

Authorised Version No. 004
Gender Equality Act 2020

No. 5 of 2020

Authorised Version incorporating amendments as at
1 June 2022

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The Parliament of Victoria enacts:

Part 1—Preliminary

1 Purposes

The main purposes of this Act are—

- (a) to require the public sector, Councils and universities to take positive action towards achieving workplace gender equality; and
- (b) to require the public sector, Councils and universities to promote gender equality in their policies, programs and services; and
- (c) to establish the Public Sector Gender Equality Commissioner.

2 Commencement

- (1) Subject to subsections (2) and (3), this Act comes into operation on a day or days to be proclaimed.
- (2) Part 9 of this Act comes into operation on 1 July 2021.
- (3) If a provision of this Act other than Part 9 does not come into operation before 31 March 2021, it comes into operation on that day.

3 Definitions

In this Act—

Commissioner means the Public Sector Gender Equality Commissioner appointed under section 29;

compliance notice means a compliance notice issued under section 22;

Council has the same meaning as in the **Local Government Act 2020**;

S. 3 def. of *Council* amended by No. 20/2022 s. 61(a).

Councillor has the same meaning as it has in section 3(1) of the **Local Government Act 2020**;

S. 3 def. of *Councillor* inserted by No. 20/2022 s. 61(c).

Court Services Victoria means the body of that name established under section 5 of the **Court Services Victoria Act 2014**;

defined entity has the meaning given in section 5(1);

Department has the same meaning as in section 4(1) of the **Public Administration Act 2004**;

employee, of a defined entity, means a person employed by the defined entity on a full-time, part-time, casual or fixed term basis (including an apprentice or trainee) but does not include—

- (a) a contractor or subcontractor; or
- (b) an outworker; or
- (c) a person on a vocational placement; or
- (d) a student gaining work experience; or
- (e) a volunteer;

gender equality means equality of rights, opportunities, responsibilities and outcomes between persons of different genders;

Gender Equality Action Plan means a Gender Equality Action Plan referred to in section 10, and includes a report or document taken to be a Gender Equality Action Plan under section 13;

Gender Equality Action Plan reporting year means the following—

- (a) 2021;
- (b) each subsequent 4th year;

gender equality principles means the principles set out in section 6;

gender equality quotas means quotas prescribed under section 17(2);

gender equality targets means targets prescribed under section 17(1);

gender impact assessment means an assessment undertaken under section 9;

governing body, in relation to a defined entity, means a board of directors, trustees, committee of management, council or other governing authority of the defined entity;

Office of Public Prosecutions means the body of that name established under the **Public Prosecutions Act 1994**;

personal information has the same meaning as it has in section 3 of the **Privacy and Data Protection Act 2014**;

S. 3 def. of *personal information* inserted by No. 20/2022 s. 61(c).

progress report means a report submitted under section 19;

S. 3 def. of
Secretary
amended by
No. 20/2022
s. 61(b).

public entity has the meaning given by section 5 of the **Public Administration Act 2004**;

public service body has the same meaning as in section 4(1) of the **Public Administration Act 2004**;

Secretary means the Secretary to the Department of Families, Fairness and Housing;

special body has the meaning given by section 6 of the **Public Administration Act 2004**;

State Gender Equality Action Plan means the State Gender Equality Action Plan developed by the Minister under section 50;

State Gender Equality Action Plan report means the State Gender Equality Action Plan report prepared under section 50;

Tribunal means VCAT;

workforce, in relation to a defined entity, means the employees of that entity;

workplace gender audit means a workplace gender audit undertaken under section 11;

workplace gender equality indicators means the following—

- (a) gender composition of all levels of the workforce;
- (b) gender composition of governing bodies;
- (c) equal remuneration for work of equal or comparable value across all levels of the workforce, irrespective of gender;
- (d) sexual harassment in the workplace;

- (e) recruitment and promotion practices in the workplace;
- (f) availability and utilisation of terms, conditions and practices relating to—
 - (i) family violence leave; and
 - (ii) flexible working arrangements; and
 - (iii) working arrangements supporting employees with family or caring responsibilities;
- (g) gendered segregation within the workplace;
- (h) any other prescribed matters.

4 Objects of Act

The objects of this Act are—

- (a) to promote, encourage and facilitate the achievement of gender equality and improvement in the status of women; and
- (b) to support the identification and elimination of systemic causes of gender inequality in policy, programs and delivery of services in workplaces and communities; and
- (c) to recognise that gender inequality may be compounded by other forms of disadvantage or discrimination that a person may experience on the basis of Aboriginality, age, disability, ethnicity, gender identity, race, religion, sexual orientation and other attributes; and
- (d) to redress disadvantage, address stigma, stereotyping, prejudice and violence, and accommodate persons of different genders by way of structural change; and

- (e) to enhance economic and social participation by persons of different genders; and
- (f) to further promote the right to equality set out in the Charter of Human Rights and Responsibilities and the Convention on the Elimination of All Forms of Discrimination against Women.

