualification relates.

Educational institutions and authorities

Division 3 of Part 4 of the new Act includes a number of exceptions for educational authorities. An educational authority means the person or body administering an educational institution. An educational institution means a school, college, university or other institution at which education or training is provided. The education-related exceptions include:

- **section 39** (section 38 of the 1995 Act), which allows 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 for students with a general or particular disability, to exclude students without the particular attribute from the institution or educational program. The exception allows educational authorities to provide educational settings targeted towards the needs of particular groups.
- **section 42** (section 40) allows educational authorities to set and enforce reasonable standards of dress, appearance and behaviour for students. Without limiting the generality of what constitutes a reasonable standard of dress, appearance and behaviour, in relation to a school, a standard will be reasonable if the educational authority administering the school has taken into account the views of the school community in setting the standard.
- **section 43** (section 41) allows educational authorities to select students for an educational program on the basis of an admission scheme that has a minimum qualifying age (for example, a child must be 5 years old to start school) or that imposes quotas in relation to students of different ages or age groups. The exception enables educational authorities to cater for the different developmental and learning needs of students of different ages.

Accommodation

Division 5 of Part 4 of the new Act includes a number of exceptions for accommodation providers. Accommodation includes business premises, a house or flat, a hotel or motel, a boarding house or hostel, a caravan park or caravan site, a mobile home or mobile home site, or a camping site. The exceptions include:

- **section 58A** (section 53 of the 1995 Act), which allows a person to refuse to provide accommodation to a child or a person with a child if the accommodation, because of its design or location, is unsuitable or inappropriate for occupation by a child. This exception does not allow a person to refuse to provide accommodation where the premises are considered unsuitable for other reasons, such as the amenity of other guests.
- **section 60** (section 55), which allows hostels and similar institutions established wholly or mainly for the welfare of people of a particular sex, age, race or religious belief to refuse to provide accommodation to people who do not have that particular attribute.

Clubs

Division 6 of Part 4 of the new Act includes exceptions that allow particular types of clubs to restrict their membership or to provide different benefits to people with particular attributes.

Under the 1995 Act, a “club” meant a social, recreational, sporting or community service club or organisation that occupied Crown land or received direct or indirect State or council funding. This definition has changed in the new Act. A “club” now means an association of more than 30 persons associated together for social, literary, cultural, political, sporting, athletic or other lawful purposes that has a liquor licence (other than a temporary limited licence or a major event liquor licence), and that operates its facilities wholly or partly from its own funds.

The club-related exceptions include:

- **section 66** (section 61(b) of the 1995 Act), which allows a club that operates principally to preserve a minority culture to exclude from membership people who are not members of the minority culture
- **section 66A**, a new exception, which allows a club established principally for a political purpose to exclude a person from membership on the basis of political belief or activity
- **section 67** (section 62), which allows a club that exists principally to provide benefits for people of a particular age group to exclude from membership people who are outside that age group and also allows a club to restrict a benefit to members of a particular age group where it is reasonable to do so in the circumstances
- **section 68**, a new exception, which allows a club to exclude from membership a person of a particular sex if membership of the club is available only to people of the opposite sex. In these circumstances, the club must make the rules of eligibility for membership publicly available, without charge
- **section 69** (section 63 of the 1995 Act), which allows a club to provide separate access to benefits for male and female members where it is not practicable for men and women to enjoy the benefit at the same time. For example, this exception may apply to allow a club to limit access to facilities to members of one sex at certain times if the facilities only have change rooms suitable for use by members of one sex at a time. However, if a club does restrict access in this way, it would need to provide equivalent access to members of the opposite sex before the exception will permit the discrimination. In determining when a club can limit a member’s access to a benefit, a number of factors must be considered, including the purpose for which the club is established, the nature of the club’s benefits and the opportunities for the use and enjoyment of those benefits by men and women.

The new Act no longer includes an exception for clubs that operate principally to prevent or reduce disadvantage suffered by a group with a particular attribute (section 61(a) of the 1995 Act). These clubs can rely on the special measures provision in section 12 of the new Act, which provides that taking measures for the purposes of promoting or realising substantive equality for members of a group with a particular attribute is not discrimination, or section 88, which permits special services, benefits or facilities to meet the special needs of people with a particular attribute.

Sport

Division 7 of Part 4 includes exceptions that apply to competitive sporting activities. A competitive sporting activity includes any exhibition or demonstration of a sport but does not include coaching, umpiring or refereeing, administration or the non-competitive practice of a sport. **Section 72** sets out the following exceptions for competitive sporting activities, but does not apply to sporting activities for children under the age of 12 years:

- **section 72(1)** (section 66(1) of the 1995 Act), which allows a person to exclude a person of one sex or with a gender identity from participating in a competitive sporting activity in which the strength, stamina or physique of the competitors is relevant
- **section 72(1A)**, a new exception, which permits the exclusion of one sex from participating in a competitive sporting activity if participation in the activity is necessary for progression to an elite level competition and the exclusion is necessary to enable participants in the activity to progress to national or international elite level competition.
- **section 72(1B)**, a new exception, which permits single sex competitions, or restrictions on the participation of one sex in the competition, where the exclusion or restriction is intended to facilitate participation in the activity by people of a particular sex and is otherwise reasonable. Whether the exclusion or restriction is reasonable will depend on the nature and purpose of the activity, the consequences of the exclusion or restriction for the excluded or restricted sex and whether there are other opportunities for people who are excluded to participate in the activity.
- **section 72(2)** (section 66(2)), which allows participation in competitive sporting activities to be restricted to people who can effectively compete, people of a specified age or age group, or people with a general or particular disability. This exception is intended to allow for fair competition in sport.

General exceptions to discrimination

Like the 1995 Act, the new Act includes general exceptions that apply to discrimination in all areas of public life. Further detail in relation to some, but not all, of these exceptions is set out below.

