

Authorised Version
Change or Suppression (Conversion) Practices
Prohibition Act 2021
No. 3 of 2021

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Authorised Version



Victoria

Change or Suppression (Conversion) Practices Prohibition Act 2021[†]

No. 3 of 2021

[Assented to 16 February 2021]

The Parliament of Victoria enacts:

Part 1—Preliminary

Division 1—General

1 Purposes

The main purposes of this Act are—

- (a) to denounce and prohibit change or suppression practices; and
- (b) to establish a civil response scheme within the Victorian Equal Opportunity and Human Rights Commission that will—

- (i) promote understanding of the prohibition on change or suppression practices under this Act and matters relating generally to change or suppression practices; and
 - (ii) consider and resolve reports of change or suppression practices; and
 - (iii) investigate serious or systemic change or suppression practices; and
- (c) to prohibit engaging in change or suppression practices, including through creating offences in relation to engaging in change or suppression practices and certain related activities; and
- (d) to amend the definitions of *sexual orientation* and *gender identity* in the **Equal Opportunity Act 2010**; and
- (e) to include sex characteristics as a protected attribute under the **Equal Opportunity Act 2010**; and
- (f) to make consequential amendments to certain Acts.

2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation within the period of 12 months beginning on the day on which this Act receives the Royal Assent, it comes into operation on the day after the end of that period.

3 Objects of this Act

- (1) The objects of this Act are—
 - (a) to eliminate so far as possible the occurrence of change or suppression practices in Victoria; and
 - (b) to further promote and protect the rights set out in the Charter of Human Rights and Responsibilities; and
 - (c) to ensure that all people, regardless of sexual orientation or gender identity, feel welcome and valued in Victoria and are able to live authentically and with pride.
- (2) In enacting this Act, it is the intention of the Parliament—
 - (a) to denounce and give statutory recognition to the serious harm caused by change or suppression practices; and
 - (b) to affirm that a person's sexual orientation or gender identity is not broken and in need of fixing; and
 - (c) to affirm that no sexual orientation or gender identity constitutes a disorder, disease, illness, deficiency or shortcoming; and
 - (d) to affirm that change or suppression practices are deceptive and harmful both to the person subject to the change or suppression practices and to the community as a whole.

4 Definitions

In this Act—

associate, in relation to a body corporate, means the following—

- (a) an employee or agent of the body corporate to the extent that the employee or agent is acting within the actual or apparent scope of their employment or within their actual or apparent authority;
- (b) an officer of the body corporate;

Australian Health Practitioner Regulation Agency means the Australian Health Practitioner Regulation Agency established by section 23 of the Health Practitioner Regulation National Law;

board of directors means the body (by whatever name called) exercising the executive authority of a body corporate;

change or suppression practice has the meaning given by section 5;

Chief Commissioner of Police means the ***Chief Commissioner*** within the meaning of the **Victoria Police Act 2013**;

Commission has the same meaning as it has in the **Equal Opportunity Act 2010**;

Commissioner has the same meaning as it has in the **Equal Opportunity Act 2010**;

compliance notice means a compliance notice issued under section 45(1);

corporate culture of a body corporate means an attitude, policy, rule, course of conduct or practice existing within the body corporate

or within a part of the body corporate, as the case requires;

Director of Public Prosecutions means the Director of Public Prosecutions appointed under section 87AB of the **Constitution Act 1975**;

enforceable undertaking means an undertaking accepted under section 43;

gender identity has the same meaning as it has in the **Equal Opportunity Act 2010**;

Health Complaints Commissioner means the **Commissioner** within the meaning of the **Health Complaints Act 2016**;

health service has the same meaning as it has in the Health Practitioner Regulation National Law;

health service provider has the same meaning as it has in the Health Practitioner Regulation National Law;

IBAC means the Independent Broad-based Anti-corruption Commission established by the **Independent Broad-based Anti-corruption Commission Act 2011**;

injury has the same meaning as it has in section 15 of the **Crimes Act 1958**;

investigation means an investigation under section 34;

officer, in relation to a body corporate, means an officer (as defined by section 9 of the Corporations Act) of the body corporate to the extent that the officer is acting within the actual or apparent scope of their employment or within their actual or apparent authority;

Ombudsman means the person appointed as the Ombudsman under section 3 of the **Ombudsman Act 1973**;

organisation means an unincorporated body or association, whether the body or association—

- (a) is based in or outside Australia; or
- (b) is part of a larger organisation;

person affected by a change or suppression practice means a person towards whom a change or suppression practice is being, or has been, directed;

police officer has the same meaning as it has in the **Victoria Police Act 2013**;

produce includes permit access to;

protected information has the meaning given by section 50;

serious injury has the same meaning as it has in section 15 of the **Crimes Act 1958**;

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

Tribunal means the Victorian Civil and Administrative Tribunal established by the **Victorian Civil and Administrative Tribunal Act 1998**;

Victoria Police has the same meaning as in the **Victoria Police Act 2013**;

Victorian Inspectorate means the Victorian Inspectorate established by the **Victorian Inspectorate Act 2011**.