5 Meaning of *defined entity*

- (1) For the purposes of this Act, an entity is a ***defined entity*** on a particular day if it is, on the most recent 30 June before that day—
 - (a) a public service body; or
 - (b) a public entity; or
 - (c) a special body; or
 - (d) a Council; or
 - (e) Court Services Victoria; or
 - (f) a university within the meaning of the **Education and Training Reform Act 2006**; or
 - (g) the Office of Public Prosecutions; or
 - (h) a prescribed entity—that has 50 or more employees.
- (2) The regulations may prescribe a defined entity to be exempt from the application of this Act.

6 Gender equality principles

- (1) All Victorians should live in a safe and equal society, have access to equal power, resources and opportunities and be treated with dignity, respect and fairness.
- (2) Gender equality benefits all Victorians regardless of gender.

- (3) Gender equality is a human right and precondition to social justice.
- (4) Gender equality brings significant economic, social and health benefits for Victoria.
- (5) Gender equality is a precondition for the prevention of family violence and other forms of violence against women and girls.
- (6) Advancing gender equality is a shared responsibility across the Victorian community.
- (7) All human beings, regardless of gender, should be free to develop their personal abilities, pursue their professional careers and make choices about their lives without being limited by gender stereotypes, gender roles or prejudices.
- (8) Gender inequality may be compounded by other forms of disadvantage or discrimination that a person may experience on the basis of Aboriginality, age, disability, ethnicity, gender identity, race, religion, sexual orientation and other attributes.
- (9) Women have historically experienced discrimination and disadvantage on the basis of sex and gender.
- (10) Special measures may be necessary to achieve gender equality.

Part 2—Duty to promote gender equality

7 Duty to promote gender equality

A defined entity must, in developing policies and programs and in delivering services that are to be provided to the public, or have a direct and significant impact on the public—

- (a) consider and promote gender equality; and
- (b) take necessary and proportionate action towards achieving gender equality.

8 Duty does not give rise to legal rights etc.

The Parliament does not intend by this Part—

- (a) to create in any person any legal right or give rise to any civil cause of action; or
- (b) to affect in any way the interpretation of any law in force in Victoria; or
- (c) to affect the validity, or provide grounds for review, of any judicial or administrative act or omission.

Part 3—Gender impact assessments

9 Defined entity must undertake gender impact assessments

- (1) A defined entity must undertake a gender impact assessment when developing or reviewing any policy of, or program or service provided by, the entity that has a direct and significant impact on the public.
- (2) A gender impact assessment must—
 - (a) assess the effects that the policy, program or service may have on persons of different genders; and
 - (b) state how the policy, program or service will be developed or varied in order to—
 - (i) meet the needs of persons of different genders; and
 - (ii) address gender inequality; and
 - (iii) promote gender equality; and
 - (c) if practicable, take into account that gender inequality may be compounded by disadvantage or discrimination that a person may experience on the basis of any of the following—
 - (i) Aboriginality;
 - (ii) age;
 - (iii) disability;
 - (iv) ethnicity;
 - (v) gender identity;
 - (vi) race;
 - (vii) religion;
 - (viii) sexual orientation.

Part 4—Workplace gender equality

Division 1—Gender Equality Action Plans

10 Defined entity must prepare Gender Equality Action Plan

- (1) A defined entity must prepare a Gender Equality Action Plan that includes the following matters—
 - (a) the results of the workplace gender audit;
 - (b) strategies and measures for promoting gender equality in the workplace of the defined entity, based on the results of the workplace gender audit;
 - (c) any other prescribed matters.
- (2) In preparing a Gender Equality Action Plan, the defined entity must—
 - (a) take into account the gender equality principles; and
 - (b) consult with the governing body of the entity, the employees, employee representatives and any other relevant person.
- (3) A defined entity must ensure adequate resources are allocated to developing and implementing the Gender Equality Action Plan.

11 Workplace gender audit

- (1) A defined entity must undertake a workplace gender audit before developing a Gender Equality Action Plan.
- (2) A workplace gender audit must assess the state and nature of gender inequality in the workplace of the defined entity as at 30 June in the Gender Equality Action Plan reporting year to which the audit relates, having regard to the following—

- (a) the workplace gender equality indicators;
 - (b) any gender equality targets or gender equality quotas prescribed in relation to the entity;
 - (c) the disadvantage or discrimination that a person may experience on the basis of any of the following in addition to gender inequality—
 - (i) Aboriginality;
 - (ii) age;
 - (iii) disability;
 - (iv) ethnicity;
 - (v) gender identity;
 - (vi) race;
 - (vii) religion;
 - (viii) sexual orientation;
 - (d) any other matters that the defined entity considers relevant;
 - (e) any prescribed matters.
- (3) A workplace gender audit must be based on the following data as at 30 June in the Gender Equality Action Plan reporting year—
- (a) gender-disaggregated data; and
 - (b) if available, data about Aboriginality, age, disability, ethnicity, gender identity, race, religion and sexual orientation.