Orders of courts and tribunals

Section 76 (section 70 of the 1995 Act) allows a person to discriminate if the discrimination is necessary to comply with an order of VCAT or any other tribunal or court.

Religious exceptions

Part 5 of the new Act continues to provide exceptions for religious bodies and religious schools. For the purposes of the exceptions, a religious body is defined to mean a body established for a religious purpose or an entity that establishes, or directs, controls or administers, an educational or other charitable entity that is intended to be, and is, conducted in accordance with religious doctrines, beliefs or principles. This definition is the same as the definition in section 38(5) of the Charter Act. The exceptions include:

- **section 82(1)** (section 75(1) of the 1995 Act), which allows a religious body to discriminate on the basis of any attribute in relation to:
 - the ordination or appointment of priests, ministers of religion or members of a religious order
 - the training or education of people seeking ordination or appointment as priests, ministers of religion or members of a religious order
 - the selection or appointment of people to perform functions in relation to, or otherwise participate in, any religious observance or practice

- **sections 82(2) and 83(2)** (sections 75(2) and 76), which allow religious bodies and religious schools to discriminate where the discrimination conforms with the doctrines, beliefs or principles of the religion or is reasonably necessary to avoid injury to the religious sensitivities of adherents of the religion. The term “reasonably necessary” requires an objective assessment of whether the discrimination is necessary. The exceptions are narrower in scope than those in the 1995 Act as they do not extend to all of the attributes protected by the Act. Discrimination on the grounds of religious belief or activity, sex, sexual orientation, lawful sexual activity, marital status, parental status or gender identity will continue to be lawful. However, religious bodies and religious schools will no longer be able to discriminate on the grounds of race, disability, age, physical features, industrial or employment activity, carer status, political belief or activity, pregnancy, breastfeeding or on the basis of a personal association with a person with any attribute.
- **section 84** (section 77), which allows a person to discriminate against another person on the grounds of the person's religious belief or activity, sex, sexual orientation, lawful sexual activity, marital status, parental status or gender identity if the discrimination is reasonably necessary for the first person to comply with the doctrines, beliefs or principles of their religion. The term "reasonably necessary" requires an objective assessment of whether the discrimination is necessary.

The exemption process

Sections 89 to 91 set out the process by which VCAT may grant, renew or revoke exemptions from the new Act. The process is similar to that under section 83 of the 1995 Act but increases the maximum period for which an exemption can be granted from 3 years to 5 years. VCAT will still be able to grant exemptions for a shorter period or to revoke an exemption at any time.

In deciding whether to grant, renew or revoke an exemption, VCAT must consider all of the relevant circumstances of the case and consider whether:

- the exemption is unnecessary because:
 - an exception or exemption already applies to the conduct sought to be exempted
 - the conduct sought to be exempted would not amount to prohibited discrimination (because for example, it is a special measure)
- the proposed exemption is a reasonable limitation on the right to equality set out in the Charter Act.

The process also requires applicants for exemptions to provide a copy of their application to the Commission at the same time as the application is lodged with VCAT. This will allow the Commission to monitor exemption applications to support its education, research, intervention and *amicus curiae* functions.

PART 6 – SEXUAL HARRASSMENT

The new Act continues to prohibit sexual harassment and extends the prohibition to unpaid workers and volunteers.

Prohibition against sexual harassment

Sexual harassment occurs when a person makes an unwelcome sexual advance or an unwelcome request for sexual favours to another person, or engages in unwelcome conduct of a sexual nature, in circumstances in which a reasonable person would have anticipated that the other person would be offended, humiliated or intimidated. Conduct of a sexual nature includes subjecting a person to any act of physical intimacy, making a remark with sexual connotations to a person or about a person in their presence, or making a gesture, action or comment of a sexual nature in a person's presence.

Part 6 of the new Act continues to prohibit sexual harassment:

- by employers and employees (**section 93**)
- in common workplaces, regardless of whether the people involved are employers, employees or contractors (**section 94**)
- by partners (**section 95**)
- in industrial organisations (**section 96**)
- by members of qualifying bodies (**section 97**)
- in educational institutions (**section 98**)
- in the provision of goods and services (**section 99**)
- in the provision of accommodation (**section 100**)
- in clubs (**section 101**)
- in local government (**section 102**).

Protecting volunteers and unpaid workers from sexual harassment

The new Act amends the definitions of “employee”, “employer” and “employment” in **section 4** to include unpaid workers and volunteers for the purposes of **Part 6**, which prohibits sexual harassment. Other than in Part 6, the definitions do not include unpaid workers or volunteers.

Extending the protections of Part 6 to unpaid workers and volunteers means that:

- an employer must not sexually harass a person who works for that employer as an unpaid worker or volunteer, or a person seeking to work with that employer as an unpaid worker or volunteer. Also, an unpaid worker or volunteer must not sexually harass their employer, other employees (whether unpaid workers, volunteers or otherwise) or people seeking to work with their employer (whether as unpaid workers, volunteers or otherwise)
- a person must not sexually harass another person (including an unpaid worker or volunteer) at a place that is a workplace of both of them
- a member of an industrial organisation must not sexually harass a person who works for that organisation as an unpaid worker or volunteer, and an unpaid worker or volunteer must not sexually harass a person seeking to become a member of an industrial organisation or a member of that organisation

- a member of a qualifying body must not sexually harass a person who works for that body as an unpaid worker or volunteer, and an unpaid worker or volunteer must not sexually harass a person seeking action in connection with an occupational qualification or a member of that qualifying body
- a person who works as an unpaid worker or volunteer for an educational institution must not sexually harass a person seeking admission to that institution as a student or a student of that institution, and a student must not sexually harass a person who works as an unpaid worker or volunteer for that institution
- a member of a club, including a member of the management committee or other governing body of the club, must not sexually harass a person who works as an unpaid worker or volunteer for the club.