5 Meaning of *change or suppression practice*

- (1) In this Act, a ***change or suppression practice*** means a practice or conduct directed towards a person, whether with or without the person's consent—
- (a) on the basis of the person's sexual orientation or gender identity; and
 - (b) for the purpose of—
 - (i) changing or suppressing the sexual orientation or gender identity of the person; or
 - (ii) inducing the person to change or suppress their sexual orientation or gender identity.
- (2) For the purposes of subsection (1), a practice or conduct is not a change or suppression practice if it—
- (a) is supportive of or affirms a person's gender identity or sexual orientation including, but not limited to, a practice or conduct for the purposes of—
 - (i) assisting a person who is undergoing a gender transition; or
 - (ii) assisting a person who is considering undergoing a gender transition; or
 - (iii) assisting a person to express their gender identity; or
 - (iv) providing acceptance, support or understanding of a person; or
 - (v) facilitating a person's coping skills, social support or identity exploration and development; or

- (b) is a practice or conduct of a health service provider that is, in the health service provider's reasonable professional judgement, necessary—
 - (i) to provide a health service; or
 - (ii) to comply with the legal or professional obligations of the health service provider.
- (3) For the purposes of subsection (1), a practice includes, but is not limited to the following—
 - (a) providing a psychiatry or psychotherapy consultation, treatment or therapy, or any other similar consultation, treatment or therapy;
 - (b) carrying out a religious practice, including but not limited to, a prayer based practice, a deliverance practice or an exorcism;
 - (c) giving a person a referral for the purposes of a change or suppression practice being directed towards the person.
- (4) For the purposes of subsection (1), a practice or conduct may be directed towards a person remotely (including online) or in person.

6 Act binds the Crown

This Act binds the Crown in right of Victoria and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

7 Contravention does not create civil or criminal liability

A contravention of this Act does not create any civil or criminal liability except to the extent expressly provided by this Act.

8 Extra-territorial application

- (1) This section applies if—
 - (a) a person engages in conduct outside, or partly outside, Victoria; and
 - (b) there is a real and substantial link between the conduct and Victoria.
- (2) This Act has effect in relation to the conduct as if it had been engaged in wholly within Victoria.
- (3) For the purposes of subsection (1), there is a real and substantial link with Victoria if—
 - (a) a significant part of the conduct occurs in Victoria; or
 - (b) the conduct occurred wholly outside Victoria, but the effects of the conduct occurred wholly or partly in Victoria.

Division 2—Change or suppression practices are prohibited

9 General prohibition on change or suppression practices

A person or organisation contravenes this Act if the person or organisation engages in a change or suppression practice.

Note

A contravention of this Act by a person or organisation may result in a report being made under Part 3, which sets out the civil response scheme.

Part 2—Offences relating to change or suppression practices

Division 1—Offences

10 Offence of engaging in one or more change or suppression practices that cause serious injury

- (1) A person (**A**) commits an offence if—
- (a) A intentionally engages in a change or suppression practice directed towards another person (**B**); and
 - (b) the change or suppression practice causes serious injury to B; and
 - (c) A is negligent as to whether engaging in the change or suppression practice will cause serious injury to B.

Penalty: In the case of a natural person, level 5 imprisonment (10 years maximum) or a level 5 fine (1200 penalty units maximum) or both;

In the case of a body corporate,
6000 penalty units maximum.

- (2) A person (**A**) commits an offence if—
- (a) A intentionally engages in change or suppression practices directed towards another person (**B**); and
 - (b) any or all of the change or suppression practices, considered as a group, cause serious injury to B; and

- (c) A is negligent as to whether engaging in any or all of the change or suppression practices will cause serious injury to B.

Penalty: In the case of a natural person, level 5 imprisonment (10 years maximum) or a level 5 fine (1200 penalty units maximum) or both;

In the case of a body corporate, 6000 penalty units maximum.

11 Offence of engaging in one or more change or suppression practices that cause injury

- (1) A person (**A**) commits an offence if—

- (a) A intentionally engages in a change or suppression practice directed towards another person (**B**); and
- (b) the change or suppression practice causes injury to B; and
- (c) A is negligent as to whether engaging in the change or suppression practice will cause injury to B.

Penalty: In the case of a natural person, level 6 imprisonment (5 years maximum) or a level 6 fine (600 penalty units maximum) or both;

In the case of a body corporate, 3000 penalty units maximum.