12 Publication and submission of Gender Equality Action Plan

- (1) A defined entity must submit a Gender Equality Action Plan to the Commissioner on or before—
 - (a) 31 October in each Gender Equality Action Plan reporting year; or
 - (b) any later date specified by the Commissioner under subsection (2).
- (2) The Commissioner, at the request of the defined entity, may extend the time by which the entity must submit the Gender Equality Action Plan.
- (3) Within a reasonable time after submitting the Gender Equality Action Plan to the Commissioner, a defined entity must—
 - (a) publish the completed Gender Equality Action Plan on its website; and
 - (b) notify the governing body, the employees and employee representatives of the defined entity of that publication.
- (4) To avoid doubt, the obligation in subsection (1) only applies to an entity that is a defined entity as at 30 June of the Gender Equality Action Plan reporting year concerned.

13 Plan prepared for another purpose may be taken to be a Gender Equality Action Plan

- (1) A defined entity may submit to the Commissioner a report or document prepared by the defined entity for another purpose and request that it be taken to be a Gender Equality Action Plan.
- (2) The report or document is taken to be a Gender Equality Action Plan for the defined entity if the Commissioner is satisfied that—
 - (a) the report or document includes the matters set out in section 10(1); and

- (b) the report or document has been prepared in accordance with section 10(2); and
 - (c) the report or document has been prepared no more than 12 months before the start of the Gender Equality Action Plan reporting year concerned.
- (3) If the report or other document is taken to be a Gender Equality Action Plan, the defined entity must publish it on its website, and notify the governing body, the employees and employee representatives of that publication.

14 Commissioner to keep register of Gender Equality Action Plans

- (1) The Commissioner must keep a register of Gender Equality Action Plans submitted to the Commissioner.
- (2) The Commissioner may publish a Gender Equality Action Plan submitted to the Commissioner.

15 Gender Equality Action Plan may be amended

- (1) A defined entity may amend its Gender Equality Action Plan at any time if the entity considers the amendment is necessary.
- (2) If a defined entity amends its Gender Equality Action Plan, the defined entity must—
 - (a) submit the amended Gender Equality Action Plan to the Commissioner; and
 - (b) within a reasonable time after submitting the amended Gender Equality Action Plan to the Commissioner, publish the amended plan on its website, and notify the governing body, the employees and employee representatives of that publication.

Division 2—Workplace gender equality indicators

16 Defined entity must make reasonable and material progress

- (1) A defined entity must make reasonable and material progress in relation to the workplace gender equality indicators.
- (2) For the purposes of subsection (1), the following factors must be taken into account in determining whether a defined entity has made reasonable and material progress—
 - (a) the size of the defined entity, including the defined entity's number of employees;
 - (b) the nature and circumstances of the defined entity, including any barriers to making progress;
 - (c) requirements that apply to the defined entity under any other Act, including an Act of the Commonwealth;
 - (d) the defined entity's resources;
 - (e) the defined entity's operational priorities and competing operational obligations;
 - (f) the practicability and cost to the defined entity of making progress;
 - (g) genuine attempts made by the defined entity to make progress.

Division 3—Gender equality targets and quotas

17 Prescribed gender equality targets and quotas

- (1) The regulations may prescribe—
 - (a) targets relating to the workplace gender equality indicators; and
 - (b) the defined entities or class of defined entities to which those targets apply.

- (2) The regulations may prescribe—
 - (a) quotas relating to the workplace gender equality indicators; and
 - (b) the defined entities or class of defined entities to which those quotas apply.

18 Defined entity must make progress

- (1) A defined entity must make reasonable and material progress towards meeting gender equality targets prescribed in relation to that entity under section 17.
- (2) A defined entity must make reasonable and material progress towards meeting gender equality quotas prescribed in relation to that entity under section 17.
- (3) For the purposes of subsections (1) and (2), the following factors must be taken into account in determining whether a defined entity has made reasonable and material progress—
 - (a) the size of the defined entity, including the defined entity's number of employees;
 - (b) the nature and circumstances of the defined entity, including any barriers to making progress;
 - (c) requirements that apply to the defined entity under any other Act, including an Act of the Commonwealth;
 - (d) the defined entity's resources;
 - (e) the defined entity's operational priorities and competing operational obligations;
 - (f) the practicability and cost to the defined entity of making progress;
 - (g) genuine attempts made by the defined entity to make progress.