The duty in **Part 3** of the new Act to take reasonable and proportionate measures to eliminate sexual harassment as far as possible includes taking reasonable and proportionate measures to eliminate sexual harassment against and by volunteers and unpaid workers.

PART 7 – OTHER PROHIBITED CONDUCT AND VICARIOUS LIABILITY

The new Act continues to prohibit victimisation and other discriminatory conduct. It also continues to specifically provide for vicarious liability of employers and principals.

Victimisation

Division 1 of Part 7 of the new Act continues to prohibit victimisation. Victimisation occurs if a person subjects or threatens to subject another person to any detriment because the other person, or a person associated with them, has taken specified action under the new Act or the 1995 Act, such as making an allegation of discrimination or sexual harassment, taking a dispute to the Commission or participating in proceedings at VCAT, or giving information in connection with an investigation by the Commission.

Other prohibited conduct

Section 105 (section 98 of the 1995 Act) prohibits a person from requesting, instructing, inducing, encouraging, authorising or assisting another person to discriminate against, sexually harass or victimise another person. **Section 106** (section 99) provides that both the person authorising or assisting the discrimination, sexual harassment or victimisation, and the person who carries out the prohibited action, will be jointly and severally liable for the contravention.

Section 107 (section 100) prohibits a person from requesting or requiring (verbally or in writing) another person to supply information that could be used to form the basis of discrimination against the other person. However, **section 108** allows a person to request information for a potentially discriminatory purpose if the person is able to prove, on the balance of probabilities, that the information was reasonably required for a purpose that did not involve prohibited discrimination. For example, a special measure under section 12 is not prohibited discrimination. If a law firm has, for example, established a mentoring scheme for their Indigenous employees and asks all employees whether they are Aboriginal or Torres Strait Islander to determine eligibility for that special measure, that question would be lawful because section 108 would apply.

A person who obtains information under section 108 will not be able to use the information for any purposes other than allowed for by the section. Further, the person must keep the information confidential and destroy or permanently de-identify the information when it is no longer needed for the purpose that does not involve prohibited discrimination.

Vicarious liability

In addition to personal liability for the contravention of the new Act, **section 109** (section 102 of the 1995 Act) provides that an employer or principal may be vicariously liable for discrimination, sexual harassment and victimisation by an employee or agent that occurs in the course of employment or while acting as an agent. However, **section 110** provides that the employer or agent will not be vicariously liable if they can show, on the balance of probabilities, that they took reasonable precautions to prevent the discrimination, sexual harassment or victimisation.

What is considered a reasonable precaution will vary depending on the size and nature of the business and workplace. Reasonable precautions may include:

- preparing and promoting a written policy on discrimination and harassment
- conducting training to identify and prevent workplace discrimination and harassment
- establishing an effective internal complaints procedure.

PART 8 – RESOLVING DISPUTES

Summary of the new dispute resolution process

Part 8 of the new Act sets out the process for resolving disputes about discrimination, sexual harassment and victimisation. Part 8 replaces the complaint-handling process in Part 7 of the 1995 Act with a new model that allows a greater range of dispute resolution options for parties to a dispute. The new Act refers to “disputes” rather than “complaints”. A dispute means a dispute about compliance with the new Act (**section 4**)¹.

Under the 1995 Act, a person claiming discrimination had to first lodge a complaint with the Commission. The matter was then investigated and referred to conciliation. If the matter was not resolved by agreement following a conciliation process, the complainant could require the Commission to refer the complaint to VCAT for hearing.

By comparison, the new Act requires the Commission to offer services designed to facilitate resolution of disputes, whether through the provision of general information and education to duty holders and people with disputes at the initial stages, or through the process of dispute resolution at the Commission. The new Act also allows people with disputes to go directly to VCAT to have their matter determined, without first having to go through the Commission’s dispute resolution process.

Dispute resolution offered by the Commission is free, voluntary and confidential.

The new Act gives the Commission the discretion to use a wide variety of methods to resolve the dispute. The type of dispute resolution offered will be appropriate to the nature of the dispute. Once the person with the dispute informs the Commission that they want to proceed with dispute resolution, the Commission may make contact with the person or organisation being complained about. The methods the Commission may use range from informal discussions and providing education and information about the new Act, through to conciliation. Conciliation can take place in a face-to-face meeting, by telephone conference or by contact through the conciliator.

Under the new Act, a party to a dispute may withdraw from the Commission’s process at any stage and may take the dispute to VCAT for determination. This means that parties to a dispute do not need to request that the Commission refer their matter to VCAT.

For matters taken to VCAT, VCAT will continue to have the power to order compulsory conferences and mediation, and to strike out claims in certain circumstances.

The changes to the dispute resolution process for disputes under the new Act will also apply to disputes about racial and religious vilification brought to the Commission under Part 3 of the *Racial and Religious Tolerance Act 2001* (RRTA) – see Part 13 of this Guide (Other Matters).

¹ A person may bring a dispute to the Commission or make a direct application to VCAT about an alleged contravention of the 1995 Act that occurred before the commencement of the new Act, if a complaint had not been lodged under the 1995 Act and the alleged contravention would also contravene the new Act (**section 194**).

Dispute resolution by the Commission

Division 1 of Part 8 sets out the process for bringing a dispute to the Commission.

Role of the Commission

Section 111 provides that the Commission's functions in relation to dispute resolution under the new Act are to offer services designed to facilitate resolution of disputes and to establish policies and issue procedures and directions about how dispute resolution should be conducted.

Section 112 outlines the principles of dispute resolution offered by the Commission, which include that dispute resolution should be provided as early as possible, be appropriate to the nature of the dispute, be fair and voluntary, and be consistent with the objectives of the new Act.