- (2) A person (**A**) commits an offence if—

- (a) A intentionally engages in change or suppression practices directed towards another person (**B**); and
- (b) any or all of the change or suppression practices, considered as a group, cause injury to B; and

- (c) A is negligent as to whether engaging in any or all of the change or suppression practices will cause injury to B.

Penalty: In the case of a natural person, level 6 imprisonment (5 years maximum) or a level 6 fine (600 penalty units maximum) or both;

In the case of a body corporate,
3000 penalty units maximum.

12 Offence of taking a person from Victoria for a change or suppression practice

- (1) A person (**A**) commits an offence if—

- (a) A takes another person (**B**) from Victoria, or arranges for B to be taken from Victoria; and
- (b) A intends that a change or suppression practice directed towards B will be engaged in outside Victoria (whether by A or another person); and
- (c) a change or suppression practice directed towards B is engaged in outside Victoria; and
- (d) the change or suppression practice causes injury to B; and
- (e) A is negligent as to whether the change or suppression practice will cause injury to B.

Penalty: In the case of a natural person, level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both;

In the case of a body corporate,
1200 penalty units maximum.

- (2) A person (**A**) commits an offence if—
- (a) A takes another person (**B**) from Victoria, or arranges for B to be taken from Victoria; and
 - (b) A intends that change or suppression practices directed towards B will be engaged in outside Victoria (whether by A or another person); and
 - (c) change or suppression practices directed towards B are engaged in outside Victoria; and
 - (d) any or all of the change or suppression practices, considered as a group, cause injury to B; and
 - (e) A is negligent as to whether any or all of the change or suppression practices, considered as a group, will cause injury to B.

Penalty: In the case of a natural person, level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both;

In the case of a body corporate,
1200 penalty units maximum.

13 Offence of advertising a change or suppression practice

- (1) A person commits an offence if—
- (a) the person publishes or displays, or authorises the publication or display of, an advertisement or other notice; and
 - (b) the advertisement or other notice indicates, or could reasonably be understood as indicating, that the person or any other person intends to engage in one or more change or suppression practices, other than

for the purposes of warning of the harm caused by such practices.

Penalty: In the case of a natural person, level 9 fine (60 penalty units maximum);

In the case of a body corporate, 300 penalty units maximum.

- (2) It is a defence to a charge under subsection (1) if the accused proves that the accused took reasonable precautions and exercised due diligence to prevent the publication or display.

14 Production of documents relating to advertising offence

- (1) For the purpose of proceedings under section 13, the Commission may, by written notice, require any person to produce any documents specified in the notice to the Commission.

- (2) A person must not refuse, without reasonable excuse, to produce a document referred to in subsection (1) to the Commission.

Penalty: In the case of a natural person, level 9 fine (60 penalty units maximum);

In the case of a body corporate, 300 penalty units maximum.

Division 2—General matters relating to offences against this Part

15 Corporate criminal responsibility for offence against this Part

- (1) For the purposes of a proceeding against a body corporate for an offence against this Part, the following must also be attributed to the body corporate—

- (a) relevant conduct engaged in by an associate of the body corporate;

- (b) knowledge of an associate of the body corporate;
 - (c) intention—
 - (i) of the body corporate's board of directors; or
 - (ii) of an officer of the body corporate; or
 - (iii) of any other associate of the body corporate if a corporate culture existed within the body corporate that directed, encouraged, tolerated or led to the formation of that intention.
- (2) If an officer of a body corporate engages in conduct that constitutes an offence against this Part, the body corporate must be taken to have also engaged in conduct constituting the offence, and may be proceeded against and found guilty of the offence whether or not the officer has been proceeded against or found guilty of that offence.
- (3) In a proceeding against a body corporate for an offence against this Part brought in reliance on subsection (2), it is a defence to the charge for the body corporate to prove that it exercised due diligence to prevent the conduct engaged in by the officer.

16 Who may bring proceedings for an offence under section 13

Proceedings for an offence under section 13 may be brought by—

- (a) the Commission; or
- (b) a police officer; or
- (c) a person who is authorised to do so, either generally or in a particular case, by the Commission.

Part 3—Civil response scheme

Division 1—Functions and powers of Commission

17 Functions and powers of Commission

- (1) The Commission has the following functions—
 - (a) to develop and provide education in relation to change or suppression practices;
 - (b) to receive reports about change or suppression practices from any person;
 - (c) to request further information regarding reports of change or suppression practices from persons who make a report and persons or organisations alleged to be engaging in change or suppression practices;
 - (d) to determine appropriate responses to reports on the basis of information provided and the wishes of persons affected where those persons are involved in making reports;
 - (e) to offer education to persons and organisations engaged in change or suppression practices;
 - (f) to establish processes for facilitating an outcome in relation to matters in certain reports that meet the needs of persons affected by change or suppression practices;
 - (g) to focus on ensuring that persons affected by change or suppression practices receive support by directing them to appropriate support services;
 - (h) to support persons who are or may be victims of criminal offences under this Act to voluntarily report these to police.
- (2) The Commission has all the powers necessary to enable it to perform its functions.