Part 5—Reports

19 Defined entity must prepare progress report

- (1) A defined entity must submit a progress report to the Commissioner on or before—
 - (a) 31 October in every second year after submitting a Gender Equality Action Plan; or
 - (b) any later date specified by the Commissioner under subsection (2).
- (2) The Commissioner, at the request of the defined entity, may extend the time by which the defined entity must submit a progress report.
- (3) The progress report must—
 - (a) in relation to any gender impact assessment undertaken by the defined entity within the relevant period—
 - (i) identify the policy, program or service that was the subject of the assessment; and
 - (ii) report on the actions taken in response to the requirements in section 9(2)(b); and
 - (b) report on the defined entity's progress within the relevant period in relation to the measures and strategies set out in the defined entity's Gender Equality Action Plan; and
 - (c) demonstrate the defined entity's progress within the relevant period in relation to—
 - (i) the workplace gender equality indicators; and
 - (ii) meeting any gender equality targets or gender equality quotas prescribed in relation to that defined entity.

- (4) Despite subsection (3)(a), a defined entity must not identify or report on a policy, program or service if it would disclose—
- (a) information that, if it were included in a document, would make that document an exempt document within the meaning of the **Freedom of Information Act 1982**; or
 - (b) information the disclosure of which is prohibited or restricted by a provision of another enactment; or
 - (c) information about any other confidential matter.
- (5) To avoid doubt, the obligation in subsection (1) only applies to an entity that is a defined entity as at 30 June of the year referred to in subsection (1)(a).
- (6) In this section—
- relevant period* means the previous 2 financial years or other prescribed period.

20 Progress report must be submitted to Commissioner and published

A defined entity must publish its progress report on its website as soon as reasonably practicable after it is submitted under section 19(1).

21 Commissioner must keep a register of progress reports

The Commissioner must keep a register of progress reports.

Part 6—Monitoring and compliance

22 Compliance notices

- (1) Subject to subsection (3), the Commissioner may issue a compliance notice to a defined entity if the Commissioner reasonably believes that the defined entity, without reasonable excuse, has failed to comply with this Act by—
 - (a) not preparing a Gender Equality Action Plan in accordance with this Act; or
 - (b) not submitting a Gender Equality Action Plan within the time required by section 12; or
 - (c) not preparing a progress report in accordance with this Act; or
 - (d) not submitting a progress report within the time required by section 19; or
 - (e) not making reasonable and material progress in relation to the workplace gender equality indicators; or
 - (f) not making reasonable and material progress towards meeting gender equality targets; or
 - (g) not making reasonable and material progress towards meeting gender equality quotas.
 - (2) A defined entity must comply with a compliance notice.
 - (3) Before issuing a compliance notice, the Commissioner must take reasonable steps to resolve the matter informally.
 - (4) A compliance notice may require the defined entity—
 - (a) to prepare and submit a Gender Equality Action Plan; or
 - (b) to prepare and submit a progress report; or
-

- (c) to take any other action that is reasonably required to comply with this Act.

23 Form and content of compliance notice

- (1) A compliance notice issued to a defined entity must—
 - (a) state the requirement of this Act with which the defined entity has failed to comply; and
 - (b) state the basis for the Commissioner's belief that the defined entity has failed to comply with that requirement; and
 - (c) state the action that the defined entity must take to comply with that requirement; and
 - (d) specify the date by which the defined entity must take the action; and
 - (e) state the further action that the Commissioner may take if the defined entity does not comply with the notice; and
 - (f) state that the defined entity may disagree with the compliance notice within 14 days after receiving the notice.
- (2) For the purposes of subsection (1)(d), the date specified in the compliance notice must be—
 - (a) if the compliance notice requires the entity to submit a Gender Equality Action Plan or a progress report, not less than 60 days after the notice is issued; or
 - (b) in any other case, not less than 14 days after the notice is issued.
- (3) The Commissioner, by further written notice, may extend the time period specified in the compliance notice for up to 24 months.

24 Defined entity may disagree with a compliance notice

- (1) If a defined entity disagrees with a compliance notice, the entity has 14 days after receiving the compliance notice to give a written response to the Commissioner outlining the entity's reasons for disagreeing with the compliance notice.
- (2) After considering a response under subsection (1), the Commissioner may, by notice in writing—
 - (a) withdraw the compliance notice; or
 - (b) amend the compliance notice; or
 - (c) confirm the compliance notice.
- (3) If the compliance notice is confirmed or amended—
 - (a) the notice must specify a period within which the defined entity must comply; and
 - (b) the defined entity must comply within that period.

25 Review by Tribunal of decision to confirm compliance notice

- (1) A defined entity may apply to the Tribunal for review of the Commissioner's decision to confirm a compliance notice under section 24(2)(c).
- (2) An application for review must be made within 28 days after the defined entity receives notice of the Commissioner's decision.