Dispute resolution process

As is the case in relation to complaints under the 1995 Act, disputes under the new Act can be made by a person who claims that the Act has been contravened or by another person or representative body on behalf of a person with a dispute (where allowed for by the Act) (**sections 113 and 114**).

In practice, there are two steps to commencing the dispute resolution process with the Commission. The first step involves bringing the dispute to the Commission and the second step is when the person informs the Commission that they wish to proceed with dispute resolution (for example, by filling in the online complaint form on the Commission's website). Dispute resolution can only start with the consent of the person bringing the dispute.

Dispute resolution is deemed to end when the Commission declines to provide or continue to provide dispute resolution, a party withdraws from the process or the parties resolve the dispute.

The Commission has the discretion to decline to provide or continue to provide dispute resolution services (**section 116**). The Commission may do so for any of the following reasons:

- the alleged contravention occurred more than 12 months before the dispute was brought
- the matter has been adequately dealt with by a court or tribunal
- the matter would be more appropriately dealt with by a court or tribunal
- proceedings in relation to the matter have already been initiated in another forum
- having regard to all the circumstances, the Commission considers it is not appropriate to provide or continue to provide dispute resolution.

As dispute resolution at the Commission is voluntary, a party to a dispute can withdraw from the process at any time by informing the Commission (**section 118**). A withdrawal does not affect a person's right to lodge an application at VCAT or to commence proceedings in another jurisdiction. Unlike under the 1995 Act, a person will not need to request the Commission to formally refer a dispute to VCAT for determination.

Where the parties to a dispute reach an agreement following dispute resolution, they may request within 30 days after the agreement is reached that a written record of the agreement be prepared by the parties or the Commission (**section 119**). If the record is prepared by the Commission, it must be signed by or on behalf of each party and certified by the Commission. If the record is prepared by the parties, it must be signed by or on behalf of each party and may be certified by the Commission if a party requests this. The Commission can decline a request to prepare a record of an agreement or to

certify the record if, for example, it considers that the agreement is inconsistent with the objectives of the new Act. Such a refusal does not affect the validity of the agreement.

A party may lodge a copy of the signed and certified record of agreement with VCAT (**section 120**) after notifying the other party in writing. VCAT must register an agreement that it considers to be practicable to enforce or to supervise compliance with and give a certified copy to each party. VCAT can sever those parts of the agreement that it considers impracticable to enforce or supervise and only register the parts that are practicable to enforce or supervise. Once the record of agreement (or part of the agreement) is registered, it is taken to be an order of VCAT and is enforceable as such. The fact that VCAT has not registered an agreement, or has registered only part of an agreement, does not affect its legal validity. However, the unregistered part will not be enforceable as an order of VCAT.

Dispute resolution at the Commission is confidential. Evidence of anything said or done in the course of dispute resolution at the Commission is inadmissible in any proceedings before VCAT or any other legal proceeding relating to the subject matter of the dispute (**section 117**). Further, Commission staff are prohibited from unnecessarily recording, disclosing or communicating information concerning the affairs of any person obtained in the course of performing their functions or duties, or exercising their powers, under the Act (**section 176**).

However, the Commission may disclose information relating to disputes where the disclosure is for the purpose of education and is consistent with the Commission's obligations under the Charter Act and the *Information Privacy Act 2000* (**section 177**). Information may be disclosed if it does not identify any person, the information is already available in the public domain, or the relevant parties have consented to the disclosure. A further exception is the disclosure of information required by an order of a court for the purpose of a criminal proceeding or upon the consent of the relevant parties (**section 176A**).

Making an application to VCAT

Division 2 of Part 8 sets out the process for making an application to VCAT. A person with a dispute is not required to use the Commission's dispute resolution service before they can take their dispute to VCAT (**section 122**).

A person can apply directly to VCAT in respect of an alleged contravention of the new Act, as can another person or representative body on behalf of the person with the dispute (where allowed for by the Act) (**section 123 and 124**).

While the new Act does not impose a set time frame to make an application to VCAT, VCAT may summarily dismiss an application if the alleged contravention of the Act occurred more than 12 months before the application was made. This is set out in Item 18 in Part 7 of Schedule 1 to the *Victorian Civil and Administrative Tribunal Act 1998* (VCAT Act). VCAT may also make an order summarily dismissing or striking out all or part of a proceeding that, in its opinion, is frivolous, vexatious, misconceived or lacking in substance, or is otherwise an abuse of process (section 75 of the VCAT Act).

After hearing the evidence and representations of the parties to an application, VCAT may find that the new Act has been contravened (**section 125**). In that case, VCAT may make any one or more of the following orders: that the person who contravened the Act refrain from committing any further contravention of the Act, or pay compensation, or do something else to redress any loss, damage or injury suffered by the applicant as a result of the contravention. VCAT may find that the Act has been contravened but decline to take any further action. VCAT may also find there has been no contravention and order that the application (or part of it) be dismissed.

Where VCAT makes an order in response to a finding of a contravention of the new Act, and a person fails to comply with that order, the Commission, with the applicant's consent, is able to take steps on behalf of the applicant to have the order filed in the appropriate court, which will allow the applicant to enforce the order as an order of that court.

PART 9 - INVESTIGATIONS

Part 9 of the new Act allows the Commission to conduct investigations into any matter relating to the operation of the new Act, if the issue is serious, affects a class or group of people and is unlikely to be remedied through the normal complaints processes. There must also be reasonable grounds to suspect that the new Act may have been breached and that the investigation would advance the objects of the new Act.

After conducting an investigation, the Commission may take any action it thinks fit. This may include, for example, entering into an agreement with a person or organisation about action to be taken to comply with the new Act. Alternatively, the Commission may refer the matter to VCAT for an inquiry or make a report of the matter to the Attorney-General or to Parliament.