18 Functions of Commission—educative function

- (1) The Commission must—
 - (a) establish and undertake information and education programs in relation to change or suppression practices; and
 - (b) promote and advance the objects of this Act and be an advocate for this Act.
- (2) The Commission must undertake programs to disseminate information and educate the public with respect to—
 - (a) the objects of this Act; and
 - (b) any other matters relevant to the provisions of this Act.

19 Functions of Commission—research function

- (1) The Commission may undertake research into any matter arising from, or incidental to, the operation of this Act that it considers would advance the objects of this Act.
- (2) The Commission may collect and analyse information and data relevant to the operation and objects of this Act.

20 Commission may report on educative or research functions

The Commission may, at any time, submit a report to the Attorney-General on any matter arising from the performance of the Commission's functions under section 18 or 19.

21 Functions of Commission—receiving reports and facilitating outcomes

The Commission must—

- (a) receive reports under section 24 from persons affected by change or suppression practices (or persons acting on their behalf), or other persons; and
- (b) establish policies and issue procedures and directions on the manner in which such reports should be dealt with; and
- (c) in the case of a reports made by persons affected by change or suppression practices (or persons acting on their behalf), establish policies and procedures for the facilitation of an outcome in relation to the matters in the report.

22 Staff of Commission

Any staff that are necessary for the purposes of administering this Act are to be employed under Part 3 of the **Public Administration Act 2004**.

23 Delegation

The Commission, by instrument, may delegate to the Commissioner or a member of staff of the Commission referred to in section 22 any of the Commission's functions, duties or powers under this Act other than this power of delegation.

Note

Under an Order made by the Governor in Council under section 16 of the **Public Administration Act 2004**, the Commissioner has all the functions of a public service body Head in relation to employees of the Commission.

Division 2—Reporting change or suppression practices to Commission

24 Reporting change or suppression practices

- (1) A person affected by a change or suppression practice, or any other person, may make a report to the Commission in relation to an alleged change or suppression practice.
- (2) A report must be in the prescribed form (if any).

25 Principles for responding to reports

The principles for the Commission responding to reports are—

- (a) a response should be provided to the person who made the report; and
- (b) a response should be informed by the needs and wishes of persons affected by change or suppression practices; and
- (c) a response should be appropriate to the report; and
- (d) a response should be fair to all persons; and
- (e) a response should be consistent with the objects of this Act.

26 Commission may request more information

The Commission may request a person who makes a report or a person or organisation who is alleged to be engaging in a change or suppression practice to provide any further information that the Commission considers necessary to assist in determining its response to a report.

27 Consideration of reports

- (1) This section applies if, in considering a report, the Commission is satisfied that a person or organisation is engaging in, or has engaged in, a change or suppression practice.

- (2) In responding to the report, the Commission must as far as practicable have regard to the following matters, to the extent that information about the matters is reasonably available to the Commission—
- (a) the wishes of the person or persons affected by the change or suppression practice;
 - (b) whether the change or suppression practice was a one-off event or a pattern of behaviour;
 - (c) the number of people affected by the change or suppression practice;
 - (d) the nature and extent of the harm caused by the change or suppression practice;
 - (e) any steps taken by a person or organisation to stop engaging in the change or suppression practice or to address the harms caused by the change or suppression practice.

28 Responding to reports

- (1) The Commission, after considering a report, may do one or more of the following—
- (a) offer targeted education to persons or organisations reported to have engaged in change or suppression practices;
 - (b) in the case of reports made by persons affected by a change or suppression practice, offer facilitation of an outcome in relation to the matters in the report;
 - (c) refer the report to another person or body under section 29;
 - (d) decline to respond to the report in accordance with section 30.

- (2) Participation in facilitation of an outcome in relation to matters in a report is voluntary.

29 Referral of reports

- (1) Subject to subsection (3), if the Commission considers that a report relates to conduct that would be more adequately dealt with by another person or body, the Commission may refer the report to the other person or body.
- (2) The persons or bodies to which the Commission may refer a report include, but are not limited to, the following—
- (a) the Health Complaints Commissioner;
 - (b) the Australian Health Practitioner Regulation Agency;
 - (c) the Ombudsman;
 - (d) Victoria Police.
- (3) The Commission must not refer a report under subsection (1) without the consent of the person affected by the change or suppression practice to which the report relates, unless required to do so by a law dealing with mandatory reporting.

30 Discretion to decline to respond to report

The Commission may decline to respond to a report if—

- (a) the report refers to persons or organisations who can no longer be located; or
- (b) the report relates to conduct in respect of which sufficient information is no longer available; or
- (c) the report relates to conduct that has been adequately dealt with in another forum or would be more appropriately dealt with in another forum; or

- (d) having regard to all the circumstances, the Commission considers it is not appropriate to respond to the report.

