

PARLIAMENT OF VICTORIA

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**Racial and Religious Tolerance Amendment  
Bill 2019**

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# PARLIAMENT OF VICTORIA

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Introduced in the Council by Fiona Patten

## **Racial and Religious Tolerance Amendment Bill 2019**

A Bill for an Act to amend the **Racial and Religious Tolerance Act 2001** to extend the application of that Act to include protection from vilification based on certain protected attributes, to make related amendments and for other purposes.

**The Parliament of Victoria enacts:**

### **1 Purpose**

5 The main purpose of this Act is to amend the **Racial and Religious Tolerance Act 2001** to include protections from vilification based on the following attributes—

- (a) gender;
- (b) disability;
- (c) sexual orientation;
- (d) gender identity;
- 10 (e) sex characteristics.

## 2 Commencement

This Act comes into operation on 1 January 2020.

## 3 Principal Act

5 In this Act, the **Racial and Religious Tolerance Act 2001** is called the Principal Act.

## 4 Change of name of Principal Act

10 In the title to the Principal Act, for "**Racial and Religious Tolerance**" substitute "**Elimination of Vilification**".

## 5 Preamble

At the end of the Preamble to the Principal Act insert—

15 "5 The Parliament further recognises that the people of Victoria have other diverse attributes in relation to gender, disability, sexual orientation, gender identity or sex characteristics and the majority of Victorians embrace this diversity and live harmoniously together.

20 6 However, some Victorians are vilified on the ground of their unique attributes. Vilifying conduct is contrary to democratic values. It diminishes a person's dignity, sense of self-worth and belonging to the community. It also reduces their ability to contribute to, or fully participate in society as equals, thus reducing the benefit that diversity brings to the community.

25 7 It is therefore desirable that the Parliament further enact laws to extend protections for Victorians and which support inclusion."

## 30 6 Purposes amended

In section 1 of the Principal Act—

(a) in paragraph (a), for "racial and religious tolerance" substitute "inclusion";

(b) in paragraph (a), after "activity" **insert** "  
", gender, disability, sexual orientation,  
gender identity or sex characteristics";

(c) in paragraph (b), **omit** "racial or religious".

5

## **7 Definitions**

In section 3 of the Principal Act, **insert** the following definitions—

10

***gender identity*** means the gender-related identity, appearance or mannerisms or other gender-related characteristics of a person (whether by way of medical intervention or not), with or without regard to the person's designated sex at birth;

15

***protected attribute*** has the meaning given in section 3A;

20

***sex characteristics*** means a person's physical, hormonal or genetic features relating to sex, including genitalia and other sexual and reproductive anatomy, chromosomes, genes, hormones, and secondary sex characteristics;

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

## **8 New section 3A inserted**

After section 3 of the Principal Act **insert**—

25

### **"3A What are protected attributes?**

For the purposes of this Act, a protected attribute is one or more of the following—

30

- (a) race;
- (b) religious belief or activity;
- (c) gender;
- (d) disability;
- (e) sexual orientation;

- (f) gender identity;
- (g) sex characteristics."

## 9 Objects of Act

5 In section 4(1)(c) of the Principal Act, for "race or religious belief or activity" **substitute** "race, religious belief or activity, gender, disability, sexual orientation, gender identity or sex characteristics".

## 10 Section 7 amended

- 10 (1) In the heading to section 7 of the Principal Act, for "**Racial vilification**" **substitute** "**Vilification**".
- (2) In section 7(1) of the Principal Act—
- (a) for "race" **substitute** "protected attribute";
  - (b) for "incites" **substitute** "is likely to incite".

## 11 Section 8 repealed

15 Section 8 of the Principal Act is **repealed**.

## 12 Motive and dominant ground irrelevant

- (1) In section 9(1) and (2) of the Principal Act, **omit** "or 8".
- 20 (2) In section 9(2) of the Principal Act, for "race or religious belief or activity" **substitute** "protected attribute".

## 13 Section 10 amended

- 25 (1) In the heading to section 10 of the Principal Act, for "**race or religious belief or activity**" **substitute** "**protected attribute**".
- (2) In section 10 of the Principal Act—
- (a) **omit** "or 8";
  - (b) for "race or religious belief or activity" **substitute** "protected attribute".
- 30

**14 Exceptions—public conduct**

- (1) In section 11(1) of the Principal Act, **omit** "or 8".
- (2) For section 11(2) of the Principal Act, **omit** "or proselytising".