When can the Commission conduct an investigation?

Section 127 of the new Act allows the Commission to conduct an investigation into any matter relating to the operation of the new Act if:

- the matter raises a serious issue that relates to a class or group of people and cannot reasonably be expected to be resolved by dispute resolution or by an application to VCAT
- there are reasonable grounds to suspect that one or more contraventions of the Act have occurred
- the investigation would advance the objectives of the Act.

Section 127 provides scope for the Commission to investigate a matter if legitimate barriers prevent a person bringing a dispute to the Commission or making an application to VCAT. For example a person may be particularly vulnerable or have a fear of further victimisation, or an individual remedy may not be adequate to address the issue for the class or group of people.

The Commission may become aware of possible contraventions of the new Act in number of ways, including through its information service, disputes, reports in the media, in the course of performing its functions (such as education or research) or through submissions from community groups. VCAT may also refer a matter (other than a matter that is the subject of proceedings before VCAT) to the Commission for the Commission to consider whether to conduct an investigation.

The Board of the Commission is responsible for deciding whether the Commission should conduct an investigation (**section 162**).

How can the Commission conduct an investigation?

Commission to accord natural justice

The Commission may conduct an investigation as it thinks fit and is bound by the principles of natural justice, unless otherwise provided for in Part 9 (**section 129**). What is required by natural justice will depend on the circumstances of each case, but will generally require the Commission to:

- give a person whose interests may be adversely affected by an investigation an opportunity to present their case (although not necessarily in person)
- act without bias
- base any conclusions arising from the investigation on logically probative evidence.

Gathering information

If reasonably necessary for the purpose of conducting an investigation, the Commission may ask any party to provide information in relation to the investigation on a voluntary basis (**section 130**).

The Commission is also able to apply to VCAT for an order to compel a person to provide information or a document to the Commission, or to compel a person to attend before the Commission to answer questions (**sections 131 and 134**). Before making such an order, VCAT must be satisfied that the person has information or a document that is relevant to the investigation and the information is necessary for the conduct of the investigation. VCAT must also have regard to any evidence of the impact that making the order would be likely to have on the person's business or other activities and the extent of disruption or inconvenience that is likely to be caused to the person if the order is made. VCAT is not, however, required to consider whether the Commission is able to conduct the investigation under section 127 of the new Act.

A VCAT order to compel the production of information or documents must specify what information or documents the person is to produce and give them a reasonable time to respond (**section 131(5)**). A person who is required by a VCAT order to attend before the Commission is entitled to be paid a reasonable sum for their attendance and to have a legal or personal representative present (**section 134(6)**).

A VCAT order cannot require a person to create a document for an investigation unless either:

- the document 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
- it would contain factual information that is ordinarily available to the person and VCAT considers that the document would significantly assist the investigation and the document would not be unreasonably disruptive or inconvenient to produce (**section 132**).

Dealing with documents

If an order is granted for the production of a document, the Commission may take possession of the document, make copies of it or take extracts from it, and retain possession of it for as long as is necessary for the purposes of the investigation. Where the Commission retains a document, it must allow the document to be inspected at all reasonable times by a person who would be entitled to inspect the document if it were not in the Commission's possession (**section 133**).

Protection of people providing information and of certain information

Whether a person provides evidence, information or documents to the Commission voluntarily, or is compelled to do so by order of VCAT, the Commission can give directions to prohibit the disclosure of the identity of the person where the Commission considers it necessary to preserve the person's anonymity in order to protect their security of employment, their privacy or other rights protected under the Charter Act, or to protect them from victimisation (**section 135**). VCAT may give similar directions when making an order to compel a person to provide evidence, information or documents (**sections 131(6) and 134(5)**).

The Commission can also give a direction prohibiting or limiting the publication of certain evidence, information or documents given in the course of an investigation, where it is necessary to avoid prejudice to inter-governmental relations or to law enforcement, or the endangering of the life or safety of a person, or after considering other overriding public interest factors, set out in **section 136(3)**. These public interest factors are similar to those applied by the Australian Human Rights Commission under section 14 of the *Australian Human Rights Commission Act 1986* when conducting examinations and inquiries allowed under that Act.

Further to this, **section 188A** of the new Act provides that a person can refuse to give information, answer a question or produce a document if doing so would tend to incriminate them. Other common law privileges, such as legal professional privilege, also apply as they have not been expressly overridden in the new Act.

Finally, if a document or any information or evidence has been produced or given to the Commission, a person is not personally liable for any loss, damage or injury suffered by another person by reason only of the production or giving of the document, information or evidence (**section 189**).

VCAT orders to prevent prejudice to an investigation

The Commission is able to apply to VCAT for an interim order to prevent any person acting in a manner prejudicial to an investigation while the investigation is being undertaken (**section 137**). This is similar to section 121 of the new Act, which allows VCAT to make interim orders to prevent prejudice to dispute resolution at the Commission under Part 8. These provisions do not alter VCAT's general power to make interim orders under the VCAT Act.

Investigations if related legal proceedings have commenced

The Commission may commence or continue an investigation notwithstanding that proceedings have commenced in a court or tribunal that relate or are connected to the subject matter of the investigation (**section 138**). However, if the Commission is or becomes aware that such proceedings have commenced, the Commission must take all reasonable steps to ensure that the investigation does not prejudice those proceedings.

Outcomes of investigations

After conducting an investigation, the Commission may take any action it thinks fit, including taking no further action, entering into an agreement with a person about action required to comply with the new Act, referring a matter to VCAT for an inquiry, or making a report with respect to the matter to the Attorney-General or directly to Parliament (**section 139**). The new Act does not provide an exhaustive list of actions the Commission can take because it is intended that the Commission be able to encourage best practice and compliance with the Act through a range of strategies, whether educative or facilitative, or involving formal consideration by VCAT of contraventions.