31 Withdrawal from facilitation of an outcome

If the Commission is facilitating an outcome in relation to a matter in a report, any person involved in the facilitation may withdraw at any time by informing the Commission that the person no longer wishes to participate.

32 Agreements resulting from facilitation

- (1) This section applies if, after the Commission facilitates an outcome in relation to a matter in a report, the persons engaged in the facilitation (the *parties*) reach agreement with respect to any of the matters.
- (2) Any party may request that a written record of agreement be prepared by the parties or the Commission.
- (3) A request must be made within 30 days after the agreement is reached.
- (4) If a record of agreement is prepared by the Commission following a request under subsection (2)—
 - (a) the record of agreement must be signed by or on behalf of each party; and
 - (b) the Commission must certify the record of agreement.
- (5) If a record of agreement is prepared by the parties following a request under subsection (2)—
 - (a) the record of agreement must be signed by or on behalf of each party; and
 - (b) on the request of a party, the Commission may certify the record of agreement.

- (6) If the Commission certifies a record of agreement under subsection (4)(b) or (5)(b), the Commission must give each party a copy of the signed and certified record of agreement.
- (7) The refusal of the Commission to certify a record of agreement does not affect the validity of the agreement.

33 Registration of agreements

- (1) Any party to an agreement reached under section 32 may, after notifying each other party in writing, lodge a copy of the signed and certified record of agreement with the Tribunal for registration.
- (2) Subject to subsection (3), the Tribunal must register the record of agreement and give a certified copy of the registered record of agreement to each party.
- (3) If the Tribunal, constituted by a presidential member, considers that it may not be practicable to enforce, or to supervise compliance with, a record of agreement or part of a record of agreement, the Tribunal—
 - (a) in the case of a record of agreement, may refuse to register the record of agreement; or
 - (b) in the case of a part of a record of agreement, may refuse to register the part of the record of agreement that it considers may not be practicable to enforce, or to supervise compliance with.
- (4) On registration, a registered record of agreement or a registered part of a record of agreement—
 - (a) is taken to be an order of the Tribunal in accordance with its terms; and
 - (b) may be enforced accordingly.

- (5) The refusal of the Tribunal to register a record of agreement or any part of a record of agreement does not affect the validity of the agreement.

Division 3—Investigations

34 When investigation may be conducted

The Commission may conduct an investigation under this section into any matter relating to this Act—

- (a) that raises an issue that is serious in nature or indicates change or suppression practices that are systemic or persisting; and
- (b) that indicates a possible contravention of this Act; and
- (c) that relates to a class or group of persons; and
- (d) that would advance the objects of this Act.

35 Commission to conduct investigation as it considers fit

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

36 Power to compel provision of information and production of documents

- (1) If the Commission reasonably believes that—
 - (a) a person is in possession of information or a document that is relevant to an investigation; and

(b) the information or document is necessary for the conduct of the investigation—

the Commission may by written notice require the person to provide the information or document or both.

- (2) A notice referred to in subsection (1) must specify that the person must do either or both of the following within a reasonable period specified in the notice, or on a reasonable date and at a reasonable time specified in the notice—
- (a) give the Commission a document containing information required by the notice;
 - (b) produce to the Commission the documents specified in the notice.
- (3) A document referred to in subsection (2)(a) must be signed by the person or, in the case of a notice served on a body corporate, an officer of the body corporate.
- (4) If a document is produced to the Commission in accordance with a notice under this section, the Commission may—
- (a) take possession of the document; and
 - (b) make copies of the document or take extracts from the document; and
 - (c) retain possession of the document for as long as is necessary for the purposes of the investigation to which the document relates.
- (5) 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.

37 Power to compel attendance

- (1) The Commission by written notice may require a person to attend before the Commission, at a reasonable time and place, to answer questions if the Commission reasonably believes that—
 - (a) the person has information that is relevant to an investigation; and
 - (b) the information is necessary for the conduct of the investigation.
- (2) A person who is required under this section to attend before the Commission—
 - (a) is entitled to be paid a reasonable sum for the person's attendance; and
 - (b) is entitled to have a legal or personal representative present.

38 Compliance with notice requiring attendance or production of documents

A person must not, without reasonable excuse, fail to comply with a notice of the Commission under section 36 or 37.

Penalty: In the case of a natural person, level 9 fine (60 penalty units maximum);

In the case of a body corporate,
300 penalty units maximum.

39 Protection against self-incrimination

It is a reasonable excuse for a natural person to refuse to give information, answer a question or produce a document under this Act if the giving of the information, the answering of the question or the production of the document would tend to incriminate the person.