26 Actions to be taken if compliance notice not complied with

If a defined entity does not comply with a compliance notice within the time period specified in the notice, the Commissioner may do one or more of the following—

- (a) accept a written undertaking from the defined entity under which the entity undertakes to take certain action to comply with this Act;
- (b) recommend the Minister take any action that the Commissioner considers appropriate to ensure the defined entity's compliance with this Act;
- (c) publish on the Commissioner's website the name of the defined entity and the requirement of this Act that the entity has failed to comply with;
- (d) apply to the Tribunal for an order directing the defined entity to comply with the notice.

27 Enforceable undertakings

- (1) This section applies if the Commissioner has accepted an undertaking given by a defined entity under section 26(a).
- (2) The defined entity, with the consent of the Commissioner, may withdraw or vary the undertaking.
- (3) While the undertaking is in force, the Commissioner must not take any further action under section 26 or issue any further compliance notice with respect to the matter that is the subject of the undertaking.
- (4) If the defined entity complies with the undertaking, the Commissioner must not take any action under section 26 or issue any compliance notice with respect to the matter that is the subject of the undertaking.
- (5) If the Commissioner considers that the defined entity has failed to comply with any terms of the undertaking, the Commissioner may apply to the Tribunal for an order enforcing the undertaking.

- (6) If the Tribunal determines that the defined entity has failed to comply with a term of the undertaking, the Tribunal may—
- (a) make an order directing the entity to comply with that term of the undertaking; or
 - (b) make an order directing the defined entity to take any specified action in order to comply with that term of the undertaking; or
 - (c) make any other order that the Tribunal considers appropriate.

Part 7—Public Sector Gender Equality Commissioner

Division 1—Public Sector Gender Equality Commissioner

28 Public Sector Gender Equality Commissioner

There is to be a Public Sector Gender Equality Commissioner.

29 Appointment

- (1) The Minister may appoint a person to be the Public Sector Gender Equality Commissioner.
- (2) The Minister must not appoint a person as the Commissioner if the person is—
 - (a) a member of the Parliament of Victoria or of the Commonwealth or of another State or a Territory; or
 - (b) a Councillor.

S. 29(2)(b)
substituted by
No. 20/2022
s. 62.

- (3) A person may hold office as the Commissioner for not more than 9 years (whether appointed for consecutive terms or otherwise).

30 Terms and conditions of appointment

- (1) The Commissioner is appointed for the period, not exceeding 4 years, set out in the instrument of appointment.
- (2) Subject to this Part, the Commissioner is appointed on the terms and conditions set out in the instrument of appointment.
- (3) The Commissioner may hold office on a full-time or part-time basis.
- (4) Subject to section 29(3), the Commissioner may be reappointed.

- (5) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to the Commissioner in respect of the office of the Commissioner.
- (6) The Commissioner must not, without the consent of the Minister, engage in paid employment or conduct any trade or business outside the duties of the Commissioner.

31 Remuneration and allowances

The Commissioner is entitled to receive the remuneration and allowances determined by the Minister.

32 Vacancy and resignation of Commissioner

The Commissioner ceases to hold office if the Commissioner—

- (a) resigns by notice in writing delivered to the Minister; or
- (b) becomes an insolvent under administration; or
- (c) is convicted of an indictable offence or an offence that, if committed in Victoria, would be an indictable offence; or
- (d) nominates for election for or is elected to the Parliament of Victoria or of the Commonwealth or of another State or a Territory, or a Council; or
- (e) is removed from office under section 33.

33 Suspension of Commissioner and removal from office

- (1) The Minister may suspend or remove the Commissioner from office on any of the following grounds—
 - (a) neglect of the Commissioner in carrying out the duties of office;

- (b) any misconduct of the Commissioner in carrying out the duties of office;
 - (c) inability of the Commissioner to carry out the duties of office;
 - (d) engaging in employment (whether paid or unpaid) outside the duties of office without the consent of the Minister.
- (2) The Minister may suspend the Commissioner from office on any other ground on which the Minister is satisfied that the Commissioner is unfit to hold office.
 - (3) A suspension under subsection (1) or (2) must not exceed 12 months.
 - (4) If the Commissioner is suspended from office under subsection (1) or (2), the Commissioner is taken not to be the Commissioner during the period of suspension.
 - (5) The Commissioner is restored to office at the end of the period of suspension unless the Commissioner is earlier removed from office.

34 Acting Commissioner

- (1) The Minister may appoint an eligible person to act as the Commissioner—
 - (a) during a vacancy in the office of the Commissioner; or
 - (b) during any period when the Commissioner is absent from duty or from the State or, for another reason, is unable to perform the functions and duties of the office.
- (2) A person is not eligible to be appointed to act as the Commissioner if the person is—
 - (a) a member of the Parliament of Victoria or of the Commonwealth or of another State or a Territory; or

S. 34(2)(b)
substituted by
No. 20/2022
s. 63.

(b) a Councillor.

