

South Australia

**Equal Opportunity (Miscellaneous) Amendment
Bill 2006**

A BILL FOR

An Act to amend the *Equal Opportunity Act 1984* and to make related amendments to the *Civil Liability Act 1936* and the *Racial Vilification Act 1996*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Equal Opportunity (Miscellaneous) Amendment Act 2006*.

5 2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Equal Opportunity Act 1984*

5 4—Amendment of long title

Long title—delete "sex, sexuality, marital status, pregnancy, race, physical or intellectual impairment or age" and substitute:

sex, race, disability, age or various other grounds

5—Amendment of section 5—Interpretation

10 (1) Section 5(1)—before the definition of *the Commissioner* insert:

act includes an omission;

area of residence of a person means the suburb, town or regional district in which the person resides;

assistance animal means—

15 (a) a dog that is an accredited guide dog, an accredited hearing dog or an accredited disability dog under the *Dog and Cat Management Act 1995*; or

(b) an animal of a class prescribed by regulation;

business includes a business that is not carried on for profit;

20 *caring responsibilities* of a person means responsibilities for providing ongoing care for another, whether or not as a dependant, other than in the course of paid employment or other remunerative activity;

child means a person who is under the age of 18 years;

chosen gender—see subsection (3);

25 (2) Section 5(1)—after the definition of *detriment* insert:

disability, in relation to a person, means—

(a) total or partial loss of the person's bodily or mental functions; or

(b) total or partial loss of a part of the body; or

(c) the presence in the body of organisms causing disease or illness; or

30 (d) the presence in the body of organisms capable of causing disease or illness; or

(e) the malfunction, malformation or disfigurement of a part of the person's body; or

35 (f) a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction; or

(g) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour;

5 (3) Section 5(1), definition of *employment agency*—delete "employment to employers" and substitute:

work to persons seeking to employ or engage persons to perform work

(4) Section 5(1), definitions of *impairment* and *intellectual impairment*—delete the definitions

(5) Section 5(1), after the definition of *marital status* insert:

10 *medical practitioner* means a person who is registered in this State as a medical practitioner;

(6) Section 5(1), definitions of *physical impairment* and *race*—delete the definitions and substitute:

15 *potential pregnancy* of a woman means that the woman is likely, or is perceived as being likely, to become pregnant;

putative spouse means a putative spouse within the meaning of the *Family Relationships Act 1975*, whether or not a declaration of the relationship has been made under that Act;

20 *race* of a person means the nationality (current, past or proposed), country of origin, colour or ancestry of the person;

registered industrial association means an industrial association or organisation registered under a law of the State or the Commonwealth;

(7) Section 5(1), after the definition of *the Registrar* insert:

25 *secondary education institution* means an institution at which secondary education is provided;

(8) Section 5(1), definition of *services to which this Act applies*, (a)—delete paragraph (a) and substitute:

(a) access to or use of a place or facilities that members of the public are permitted to enter or use; or

30 (9) Section 5(1), definition of *sexuality*—delete ", bisexuality or transsexuality" and substitute:

or bisexuality

(10) Section 5(1), definitions of *transsexual* and *transsexuality*—delete the definitions

(11) Section 5—after subsection (2) insert:

35 (3) For the purposes of this Act, a person is a person of a *chosen gender* if—

40 (a) the person identifies on a genuine basis as a member of the opposite sex by assuming characteristics of the opposite sex (whether by means of medical intervention, style of dressing or otherwise) or by living, or seeking to live, as a member of the opposite sex; or

- (b) the person, being of indeterminate sex, identifies on a genuine basis as a member of a particular sex by assuming characteristics of the particular sex (whether by means of medical intervention, style of dressing or otherwise) or by living, or seeking to live, as a member of the particular sex.

6—Amendment of section 6—Interpretative provisions

- (1) Section 6(2)—delete ", and that ground is a substantial reason for the act"
(2) Section 6—after subsection (3) insert:

- (4) For the purposes of this Act, an act will be regarded as a discriminatory act despite the fact that the person alleged to have committed the act did so on the basis of a mistaken assumption (for example, a mistaken assumption that another person was of a particular sexuality or a particular race or a person of a chosen gender).

7—Amendment of section 10—Administration of Act and Ministerial direction

Section 10—after its present contents (now to be designated as subsection (1)) insert:

- (2) However, the Minister—
(a) must not give a direction in relation to the manner in which action should be taken on a particular complaint; and
(b) must not seek information tending to identify a party to proceedings under this Act.