Agreements

If, following an investigation, the Commission enters into an agreement with a person or organisation about action required to comply with the new Act, the agreement may provide for the agreement to be registered with VCAT. If so, either the Commission or the other party can lodge the agreement with VCAT for registration (**section 140**).

VCAT must register an agreement (or part of an agreement) and give a certified copy to each party, unless it considers the agreement to be impracticable to enforce or to supervise compliance with. VCAT will be able to sever those parts of the agreement that it considers impracticable to enforce or supervise and only register the remaining parts. Once the agreement (or part of the agreement) is registered, it is taken to be an order of VCAT and is enforceable as such. VCAT's refusal to register an agreement or part of an agreement does not affect its legal validity. However, the unregistered part of the agreement will not be enforceable as an order of VCAT.

VCAT inquiries

If, following an investigation, the Commission refers a matter to VCAT, VCAT must conduct an inquiry into the matter (**section 141**). This provision is similar to section 159 of the 1995 Act.

VCAT may conduct an inquiry as it thinks fit. If satisfied that a person has contravened the new Act, VCAT may make both or either of the following orders: an order that the person refrain from acting in contravention of the Act, or an order that the person do anything specified in the order with a view to eliminating future contravention of the Act or redressing circumstances that have arisen from the contravention.

A person who is alleged to have contravened the new Act will be a party to the inquiry. The Commission may also be a party.

Investigation reports

Following an investigation, the Commission may publish a report of the investigation (**section 142(4)**). The Commission may give the report to the Attorney-General, who may present it to Parliament, or make the report directly to Parliament.

Before publishing the report or providing it to the Attorney-General or Parliament, the Commission must give a person who may be the subject of adverse findings from an investigation a reasonable opportunity to comment on the subject matter of the investigation and respond to the findings (**section 143**).

The Commission is also able to exclude from the report any matter it sees fit, having regard to:

- the need to preserve a person's anonymity in order to protect their security of employment, their privacy or other rights in the Charter Act, or to protect them from victimisation
- the need to avoid prejudice to Government relations or to law enforcement, or the endangering of the life or safety of a person, and the consideration of other overriding public interest factors (set out in **section 136(3)**).

If the Commission provides an investigation report to the Attorney-General, the Commission must advise the Attorney-General about any matter it has excluded and the reason for its exclusion.

The secrecy provisions under **section 176** of the new Act do not apply to a report published or provided to the Attorney-General or to Parliament (**section 144**).

PART 10 – OTHER TOOLS TO HELP DUTY HOLDERS COMPLY: PRACTICE GUIDELINES, REVIEWS AND ACTION PLANS

The new Act gives the Commission additional tools to assist people and organisations that have a duty not to engage in discrimination, sexual harassment or victimisation, to comply with the Act and achieve best practice. These tools include the issuing of practice guidelines, conducting compliance reviews and assisting with the preparation of action plans.

Practice guidelines

The Commission is able to issue practice guidelines on any matter relating to the new Act (**section 148**). Practice guidelines are not legally binding on duty holders but a court or VCAT may consider evidence of compliance with the guidelines if relevant to proceedings under the new Act. The guidelines generally aim to assist duty holders to understand their obligations under the new Act and provide constructive advice and information for duty holders to use when developing their own equal opportunity policies and procedures.

The Commission is not restricted in determining the scope or subject matter of practice guidelines. However, the Commission must consult with people or bodies that it considers represent the areas or people to whom the practice guidelines relate, and must publish a notification when guidelines are issued or withdrawn. The practice guidelines themselves must be published on the Commission's website.

Compliance reviews

The Commission is able to undertake a review of a person or organisation's programs and practices upon request, to determine their compliance with the new Act. The review may be conducted on terms agreed between the Commission and the requesting party, which may provide for payment of the Commission's reasonable costs (**section 151**).

If, after undertaking a review, the Commission provides advice about whether programs or practices are compliant with the new Act, this advice will not give rise to any liability or claim against the Commission, or to any right, expectation, duty or obligation that would not otherwise be conferred or imposed on the person who has been given the advice, or to any defence that would not otherwise have been available to the person or organisation.

Action plans

The new Act recognises that a person or organisation may voluntarily prepare an action plan that specifies steps that need to be taken to improve compliance with the Act (**section 152**).

The Commission is able to provide advice about preparing and implementing action plans, and may set minimum requirements that such plans should meet. The action plans may be provided to the Commission and the Commission may include the action plan in a Register of Action Plans (**section 153**). The Commission must make the Register of Action Plans available on the Commission's website and may publish the Register in any other manner it thinks fit. It is intended that the Register of Action Plans provide added incentive for a duty holder to show good corporate citizenship and allow other duty holders to benefit from their work and experience.

Although action plans are not legally binding, a court or VCAT may consider an action plan if relevant to a proceeding under the new Act.

PART 11 – THE COMMISSION AND ITS FUNCTIONS

The Commission

Under the new Act, the Commission continues to be the statutory agency with responsibilities under the new Act, the Charter Act and the RRTA.

The Commission is governed by a Board with an independent chairperson, which has overall responsibility for the Commission's general functions and duties (**section 162**). The Board has particular responsibility for determining the Commission's strategic direction and for setting policies, priorities and strategies for the Commission in performing its functions. The Board is also responsible for deciding whether the Commission should conduct investigations under Part 9 of the Act.

The day-to-day management of the Commission is carried out by the Commissioner, who is the main link between the Board and the Commission's staff, carrying out responsibilities in accordance with the priorities, policies and directions of the Board (**section 170**).

On commencement of the new Act, the current Board members and Commissioner remained in their revised roles and the terms of their appointments under the 1995 Act were not affected. However, the Commissioner is no longer a member of the Board. The Board may elect a member of the Board to preside at meetings until a chairperson is appointed by the Governor-in-Council. The Commissioner will, in the future, be appointed by the Board with the approval of the Attorney-General (**section 170**).