5 **15 Exceptions—private conduct**

In section 12(1) of the Principal Act, **omit** "or 8".

**16 Application of Equal Opportunity Act 2010 to a dispute**

After section 22(2) of the Principal Act **insert**—

- 10 "(3) For the purposes of this section, if it is reasonably necessary for the purpose of dispute resolution under this Act, the Commission may ask any party to provide information in relation to a dispute."

15 **17 New sections 22A to 22E inserted**

After section 22 of the Principal Act **insert**—

**"22A Tribunal order compelling production of information**

- 20 (1) The Commission may apply to the Tribunal for an order requiring a person to provide information to the Commission for the purpose of dispute resolution under this Act.
- (2) The Tribunal may make an order referred to in subsection (1) if it is satisfied that—
- 25 (a) a person is in possession of information that is relevant to the dispute resolution; and
- (b) the information is necessary for the conduct of the dispute resolution.

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- (3) In making the order, the Tribunal must have regard to—
    - (a) any evidence of the impact that making the order would be likely to have on the person's business or other activities; and
    - (b) the extent of disruption or inconvenience that is likely to be caused to the person if the order were made.
  - (4) The order must specify that the person must give the Commission the information required by the order—
    - (a) within a reasonable period specified in the order; or
    - (b) on a reasonable date and at a reasonable time specified in the order.
  - (5) The Tribunal may give directions prohibiting the disclosure of the identity of a person or information that would be reasonably likely to identify a person if the Tribunal considers that preservation of the person's anonymity is necessary—
    - (a) to protect the person's security of employment, privacy or any right protected by the **Charter of Human Rights and Responsibilities Act 2006**; or
    - (b) to protect the person from victimisation.
  - (6) A document containing information referred to in subsection (4) must be signed by the person or, if the person is a body corporate, an officer of the body corporate.

- (7) The person against whom an order is sought is a party to the proceeding on an application under subsection (1).

**22B Creation of documents**

5 An order under section 22A must not require a person to create a document unless—

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

20 **22C Information in documents provided to the Commission**

- (1) If information is provided in a document to the Commission in accordance with an order under section 22A, the Commission may—
- 25 (a) take possession of the document; and
- (b) make copies of the document or take extracts from the document; and
- 30 (c) retain possession of the document for as long as is necessary for the purposes of the investigation to which the document relates.



5 (2) The Commission must allow a document retained under this section to be inspected, at all reasonable times, by any person who would be entitled to inspect the document if it were not in the possession of the Commission.

**22D Disclosure of identity of persons who give information or documents**

10 (1) This section applies to a person who has given or who will give evidence, information or documents to the Commission as part of a dispute resolution, whether or not the person is compelled to do so by an order under section 22A.

15 (2) The Commission may give directions prohibiting the disclosure of the identity of the person or prohibiting the disclosure of information that would be reasonably likely to identify the person if the Commission considers that preservation of the person's anonymity is necessary—

20 (a) to protect the person's security of employment, privacy or any right protected by the **Charter of Human Rights and Responsibilities Act 2006**;  
25 or

(b) to protect the person from victimisation.

30 (3) A direction under this section must not be inconsistent with any direction of the Tribunal prohibiting the disclosure of the identity of a person, or information that would be reasonably likely to identify a person, given under section 22A(5).

**22E Publication of evidence, information or documents**

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- (1) The Commission may give directions prohibiting or limiting the publication of—
- (a) any evidence given before the Commission or any information given to the Commission as part of a dispute resolution; or
- 10
- (b) the contents of any document containing information provided to the Commission as part of a dispute resolution.
- 15
- (2) Subsection (1) applies whether or not a person was compelled to give the evidence or produce the information or document by order under section 22A.
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- (3) In deciding whether or not to give a direction under subsection (1), the Commission must have regard to the need to prevent any of the following as are relevant to the circumstances—
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- (a) prejudice to the relations between the Government and the Commonwealth Government or between the Government and the Government of another State or a Territory;
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- (b) the disclosure of deliberations or decisions of the Cabinet, or of a Committee of the Cabinet;
- (c) prejudice to the proper functioning of the Government;
- (d) the disclosure, or the ascertaining by a person, of the existence or identity of a confidential source of information in