8—Amendment of section 11—Functions of Commissioner

- (1) Section 11(1)—delete "ground of sex, sexuality, marital status, pregnancy, race, impairment or age" and substitute:

grounds to which this Act applies

- (2) Section 11(2)—delete "ground of sex, sexuality, marital status, pregnancy, race, impairment or age" and substitute:

grounds to which this Act applies

9—Amendment of section 14—Annual report by Commissioner

- (1) Section 14(1)—delete "31 December" and substitute:

30 September

- (2) Section 14(1)(b)—delete "pursuant to sections 11 and 12" and substitute:

under section 11

- (3) Section 14(2)—delete "14" wherever occurring and substitute in each case:

12

10—Amendment of section 25—General powers of Tribunal

Section 25(2), penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$5 000.

11—Substitution of heading to Part 3

Heading to Part 3—delete the heading and substitute:

Part 3—Prohibition of discrimination on ground of sex, chosen gender or sexuality

12—Amendment of section 29—Criteria for discrimination on ground of sex, chosen gender or sexuality

(1) Section 29(1)—delete subsection (1)

(2) Section 29(2)(b)—delete paragraph (b) and substitute:

(b) if—

(i) he or she treats another unfavourably because the other does not comply, or is not able to comply, with a particular requirement; and

(ii) the nature of the requirement is such that a substantially higher proportion of persons of the opposite sex comply, or are able to comply, with the requirement than of those of the other's sex,

except if it is established by the person that the requirement is reasonable in the circumstances of the case; or

(3) Section 29(2)—after paragraph (c) insert:

or

(d) if he or she treats another unfavourably because of an attribute of or a circumstance affecting a relative or associate of the other, being an attribute or circumstance described in the preceding paragraphs.

(4) Section 29—after subsection (2) insert:

(2a) For the purposes of this Act, a person discriminates on the ground of chosen gender—

(a) if he or she treats another unfavourably because the other is or has been a person of a chosen gender or because of the other's past sex; or

(b) if—

(i) he or she treats another unfavourably because the other does not comply, or is not able to comply, with a particular requirement; and

(ii) the nature of the requirement is such that a substantially higher proportion of persons who are not persons of a chosen gender comply, or are able to comply, with the requirement than of those of a chosen gender,

except if it is established by the person that the requirement is reasonable in the circumstances of the case; or

- 5 (c) if he or she treats another unfavourably on the basis of a characteristic that appertains generally to persons of a chosen gender, or on the basis of a presumed characteristic that is generally imputed to persons of a chosen gender; or
- (d) if he or she requires a person of a chosen gender to assume characteristics of the sex with which the person does not identify; or
- 10 (e) if he or she treats another unfavourably because of an attribute of or a circumstance affecting a relative or associate of the other, being an attribute or circumstance described in the preceding paragraphs.
- (5) Section 29(3)—delete "Subject to subsection (4), for" and substitute:
For
- (6) Section 29(3)(a)—delete ", or a presumed sexuality" and substitute:
15 or past sexuality
- (7) Section 29(3)(b)—delete paragraph (b) and substitute:
(b) if—
- (i) he or she treats another unfavourably because the other does not comply, or is not able to comply, with a particular requirement; and
- 20 (ii) the nature of the requirement is such that a substantially higher proportion of persons of a different sexuality comply, or are able to comply, with the requirement than of those of the other's sexuality,
- 25 except if it is established by the person that the requirement is reasonable in the circumstances of the case; or
- (8) Section 29(3)—after paragraph (c) insert:
or
- (d) if he or she treats another unfavourably because of an attribute of or a circumstance affecting a relative or associate of the other, being an attribute or circumstance described in the preceding paragraphs.
- 30 (9) Section 29(4) to (6)—delete subsections (4) to (6)

13—Substitution of heading to Part 3 Division 2

Heading to Part 3 Division 2—delete the heading and substitute:

35 **Division 2—Discrimination against workers**

14—Amendment of section 31—Discrimination against agents and independent contractors

(1) Section 31(1)—delete subsection (1) and substitute:

(1) This section applies to a principal for whom work is done—

- (a) by agents remunerated by commission; or
- (b) by independent contractors engaged under a contract for services.