40 Disclosure of identity of persons who give information or documents

- (1) This section applies to a person who has given or who will give evidence, information or documents to the Commission as part of an investigation, whether or not the person is compelled to do so under section 36 or 37.
- (2) The Commission may give directions prohibiting the disclosure of the identity of the person, or prohibiting the disclosure of information that would be reasonably likely to identify the person, if the Commission considers that preservation of the person's anonymity is necessary—
 - (a) to protect the person's security of employment, privacy or any right protected by the **Charter of Human Rights and Responsibilities Act 2006**; or
 - (b) to protect the person from victimisation.

41 Publication of evidence, information or documents

- (1) The Commission may give directions prohibiting or limiting the publication of—
 - (a) any evidence given before the Commission or any information given to the Commission as part of an investigation; or
 - (b) the contents of any document produced to the Commission as part of an investigation.
- (2) Subsection (1) applies whether or not a person was compelled to give the evidence or produce the information or document under section 36 or 37.
- (3) In deciding whether or not to give a direction under subsection (1), the Commission must have regard to the need to prevent such of the following as are relevant to the circumstances—

- (a) prejudice to the relations between the Government and the Commonwealth Government or between the Government and the Government of another State or a Territory;
- (b) the disclosure of deliberations or decisions of the Cabinet, or of a Committee of the Cabinet;
- (c) prejudice to the proper functioning of the Government;
- (d) the disclosure, or the ascertaining by a person, of the existence or identity of a confidential source of information in relation to the enforcement of the criminal law;
- (e) the endangering of the life or physical or psychological safety of any person;
- (f) prejudice to the proper enforcement of the law or the protection of public safety;
- (g) the disclosure of information the disclosure of which is prohibited, absolutely or subject to qualifications, by or under another Act;
- (h) the unreasonable disclosure of the personal affairs of any person or organisation;
- (i) the unreasonable disclosure of confidential commercial information.

42 Outcome of an investigation

- (1) After conducting an investigation, the Commission may take any action it considers fit.
- (2) Without limiting subsection (1), the Commission may do any of the following—
 - (a) take no further action;
 - (b) enter into an agreement with a person about action required to comply with this Act;

- (c) accept an enforceable undertaking;
- (d) issue a compliance notice to a person.

Division 4—Remedies

43 Enforceable undertakings

If, following an investigation, the Commission believes that a change or suppression practice has occurred, is occurring or is likely to occur, the Commission may accept a written undertaking from a person under which the person undertakes to take certain actions or refrain from taking certain actions to comply with this Act.

44 Register of enforceable undertakings

The Commission may keep a register of enforceable undertakings that is available to the public.

45 Compliance notices

- (1) If, following an investigation, the Commission believes that a change or suppression practice has occurred or is occurring, the Commission may issue a compliance notice to a person who is wholly or partly responsible for the change or suppression practice.
- (2) A compliance notice must set out the following—
 - (a) the basis for the Commission's belief that a change or suppression practice has occurred or is occurring;
 - (b) the provisions of this Act (if any) that the Commission believes the person has contravened;
 - (c) the date by which the person must take or refrain from taking specified actions in relation to the change or suppression practice;

- (d) the further action that the Commission may take if the person does not take or refrain from taking specified actions;
 - (e) that the person may apply to the Tribunal for review of the issuing of the notice or any term of the notice.
- (3) A person may, within 28 days of receiving the compliance notice, apply to the Tribunal for a review of the issuing of the compliance notice or of any term of the compliance notice.

46 Failure to comply with enforceable undertaking or compliance notice

- (1) This section applies if—
- (a) the Commission has accepted an enforceable undertaking from a person; or
 - (b) the Commission has issued a compliance notice to a person.
- (2) If the person fails to comply with the enforceable undertaking or the compliance notice—
- (a) the Commission may apply to the Tribunal to enforce the undertaking or the notice; and
 - (b) the Tribunal may make an order requiring the person to comply with the undertaking or notice.

Note

Under section 133 of the **Victorian Civil and Administrative Tribunal Act 1998**, non-compliance with an order of the Tribunal is an offence.

47 Vicarious liability

- (1) For the purposes of this Part, if a natural person engages in a change or suppression practice in the course of employment (including as a volunteer) or while acting as an agent—

- (a) subject to subsection (2), both the natural person, and the employer or principal, as the case requires, are taken to have engaged in the change or suppression practice; and
 - (b) the person towards whom the change or suppression practice was directed or another person may make a report under section 24 in respect of—
 - (i) the natural person; or
 - (ii) the employer or principal; or
 - (iii) both the natural person and the employer or principal.
- (2) The employer or principal is not taken to have engaged in the change or suppression practice if the employer or principal proves, on the balance of probabilities, that the employer or principal took reasonable precautions to prevent the natural person engaging in a change or suppression practice.