The Commission's functions

The role of the Commission has been updated under the new Act. Under **section 155**, the Commission has the functions conferred on it by or under the new Act, which, as outlined in earlier Parts of this guide, include:

- providing early and flexible dispute resolution services to assist parties with disputes about discrimination, sexual harassment, victimisation and racial or religious vilification to resolve their disputes
- conducting investigations under Part 9
- assisting duty holders to comply with the new Act by issuing practice guidelines, conducting compliance reviews (upon request) and assisting with the preparation of action plans.

Under **section 155**, the Commission also has the functions of:

- establishing and undertaking information and education programs
- promoting and advancing the objectives of the new Act and being an advocate for the Act.

The Commission also has any functions conferred on it or under any other Act, including the Charter Act (**section 155(1)(c)**).

These functions are added to by further specific educative and research functions, as well as the ability to intervene in legal proceedings that involve issues of equal opportunity, discrimination, sexual harassment or victimisation.

The Commission must exercise all of its functions in accordance with the new Act and compatibly with the Charter Act.

The Commission's educative function

Under **section 156**, the Commission is required to undertake programs to disseminate information and educate the public with respect to the new Act, the Charter Act and the RRTA.

As under the 1995 Act, if the Commission becomes aware of any provision of legislation that discriminates or has the effect of discriminating against a person, the Commissioner must notify the Minister responsible for administering the relevant provision. In addition, under the new Act, the Commission must notify the Attorney-General (**section 156(2)**). The Commission can also report to the Attorney-General on its other educative functions at any time (**section 158**).

The Commission's research function

The Commission may undertake research into any matter arising from, or incidental to, the operation of the new Act that it considers would advance the objectives of the Act (**section 157**). The Commission may also collect and analyse information and data relevant to the operation and objectives of the Act. The Commission can report to the Attorney-General on its research functions at any time (**section 158**).

The Commission's intervention function

In order to encourage the development of jurisprudence, the new Act allows the Commission to intervene and assist in relevant legal proceedings.

Under section 159, if the relevant court or tribunal approves, the Commission may intervene in proceedings that involve issues of equality of opportunity, discrimination, sexual harassment or victimisation. The Commission will then be joined as a party to those proceedings. This section does not limit VCAT's power to give leave at any time for a person to intervene in a proceeding subject to any conditions that VCAT sees fit under section 73(3) of the VCAT Act.

Under section 160, if the relevant court or tribunal approves, the Commission may assist in certain proceedings as an *amicus curiae*. An *amicus curiae* is a "friend to the court" and is not a party to the proceedings. The primary purpose of an *amicus curiae* is to provide assistance to the court or tribunal by way of specialist advice, usually by making a submission. The types of proceedings where the Commission may seek leave to appear as *amicus curiae* are those where the Commission considers the outcome may significantly affect the right to protection against discrimination of the broader community, those that have significant implications for the administration of the new Act, and those where the Commission is satisfied it would be in the public interest for it to assist the court or tribunal.

PART 12 – OFFENCES

Part 12 of the new Act provides for particular offences under the Act and the process for dealing with such offences. An offence against the new Act is to be prosecuted summarily (**section 181**).

Offences

Discriminatory advertising

Section 182 prohibits the publication or display (or authorisation of the publication or display) of an advertisement or other notice that indicates, or could be reasonably understood as indicating, that a person intends to breach a prohibition on discrimination, sexual harassment or victimisation. This re-enacts section 195 of the 1995 Act, except that the penalty for the offence has been increased to 60 penalty units for an individual and a new penalty of up to 300 penalty units for a body corporate has been introduced.

It will be a defence to a charge of discriminatory advertising if the accused proves that they took reasonable precautions and exercised due diligence to prevent the publication or display of the advertisement or other notice (**section 183**). This re-enacts section 196 of the 1995 Act.

In proceedings for the offence of discriminatory advertising, the Commission may require a person to produce specified documents (**section 184**). A penalty applies where a person refuses, without reasonable excuse, to produce the required documents.

Obstructing the Commission

Section 185 prohibits a person from hindering or obstructing a member of the Board, the Commissioner or a member of the staff of the Commission who is performing a function or exercising a power under the new Act. The penalty for the offence is 60 penalty units for an individual and 300 penalty units for a body corporate. This section re-enacts section 202 of the 1995 Act with amendments to increase the penalty for a natural person and to introduce a penalty for a body corporate.

False or misleading information

Section 186 prohibits a person from knowingly giving false or misleading information to the Commission or the Commissioner or a person acting on behalf of the Commission or the Commissioner in the exercise of powers or the performance of functions under the new Act. This section is similar to section 203 of the 1995 Act except that the penalty has been increased to 60 penalty units for an individual and a new penalty introduced in respect of a body corporate (300 penalty units).

Who may bring proceedings for an offence?

Under **section 180**, proceedings for an offence under the new Act may be brought by:

- the Commission
- a member of the police force
- a person who is authorised by the Commission to do so, either generally or in a particular case.

This provision is broader than section 206 of the 1995 Act, which only provided that the Commission could bring proceedings for offences.

PART 13 – OTHER MATTERS

Transitional arrangements for complaints on commencement of the new Act

Complaints

In circumstances where a complaint was lodged under the 1995 Act but not finally dealt with before the new Act commenced, if the respondent was already notified of the complaint, the complaint will continue to be dealt with as a complaint under the 1995 Act unless the parties consent in writing to it being dealt with as a dispute under the new Act (**section 193**).

If the respondent was not notified of the complaint before the new Act commenced, the complaint will be dealt with as a dispute under the new Act, whether or not the contravention alleged in the complaint would have contravened the new Act had it been in force when the contravention occurred.