- relation to the enforcement of the criminal law;
- (e) the endangering of the life or physical safety of any person;
- 5 (f) prejudice to the proper enforcement of the law or the protection of public safety;
- (g) the disclosure of information the disclosure of which is prohibited, absolutely or subject to qualifications, by or under another Act;
- 10 (h) the unreasonable disclosure of the personal affairs of any person;
- (i) the unreasonable disclosure of confidential commercial information."
- 15

**18 Section 24 amended**

- (1) In the heading to section 24 of the Principal Act, **omit "racial"**.
- (2) In section 24(1) of the Principal Act—
- 20 (a) for "race" **substitute** "protected attribute";
- (b) after "intentionally" **insert** "or recklessly";
- (c) for "the offender knows is likely" **substitute** "is likely to";
- (d) in paragraph (a), **omit** "to";
- 25 (e) in paragraph (b), **omit** "to" (where first occurring).
- (3) In section 24(2) of the Principal Act—
- (a) for "race" **substitute** "protected attribute";
- (b) **omit** "the offender knows".
- 30 (4) Section 24(4) of the Principal Act is **repealed**.

**19 Section 25 repealed**

Section 25 of the Principal Act is **repealed**.

**20 Section 26 amended**

- 5 (1) In the heading to section 26 of the Principal Act,  
for "**race or religious belief or activity**"  
**substitute "protected attribute"**.
- (2) In section 26 of the Principal Act—
- (a) **omit "or 25"**;
- 10 (b) for "race or religious belief or activity"  
**substitute "protected attribute"**.

**21 Issue of search warrant by magistrate**

In section 28 of the Principal Act, **omit "or 25"**.

**22 Part 6 inserted**

After Part 5 of the Principal Act **insert—**

15 **"Part 6—Transitional provisions—  
Racial and Religious Tolerance  
Amendment Act 2019**

**32 Renaming of Act—savings provision**

20 Any reference to the **Racial and Religious  
Tolerance Act 2001** in any Act, subordinate  
instrument, agreement or other document, so  
far as it relates to any period after the  
commencement of section 4 of the **Racial  
and Religious Tolerance Amendment  
25 Act 2019**, is to be construed as a reference to  
the **Elimination of Vilification Act 2001**,  
unless the contrary intention appears or the  
context otherwise requires.

**33 Activities under repealed section 8 or 25**

- 5 (1) Despite the repeal of section 8, a dispute may be brought to the Commission under Part 3 on or after the commencement of the **Racial and Religious Tolerance Amendment Act 2019** in respect of a contravention of section 8 occurring before that commencement, as if that section had not been repealed.
- 10 (2) Despite the repeal of section 25, a prosecution may be brought on or after the commencement of the **Racial and Religious Tolerance Amendment Act 2019** in respect of a contravention of section 25 occurring before that commencement, as if that section had not been repealed.
- 15

**34 Regulations dealing with transitional matters**

- 20 (1) The Governor in Council may make regulations containing provisions of a transitional nature, including matters of an application or savings nature, arising as a result of the enactment of the **Racial and Religious Tolerance Amendment Act 2019**, including the repeals and amendments made by that Act.
- 25 (2) Regulations made under this section may—
- 30 (a) have a retrospective effect to a day on or from the date that the **Racial and Religious Tolerance Amendment Act 2019** receives the Royal Assent; and
- 35 (b) be of limited or general application; and
- (c) leave any matter or thing to be decided by a specified person or class of person; and

- (d) provide for the exemption of persons or proceedings or a class of persons or proceedings from any of the regulations made under this section.
- 5 (3) Regulations under this section have effect despite anything to the contrary—
- (a) in any Act (other than the **Racial and Religious Tolerance Amendment Act 2019** or the **Charter of Human Rights and Responsibilities Act 2006**); or
- 10 (b) in any subordinate instrument.
- (4) This section is **repealed** on the second anniversary of the day on which it comes into operation.
- 15
- 35 Court or Tribunal may make orders of a transitional nature**
- (1) If any difficulty arises in a proceeding because of the operation of this Part, the court or the Tribunal may make any order it considers appropriate to resolve the difficulty.
- 20
- (2) The court or the Tribunal may make such an order on the application of any party to the proceeding or on its own motion.".
- 25

### **23 Repeal of this Act**

This Act is **repealed** on 1 January 2021.

#### **Note**

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

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## **Endnotes**

### **1 General information**

See [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au) for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.