

Explanatory note from Sam Hibbins MP

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This note groups the bill's work into themes:

- ▲ Intersex
- ▲ Intersex, trans and gender diverse
- ▲ VEOHRC's powers
- ▲ Religious exemptions

Intersex:

Clause 5 - Page 3

This clause adds 'intersex status' to the list of protected attributes in the Victorian *Equal Opportunity Act*.

This has the effect of outlawing discrimination in Victoria on the basis of intersex status.

We chose the words 'intersex status' instead of 'intersex variation' or 'sex characteristics' in order to be consistent with the Commonwealth *Sex Discrimination Act*.

Clause 4(a) - Page 3

This sub-clause adds a new definition of 'intersex status' to the list of definitions at the front of the *Equal Opportunity Act*.

The definition is modelled on the one that was included in the Commonwealth *Sex Discrimination Act* in 2013, so as to ensure consistency between state and federal laws.

Intersex, Trans and Gender Diverse:

Clause 4(b) - Page 3

This sub-clause replaces the current definition of 'gender identity' with a new definition.

The current definition of 'gender identity' is inaccurate and also excludes intersex and gender diverse people.

By updating the definition, we introduce new protection for people who are gender diverse and remove out-dated and inaccurate descriptions of the gender expression of trans and gender diverse people.

The new definition is modelled on the one that was included in the Commonwealth *Sex Discrimination Act* in 2013, so as to ensure consistency between state and federal laws.



Restore the powers of the Victorian Equal Opportunity and Human Rights Commission

Clause 12 (Also clauses 6, 11, 13, 14 and 15) - Pages 4 to 18

This part of the bill has broader benefits to all Victorians who face discrimination, not only LGBTI people.

The Victorian Equal Opportunity and Human Rights Commission (VEOHRC) is an independent body with the responsibility to act on discrimination. This includes LGBTI discrimination, but also broader discrimination, harassment and vilification.

Its current role includes education, training, a free enquiry line and dispute resolution as well as some investigation functions.

This part of the bill has the effect of restoring VEOHRC's powers to conduct public inquiries, compel witness and compel people to bring documents.

In 2010, as part of a broad reform and strengthening of the *Equal Opportunity Act*, VEOHRC gained a new role of conducting public inquiries and investigations into systemic discrimination (that is, discrimination that affects a broad class of people) and greater powers to get the job done.

This balanced its other roles and gave VEOHRC real teeth to investigate and report on discrimination.

However, before the 2010 changes could take effect, the incoming Liberal government stripped away some of those powers and reduced others, including:

- ▲ removing VEOHRC's power to conduct public inquiries
- ▲ narrowing the scope of when an investigation could take place
- ▲ removing the power of VEOHRC to compel witnesses to attend and give evidence or submit documents during an investigation, and instead gave that power to the Victorian Civil and Administrative Tribunal.

With a few exceptions, this bill rolls back the law to the 2010 reforms.

The exceptions are all useful clauses that were introduced in 2011 as part of the Liberal amendments, which this bill retains while restoring VEOHRC's main powers. These include:

- ▲ the ability for VEOHRC to commence or continue an investigation during other court or tribunal proceedings
- ▲ retaining the ability for VEOHRC to enter into a voluntary agreement with the person about what actions the person will take to comply with the findings of an investigation, and registering those voluntary agreements.

Clause 15 - Page 18

This clause provides for the transition between current and new laws for ongoing investigations.

Ongoing investigations would continue under the current laws. The new laws would apply to the outcomes of those investigations.



Clauses 16, 17 and 19 - Page 21

These clauses make necessary changes to the *Victorian Civil and Administrative Tribunal Act* because of the aforementioned changes to VEOHRC's powers.

Clause 16 has the effect that inquiries referred through to VCAT from VEOHRC will be VCAT inquiries.

Clause 17 provides for the transition between the current laws and the new laws.

Clause 19 is an administrative change to reflect that VCAT will no longer be referring inquiries to VEOHRC.

Religious exemptions

The current situation

Religious schools, religious bodies and religious people currently have special permission to operate outside of our human rights and equal opportunity laws in some circumstances.

They can discriminate on the basis of another person's religious belief or activity, sex, sexual orientation, lawful sexual activity, marital status, parental status or gender identity if doing so "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".

As well as discrimination against same-sex attracted and gender diverse Victorians, the exemptions allow religious organisations to sack a teacher for becoming pregnant or even to have a policy of only promoting men to senior jobs.

Most religious groups and individuals agree these exemptions are unnecessary. They want to treat all people equally and meet or exceed society's ethical standards.

The general effect of the proposed change is that religious groups will have to comply with the same human rights laws as everyone else. Religious bodies and individuals would also have the same ability to apply for an exemption as every other Victorian, but will need a valid reason to discriminate.

Note for Intersex status: Intersex status is not included in the religious exemptions, or anywhere else in the current Act, so intersex status is not included in this section of the explanatory note. Clauses 4(a) and 5 of the bill which outlaw discrimination against people because of their intersex status do so without adding any exemptions.

Clause 8 - Page 4

Clause 8 removes section 82(2) of the Equal Opportunity Act, which is the exemption for people and activities that are not part of the religious body's religious orders and religious ceremonies.

Currently, it allows religious bodies to discriminate in terms of who they employ (in non-religious roles) and who they provide services to, if 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".

Religious bodies often perform a range of public services for housing and homelessness, child and family welfare, foster care and adoption, drug and alcohol support, counselling and more, including with government funding or under a contract to deliver government services.

It is particularly inappropriate that members of the public can be turned away from publicly funded services based on their sexual orientation, gender identity or other select attributes.



Clause 9 (Also clause 7) - Page 4

Clause 9 removes section 83 of the *Equal Opportunity Act*, which is the special provision for schools run by religious bodies to discriminate if 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”.

Currently, students, teachers and non-teaching staff in religious schools do not have the full protection of our human rights and anti-discrimination laws.

Clause 7 is an administrative change, to reflect the repeal of clause 83.

Clause 10 - Page 4

Clause 10 removes section 84 of the *Equal Opportunity Act*, which is the exemption for people with religious beliefs or principles.

This is similar to the exemption for religious bodies, except that the exemption is for individual people.