A person may either bring a dispute to the Commission or make a direct application to VCAT about an alleged contravention of the 1995 Act that occurred before the commencement of the new Act, if a complaint had not been lodged under the 1995 Act and the alleged contravention would also contravene the new Act (**section 194**). This is intended to avoid retrospective application of the new Act but works to ensure that disputes can be brought about a pre-commencement contravention of a re-enacted provision. It will not allow a dispute to be brought about a contravention of a provision that was not re-enacted or about a matter that was previously lodged as a complaint.

Exemptions

An exemption granted under the 1995 Act that was in force before the new Act commenced, continues to operate in accordance with its terms but may be revoked or renewed under the new Act (**section 195**).

Where a person had applied to VCAT for an exemption or a renewal or revocation of an exemption under the 1995 Act and the application had not been determined before the new Act commenced, the 1995 Act will continue to apply. It is intended that once this decision has been made, any reconsideration of that exemption should be under the new Act. This means that an exemption granted under the 1995 Act will continue on its terms but could be renewed or revoked in accordance with the new Act.

Changes to other Acts

Racial and Religious Tolerance Act 2001

The dispute resolution process under the new Act also applies to disputes about racial and religious vilification and victimisation under the RRTA. This means that a person alleging racial or religious vilification can go to the Commission for dispute resolution or apply directly to VCAT to have their matter determined. Previously, a person wishing to bring a complaint to VCAT under the RRTA had to apply for leave. That is no longer required, bringing it in line with the dispute resolution process that applies to allegations of discrimination, sexual harassment and victimisation.

VCAT will be able to summarily dismiss an application under the RRTA where the alleged contravention occurred more than 12 months before the application was made.

The Commission will no longer be able to investigate contraventions of Part 2 of the RRTA as it could under section 156 of the 1995 Act. The *Multicultural Victoria Act 2004* gives the Victorian Multicultural Commission a function to investigate, report and make recommendations to the Minister

on any aspect of multicultural affairs referred to it by the Minister. This may include possible contraventions of the RRTA.

Victorian Civil and Administrative Tribunal Act 1998

The new Act inserts new Parts into Schedule 1 to the VCAT Act to set out particular matters that apply to proceedings under the new Act and under the RRTA. Part 7 deals with the new Act. Part 16C deals with the RRTA.

Matters relating to proceedings under the new Act include:

- if an application is made to VCAT under section 121 of the new Act seeking an interim order to prevent prejudice to dispute resolution, VCAT must notify the Commission (item 16)
- an applicant under the new Act is not required to obtain the leave of VCAT to withdraw their application (item 17)
- VCAT may summarily dismiss an application under the new Act in respect of an alleged contravention that occurred more than 12 months before the application was made (item 18)
- evidence of anything said or done in the course of a mediation in a proceeding under the new Act is not admissible in any hearing before VCAT in the proceeding, whether or not the parties agree to the giving of the evidence (item 21)
- if VCAT proposes to grant, renew or revoke an exemption under the new Act on its own initiative, it must notify all persons whose interests may be affected by the proposal (item 15)
- VCAT may determine to grant an exemption under the new Act without a hearing (item 20)
- certain provisions of the VCAT Act dealing with settlement offers and consequences for costs do not apply to proceedings under the new Act (item 22).

Matters relating to proceedings under the RRTA include:

- an applicant is not required to obtain the leave of VCAT to withdraw an application under the RRTA (item 66J)
- VCAT may make an order summarily dismissing an application under the RRTA if the alleged contravention occurred more than 12 months before the application was made (item 66K)
- the Commission may apply for an order granting an interim injunction in a proceeding under the RRTA whether or not the Commission is a party to that proceeding (item 66L)
- evidence of anything said or done in the course of a mediation in a proceeding under the RRTA is not admissible in any hearing before VCAT, whether or not the parties agree to the giving of the evidence (item 66M).

Electoral Act 2002

Section 35 of the *Equal Opportunity Amendment Act 2011* inserted a new section 17A in the *Electoral Act 2002* to permit the Victorian Electoral Commission (VEC) to discriminate against a person in relation to offering employment or appointment as a member of the audit committee of the VEC on the basis of that person's political belief or activity. The VEC is required by notice published in the Government Gazette to issue guidelines setting out the criteria to be applied in relation to refusing employment or appointment on the basis of a person's political belief or activity. This section accords with section 75 of the new Act, which permits discrimination if it is authorised by an Act.

FURTHER INFORMATION

Legislative history

The new Act received Royal Assent on 27 April 2010. Sections 1, 2 and 211–214 of the Act (as then passed) commenced operation on 28 April 2010. The remaining provisions commenced operation on 1 August 2011.

Before commencement on 1 August 2011, the new Act was amended by the *Equal Opportunity Amendment Act 2011*, which received Royal Assent on 21 June 2011.

You can download a copy of the new Act, as amended, from the Victorian Legislation and Parliamentary Documents website (www.legislation.vic.gov.au) by following the links under “Victorian Law Today”.

The explanatory memorandum for the Equal Opportunity Bill 2010 can be downloaded from the same website by following the links under “Parliamentary Documents”, then “Archive” and then “2010”. The explanatory memorandum for the Equal Opportunity Amendment Bill 2011 can be found by following the links under “Parliamentary Documents” and then “Bills”.

Getting further assistance

The Commission conducts regular training sessions on the new Act and is preparing information and guidance materials, including a number of tools to assist duty holders understand their obligations under the Act. For further information see www.humanrightscommission.vic.gov.au.

Table of provisions

Below is a table setting out the provisions of the new Act and earlier or related provisions in the 1995 Act: a ready reckoner for considering the changes from the 1995 Act to the new Act. The table is a guide only, it is not a substitute for referring to the legislation. For example, sections in the 1995 Act may have been re-enacted with amendments in the new Act.

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