- (3) An appointment under subsection (1) is for the period, not exceeding 12 months, set out in the instrument of appointment.
- (4) The Minister may at any time remove the acting Commissioner from office.
- (5) While a person is acting in the office of the Commissioner the person has all the powers and may perform all the functions and duties of the Commissioner under this Act.

35 Remuneration and allowances for acting Commissioner

An acting Commissioner is entitled to receive the remuneration and allowances determined by the Minister.

Division 2—Functions and powers

36 Functions of the Commissioner

The Commissioner has the following functions—

- (a) to promote and advance the objects of this Act throughout the public sector;
- (b) to support defined entities to comply with this Act;
- (c) to provide advice to defined entities about the operation of this Act;
- (d) to establish and undertake information and education programs for defined entities in order to encourage best practice and facilitate compliance;
- (e) to undertake research into any matter related to the operation and objectives of this Act;

- (f) to report to the Minister on any matter arising from the performance of the Commissioner's functions;
- (g) any other function conferred on the Commissioner under this Act or any other Act.

37 Powers of the Commissioner

The Commissioner has all the powers necessary to perform the Commissioner's functions.

Division 3—Functions in relation to enterprise agreements

38 Definitions

(1) In this Division—

covers—

- (a) in relation to an enterprise agreement, has the same meaning as in section 53 of the Fair Work Act 2009 of the Commonwealth; and
- (b) in relation to a workplace determination, has the same meaning as in section 277 of the Fair Work Act 2009 of the Commonwealth;

designated body means the following—

- (a) a public sector body;
- (b) Court Services Victoria;
- (c) the Office of Public Prosecutions;
- (d) a defined entity prescribed by the regulations;

enterprise agreement means an enterprise agreement within the meaning of the Fair Work Act 2009 of the Commonwealth;

public sector body has the same meaning as in the **Public Administration Act 2004**;

systemic gender equality issue means an issue of a systemic nature within a designated body that—

- (a) relates to one or more workplace gender equality indicators; and
- (b) adversely affects a class or a group of employees of that body.

workplace determination means a workplace determination within the meaning of the Fair Work Act 2009 of the Commonwealth.

- (2) Before the Governor in Council makes a regulation prescribing a body to be a designated body, the Minister must obtain the consent of—
 - (a) the Minister or Ministers responsible for the designated body; and
 - (b) the Minister responsible for administering the **Fair Work (Commonwealth Powers) Act 2009**.

39 Commissioner may deal with gender equality disputes in agreements

- (1) The Commissioner may deal with a dispute arising under an enterprise agreement or a workplace determination that covers a designated body if—
 - (a) the dispute relates to a systemic gender equality issue; and
 - (b) the dispute is referred to the Commissioner in accordance with a term of the enterprise agreement or workplace determination by a person covered by the enterprise agreement or workplace determination.

- (2) The Commissioner may decline to deal with the dispute if the Commissioner considers it is appropriate in the circumstances to do so.

40 Commissioner's powers in relation to disputes

- (1) Subject to this section, the Commissioner may deal with a dispute referred under section 39 in any way the Commissioner considers appropriate.
- (2) The Commissioner must deal with a dispute independently and impartially.
- (3) The Commissioner must not deal with a dispute by arbitration.
- (4) The Commissioner cannot make any binding determination in relation to a dispute.

41 Commissioner may issue policies and procedures

The Commissioner may issue policies and procedures on the manner in which disputes should be dealt with under this Division.

42 Commissioner may terminate dispute resolution

The Commissioner may terminate a dispute before it is resolved if the Commissioner considers it appropriate to do so.

Division 4—General

43 Assistance to be provided

- (1) The Commissioner may make a request in writing to the Secretary for assistance in connection with the reasonable performance of the Commissioner's functions.
- (2) The Secretary must consider any reasonable request for assistance made by the Commissioner.

44 Ministerial directions

- (1) Subject to subsection (2), the Commissioner must exercise the powers and perform the functions of the Commissioner under this Act or any other Act subject to any written directions given by the Minister.
- (2) Subsection (1) does not apply in respect of the exercise of powers or the performance of functions by the Commissioner under Division 3, whether generally or in respect of a particular dispute.

45 Delegation

- (1) The Commissioner may delegate, by instrument, any power of the Commissioner under this Act or any other Act, other than this power of delegation or a power of the Commissioner under Division 3, to any person who is employed under the **Public Administration Act 2004** and has the necessary skills to exercise that power.
- (2) The Commissioner may delegate, by instrument, any power of the Commissioner under Division 3 to any person who has the necessary skills and independence to exercise that power.