48 Who may bring proceedings for an offence under this Part

Proceedings for an offence under this Part may be brought by—

- (a) the Commission; or
- (b) a police officer; or
- (c) a person who is authorised to do so, either generally or in a particular case, by the Commission.

49 Reports etc. that relate to organisations

If a report under this Act relates to change or suppression practices alleged to have been engaged in by an organisation—

Part 3—Civil response scheme

- (a) the Commission may request information under section 26 from the president, secretary or other similar officer of the organisation; and
- (b) the Commission may offer targeted education to the president, secretary or other similar officer of the organisation; and
- (c) the president, secretary or other similar officer of the organisation may be a party to facilitation of an outcome for the purposes of Division 2 of this Part.

Part 4—General matters

Division 1—Secrecy

50 Definition

In this Division—

protected information means information concerning the affairs of a person or organisation, being information obtained by a person to whom section 51 applies—

- (a) in the course of performing functions or duties or exercising powers under this Act; or
- (b) as a result of another person performing functions or duties or exercising powers under this Act.

51 Secrecy

- (1) This section applies to a person who is or has been—
 - (a) the Commissioner; or
 - (b) a member of the staff of the Commission referred to in section 22;
 - (c) a person (other than a person referred to in paragraph (b)) acting under the authority of the Commission or the Commissioner.
- (2) A person to whom this section applies must not, either directly or indirectly, make a record of, disclose or communicate protected information to any person unless —
 - (a) it is necessary to do so for the purposes of, or in connection with, the performance of a function or duty or the exercise of a power under this Act; or

- (b) it is necessary to do so to prevent a credible and imminent threat of harm to one or more persons; or
- (c) it is necessary to do so to comply with a mandatory reporting obligation; or
- (d) the disclosure, communication or production is to a court in accordance with section 52; or
- (e) the information is already in the public domain; or
- (f) the information does not identify any person or organisation; or
- (g) all persons or organisations identified by the information have consented to the disclosure of the information.

Penalty: Level 9 fine (60 penalty units maximum).

52 Disclosure to courts

- (1) Subject to this section, a person to whom section 51 applies must not be required—
 - (a) to produce in a court any document containing protected information; or
 - (b) to disclose or communicate protected information to a court.
- (2) Subsection (1) does not prevent a person to whom section 51 applies disclosing or communicating protected information or producing in a court any document containing protected information if the disclosure, communication or production —
 - (a) is necessary for the purposes of, or for a prosecution under or arising out of, this Part; or
 - (b) is required by an order of a court for the purposes of a criminal proceeding; or

- (c) is with the consent of the person or organisation to whose affairs the information relates.

Division 2—Provisions relating to certain proceedings

53 Commission not to prejudice certain proceedings or investigations

- (1) The Commission must not perform the functions or duties or exercise the powers of the Commission under this Act in a manner that would prejudice any—
 - (a) criminal proceedings or criminal investigations; or
 - (b) investigations by the IBAC or the Victorian Inspectorate.
- (2) For the purposes of ensuring compliance with subsection (1), the Commission may consult any of the following—
 - (a) the Director of Public Prosecutions;
 - (b) the Chief Commissioner of Police;
 - (c) the IBAC;
 - (d) the Victorian Inspectorate.

54 Person bringing proceedings presumed to be authorised to do so

In a proceeding for an offence against this Act it must be presumed, in the absence of evidence to the contrary, that the person bringing the proceeding was authorised to bring it.

55 Commission may assist in proceedings as amicus curiae

- (1) The Commission may assist a court or tribunal as amicus curiae in the following proceedings, with the leave of the court or tribunal—
 - (a) proceedings in which the Commission considers that the orders sought, or likely to be sought, may significantly affect the rights relating to change or suppression practices in relation to persons who are not parties to the proceedings;
 - (b) proceedings that, in the opinion of the Commission, have significant implications for the administration of this Act;
 - (c) proceedings where the Commission is satisfied that it would be in the public interest for the Commission to assist the court or tribunal as amicus curiae.

Division 3—Annual report and review of Act

56 Annual report

In its report of operations for a financial year under Part 7 of the **Financial Management Act 1994**, the Commission must include a description of the performance of its functions in relation to change or suppression practices during the financial year.

57 Review of this Act

- (1) The Attorney-General must ensure that an independent review of the operation and effectiveness of this Act commences 2 years after the commencement of this Act and is completed within 6 months.

- (2) The Attorney-General must ensure that the review is conducted by a person who, in the opinion of the Attorney-General, possesses appropriate qualifications and expertise related to change or suppression practices.
- (3) The person conducting the review must consider the following—
 - (a) whether the criminal offences contained in this Act are effective;
 - (b) whether the civil response scheme is effective, including whether broader investigation and enforcement powers are required;
 - (c) whether a redress scheme should be developed.
- (4) A person who undertakes the review must give the Attorney-General a written report of the review as soon as practicable after completing the review.
- (5) The Attorney-General must cause a copy of the review to be laid before each House of the Parliament within 15 sitting days of that House after receiving the written report.