46 Secrecy

- (1) Subject to section 46A, the Commissioner or a person specified in subsection (2) must not use or disclose any information obtained by or provided to the Commissioner or that person under Division 3 for any purpose other than the purpose for which it was obtained or provided.
- (2) The specified persons are—
 - (a) a person referred to in section 45(1) or (2); or
 - (b) a person employed under Part 3 of the **Public Administration Act 2004** assisting

S. 46
substituted by
No. 20/2022
s. 64.

the Commissioner in accordance with section 43; or

- (c) a person engaged to assist the Commissioner in the performance of the Commissioner's functions or duties, or the exercise of the Commissioner's powers, whether or not employed under Part 3 of the **Public Administration Act 2004**.

46A Commissioner or specified persons may use or disclose information in certain circumstances

S. 46A
inserted by
No. 20/2022
s. 65.

- (1) This section applies despite any Act or other law to the contrary other than the Charter of Human Rights and Responsibilities.
- (2) The Commissioner or a person specified in section 46(2) may use or disclose information obtained by or provided to the Commissioner or that person under Division 3 if—
 - (a) the use or disclosure is reasonably necessary for the Commissioner to perform a duty or function or exercise a power under this Act or any other Act and, if the information contains personal information—
 - (i) the person to whom the personal information relates consents to the use or disclosure of that personal information; or
 - (ii) the personal information is removed from the information before the information is used or disclosed; or
 - (b) the disclosure is to a court or tribunal in the course of a legal proceeding; or
 - (c) the use or disclosure is pursuant to an order of a court or tribunal; or

- (d) the disclosure is to the Commissioner or another person specified in section 46(2) (as the case requires); or
 - (e) the use or disclosure is for the purposes of obtaining or seeking legal advice; or
 - (f) the use or disclosure is authorised, required or permitted under any other Act or law.
- (3) Subject to subsection (4), the Commissioner may disclose information obtained by or provided to the Commissioner or a person specified in section 46(2) under Division 3 if—
- (a) the disclosure is to—
 - (i) the Victorian Equal Opportunity and Human Rights Commission continued in existence under section 154 of the **Equal Opportunity Act 2010**; or
 - (ii) the Fair Work Commission established under section 575 of the Fair Work Act 2009 of the Commonwealth; or
 - (iii) a prescribed person or body; and
 - (b) the Commissioner considers that the information is relevant to the performance of a duty or function, or the exercise of a power, of—
 - (i) the Commissioner; or
 - (ii) the person or body to whom the information is being disclosed.
- (4) The Commissioner may only disclose information that contains personal information under subsection (3) if—
- (a) the person to whom the personal information relates consents to the disclosure of that personal information, where it is reasonably practicable to obtain that person's consent; or
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- (b) the Commissioner is satisfied that the public interest in disclosing the personal information without consent outweighs the public interest in not disclosing personal information without consent; or
- (c) the personal information is removed from the information before the information is disclosed.

Part 8—Miscellaneous

Division 1—Guidelines

47 Minister may issue guidelines relating to obligations of defined entities

- (1) The Minister may issue guidelines for the purpose of assisting defined entities to meet the requirements of this Act in relation to the following—
 - (a) preparing and implementing Gender Equality Action Plans;
 - (b) preparing progress reports;
 - (c) undertaking gender impact assessments;
 - (d) complying with the duty to promote gender equality;
 - (e) any other matter that the Minister considers appropriate.
- (2) A defined entity must have regard to any guidelines issued under subsection (1).

48 Funding guidelines

- (1) The Treasurer or the Minister responsible for administering Part 7 of the **Financial Management Act 1994**, in consultation with the Minister, may issue guidelines in relation to the allocation of funding or grants, or entering into service agreements, for the purposes of promoting and advancing gender equality.
- (2) A defined entity that is subject to guidelines issued under subsection (1) must have regard to the guidelines.

49 Procurement guidelines

- (1) The Minister responsible for administering Part 7 of the **Financial Management Act 1994**, in consultation with the Minister, may issue guidelines relating to procurement policies and practices for the purposes of promoting and advancing gender equality.
- (2) A defined entity that is subject to guidelines issued under subsection (1) must have regard to the guidelines.

Division 2—State Gender Equality Action Plan

50 State Gender Equality Action Plan

- (1) The Minister must ensure that a State Gender Equality Action Plan is developed every 4 years.
- (2) The State Gender Equality Action Plan must set out a framework for taking coordinated action in Victoria to build the attitudinal, behavioural, structural and normative change required to improve gender equality.
- (3) The State Gender Equality Action Plan—
 - (a) must be developed having regard to the gender equality principles; and
 - (b) must include a framework for progress in relation to workplace gender equality and gender equality in the public sector's policies, programs and services.
- (4) The Minister must prepare a State Gender Equality Action Plan report every 2 years about progress towards implementing the State Gender Equality Action Plan.
- (5) The State Gender Equality Action Plan report must include an assessment of progress, on an aggregated state-wide basis, made by defined entities in the previous 2 years in relation to—

- (a) Gender Equality Action Plans; and
 - (b) gender equality targets and gender equality quotas.
- (6) The Minister must cause the State Gender Equality Action Plan report to be tabled in each House of the Parliament within 10 sitting days of the report's completion.