Division 4—Regulations

58 Regulations

- (1) The Governor in Council may make regulations for or with respect to the following matters—
 - (a) forms to be used for the purposes of this Act;
 - (b) any other matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) Regulations made under this Act—
 - (a) may be of limited or general application; and

- (b) may differ according to differences in time, place or circumstance; and
- (c) may confer powers or impose duties in connection with the regulations on any specified person or specified class of persons; and
- (d) 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—
 - (i) wholly or partially or as amended by the regulations; or
 - (ii) as formulated, issued, prescribed or published at the time the regulations are made or at any time before then; or
 - (iii) as formulated, issued, prescribed or published from time to time.

Part 5—Amendment of definitions in the Equal Opportunity Act 2010

Division 1—Amendment of definitions

59 Definitions

- (1) In section 4(1) of the **Equal Opportunity Act 2010**, for the definition of *gender identity substitute*—

"gender identity means a person's gender-related identity, which may or may not correspond with their designated sex at birth, and includes the personal sense of the body (whether this involves medical intervention or not) and other expressions of gender, including dress, speech, mannerisms, names and personal references;"

- (2) In section 4(1) of the **Equal Opportunity Act 2010** insert the following definition—

"sex characteristics means a person's physical features relating to sex, including—

- (a) genitalia and other sexual and reproductive parts of the person's anatomy; and
 - (b) the person's chromosomes, genes, hormones, and secondary physical features that emerge as a result of puberty;"
- (3) In section 4(1) of the **Equal Opportunity Act 2010**, for the definition of *sexual orientation substitute*—
- "sexual orientation* means a person's emotional, affectional and sexual attraction to, or intimate or sexual relations with, persons of

a different gender or the same gender or more than one gender;".

60 Attributes

After section 6(o) of the **Equal Opportunity Act 2010** insert—

"(oa) sex characteristics;".

Division 2—Transitional provisions

61 New Division inserted

After Division 2 of Part 14 of the **Equal Opportunity Act 2010**, insert—

"Division 3—Transitional provisions relating to the Change or Suppression (Conversion) Practices Prohibition Act 2021

197 Definitions

In this Division—

commencement day means the day on which Part 5 of the **Change or Suppression (Conversion) Practices Prohibition Act 2021** comes into operation;

old Act means the **Equal Opportunity Act 2010**, as in force immediately before the commencement day.

198 Conduct, disputes and investigations before commencement day

- (1) This section applies to—
- (a) conduct engaged in before the commencement day; and

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Part 5—Amendment of definitions in the Equal Opportunity Act 2010

- (b) a dispute brought to the Commission before the commencement day that had not ended before the commencement day; and
 - (c) an investigation of the Commission that had not been finally determined before the commencement day.
- (2) The old Act continues to apply in relation to the conduct, dispute or investigation, as the case requires, as if the amendments made by Part 5 of the **Change or Suppression (Conversion) Practices Prohibition Act 2021** had not been made."

Part 6—Consequential amendment of Acts

Division 1—Amendment of the Equal Opportunity Act 2010

62 Obstructing Commission

In section 185(1) of the **Equal Opportunity Act 2010**, after "Act" insert "or the **Change or Suppression (Conversion) Practices Prohibition Act 2021**".

63 False or misleading information

In section 186 of the **Equal Opportunity Act 2010**, after "Act" insert "or the **Change or Suppression (Conversion) Practices Prohibition Act 2021**".

Division 2—Amendment of the Family Violence Protection Act 2008

64 Meaning of *emotional or psychological abuse*

In section 7 of the **Family Violence Protection Act 2008**, after the second dot point under the heading "Examples—" insert—

- an adult child repeatedly denigrating an elderly parent's sexual orientation, including by telling them it is wrong to be same-sex attracted and that they must change or the adult child will no longer support them;".

Division 3—Amendment of the Personal Safety Intervention Orders Act 2010

65 Meaning of *harassment*

In section 7 of the **Personal Safety Intervention Orders Act 2010**, at the end of the paragraphs under the heading "**Examples**" **insert—**

"A repeatedly leaves pamphlets in B's mailbox that state that it is wrong to gender transition and that everyone's gender expression should match the sex they were assigned at birth."

Part 7—Repeal of amending Parts

66 Repeal of amending Parts

Parts 5 and 6 and this Part are **repealed** on the first anniversary of the first day on which all of the provisions in those Parts are in operation.

Note

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

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: 26 November 2020

Legislative Council: 10 December 2020

The long title for the Bill for this Act was "A Bill for an Act to prohibit change or suppression practices, to amend certain definitions in the **Equal Opportunity Act 2010** and for other purposes."