Division 3—Personal information

51 Publication of personal information prohibited

- (1) A defined entity must, before publication, remove any personal information from the following—
- (a) a Gender Equality Action Plan;
 - (b) a progress report.
- (2) When submitting to the Commissioner material that is likely to be published, a defined entity must advise the Commissioner whether the material contains any personal information.
- (3) The Commissioner must remove any personal information from a Gender Equality Action Plan or progress report before it is published or further distributed.

S. 51(4)
repealed by
No. 20/2022
s. 66.

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Division 4—Review of Act

52 Review of operation of Act after 4 years

- (1) The Minister must cause a review to be conducted of the first 4 years of operation of this Act.
- (2) On completing the review, the Minister must cause a report of the review to be laid before each House of the Parliament.

53 Review of operation of Act after 8 years

- (1) The Minister must cause a review to be conducted of the 5th to 8th years of operation of this Act.
- (2) On completing the review, the Minister must cause a report of the review to be laid before each House of the Parliament.

Division 5—Regulations

54 Regulations

- (1) The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) Without limiting subsection (1), the regulations may prescribe matters for or with respect to the following—
 - (a) matters to be included in Gender Equality Action Plans and format of Gender Equality Action Plans;
 - (b) matters to be included in gender impact assessments, the process for undertaking gender impact assessments and format of gender impact assessments;
 - (c) matters to be included in workplace gender audits, the process for undertaking workplace gender audits and format of workplace gender audits;
 - (d) method and format for progress reports.
- (3) Regulations made under this Act—
 - (a) may be of general or limited application; and
 - (b) may differ according to differences in time, place or circumstances; and

- (c) may leave any matter or thing to be from time to time determined, applied, dispensed with or regulated by a specified person; and
- (d) may exempt persons or things from the application of the whole or any provision of this Act or the regulations, subject to conditions or unconditionally; and
- (e) may confer powers or impose duties in connection with the regulations on any specified person or specified class of persons; and
- (f) may apply, adopt or incorporate, with or without modification, any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any person or body—
 - (i) wholly or partially or as amended by the regulations; or
 - (ii) as formulated, issued, prescribed (whether under this or any other Act) or published at the time the regulations are made or at any time before then; or
 - (iii) as formulated, issued, prescribed (whether under this or any other Act) or published from time to time.

Part 8A—Transitionals

Pt 8A
(Heading and
s. 54A)
inserted by
No. 20/2022
s. 67.

54A Transitional provision—Justice Legislation Amendment Act 2022

S. 54A
inserted by
No. 20/2022
s. 67.

The amendment of sections 29(2)(b) and 34(2)(b) by the **Justice Legislation Amendment Act 2022** does not affect any appointment under either of those sections existing before that amendment or anything done by a person appointed pursuant to either of those sections before that amendment.

Gender Equality Act 2020
No. 5 of 2020

Pt 9
(Headings
and ss 55, 56)
amended by
No. 9/2020
s. 390(Sch. 1
item 45A),
repealed by
No. 5/2020
s. 56.

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Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

Minister's second reading speech—

Legislative Assembly: 27 November 2019

Legislative Council: 6 February 2020

The long title for the Bill for this Act was "A Bill for an Act to require the public sector, Councils and universities to promote gender equality, to take positive action towards achieving gender equality, to establish the Public Sector Gender Equality Commissioner and for other purposes."

The **Gender Equality Act 2020** was assented to on 25 February 2020 and came into operation as follows:

Parts 1–8 (sections 1–54) on 31 March 2021: section 2(3); Part 9 (sections 55, 56) on 1 July 2021: section 2(2).

INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

Gender Equality Act 2020
No. 5 of 2020
Endnotes

2 Table of Amendments

This publication incorporates amendments made to the **Gender Equality Act 2020** by Acts and subordinate instruments.

Gender Equality Act 2020, No. 5/2020

Assent Date: 25.2.20
Commencement Date: S. 56 on 1.7.21; s. 2(2)
Note: S. 56 repealed Pt 9 (ss 55, 56) on 31.3.22
Current State: This information relates only to the provision/s amending the **Gender Equality Act 2020**

Local Government Act 2020, No. 9/2020

Assent Date: 24.3.20
Commencement Date: S. 390(Sch. 1 item 45A) on 6.4.20: Special Gazette (No. 150) 24.3.20 p. 1
Current State: This information relates only to the provision/s amending the **Gender Equality Act 2020**

Justice Legislation Amendment Act 2022, No. 20/2022

Assent Date: 31.5.22
Commencement Date: Ss 61–67 on 1.6.22: s. 2(1)
Current State: This information relates only to the provision/s amending the **Gender Equality Act 2020**

3 Explanatory details

No entries at date of publication.