(2) Section 31(2)(a)—after "agent" insert:

or independent contractor

(3) Section 31(3)—after "agent" wherever occurring insert:

or independent contractor

(4) Section 31(3)(b)—after "agent's" insert:

or independent contractor's

15—Amendment of section 32—Discrimination against contract workers

(1) Section 32(1) and (2)—delete subsections (1) and (2) and substitute:

(1) This section applies to a principal for whom work is done by persons (*contract workers*) under a contract between the principal and another where the contract workers are employed or engaged by a person other than the principal.

(2) It is unlawful for a principal to enter into a contract or arrangement with another for work to be performed by contract workers under which a person is to discriminate against a contract worker on the ground of sex, chosen gender or sexuality.

(2) Section 32(3)(c)—delete "employment" and substitute:

the employment or position concerned

16—Amendment of section 33—Discrimination within partnerships

(1) Section 33(1)—delete "(otherwise than on the ground of sexuality)"

(2) Section 33(2)—delete subsection (2)

17—Substitution of section 34

Section 34—delete the section and substitute:

34—Exemptions

(1) This Division does not apply in relation to—

- (a) an employer employing a person for purposes not connected with a business carried on by the employer; or
- (b) a principal engaging a natural person as an independent contractor for purposes not connected with a business carried on by the principal.

5 (2) This Division does not apply to discrimination on the ground of sex, chosen gender or sexuality in relation to employment or engagement for which it is a genuine occupational requirement that a person be a person of a particular sex, a person of a chosen gender or a person of a particular sexuality.

(3) This Division does not apply to discrimination on the ground of chosen gender or sexuality in relation to employment or engagement for the purposes of an educational institution if—

10 (a) the educational institution is administered in accordance with the precepts of a particular religion and the discrimination is founded on the precepts of that religion; and

15 (b) the educational authority administering the institution has lodged a policy with the Commissioner stating its position in relation to the matter and that policy is made available—

(i) to employees and contractors and prospective employees and contractors of the authority to whom it relates or may relate; and

20 (ii) to students, prospective students and parents and guardians of students and prospective students of the institution.

(4) The Commissioner may publish a policy lodged under subsection (3) on the internet or by other means.

18—Amendment of section 35—Discrimination by associations

25 (1) Section 35(1)—delete "that has both male and female members"

(2) Section 35(1)(a)—delete "on the ground of sex, marital status or pregnancy" and substitute:

on the ground of sex, chosen gender or sexuality

30 (3) Section 35(1)(b)—delete "on the ground of sex, marital status or pregnancy" and substitute:

on the ground of sex, chosen gender or sexuality

(4) Section 35—after subsection (2) insert:

(2a) This section does not render unlawful an association established for—

35 (a) persons of a particular sex; or

(b) persons of a chosen gender; or

(c) persons of a particular sexuality (other than heterosexuality),

40 and, consequently, such an association may discriminate against an applicant for membership so as to exclude from membership persons other than those for whom the association is established.

- (2b) This section does not apply to discrimination on the ground of chosen gender or sexuality if the association is administered in accordance with the precepts of a particular religion and the discrimination is founded on the precepts of that religion.

5 **19—Repeal of section 35A**

Section 35A—delete the section

20—Amendment of section 40—Discrimination in relation to accommodation

- (1) Section 40(3)—delete subsection (3) and substitute:

10 (3) This section does not apply to discrimination in relation to the provision of accommodation if the person who provides, or proposes to provide, the accommodation, or a near relative of that person, resides, and intends to continue to reside, in the same household as the person requiring the accommodation.

- (2) Section 40(4)—delete "or marital status"

15 (3) Section 40(4)—delete ", or of a particular marital status, as the case may be"

21—Amendment of section 45—Charities

- (1) Section 45(a)—after subparagraph (i) insert:

(ia) persons of a chosen gender; or

- (2) Section 45(a)(iii) and (iv)—delete subparagraphs (iii) and (iv)

20 **22—Repeal of section 46**

Section 46—delete the section

23—Amendment of section 47—Measures intended to achieve equality

Section 47—delete ", or of a particular marital status, have equal opportunities with persons of the other sex, or of another marital status, in any of the" and substitute:

25 , persons of a chosen gender, or persons of a particular sexuality, have equal opportunities with, respectively, persons of the other sex, persons who are not persons of a chosen gender or persons of another sexuality, in

24—Amendment of section 50—Religious bodies

Section 50(2)—delete subsection (2)

30 **25—Amendment of section 51—Criteria for establishing discrimination on ground of race**

- (1) Section 51(b)—delete paragraph (b) and substitute:

(b) if—

35 (i) he or she treats another unfavourably because the other does not comply, or is not able to comply, with a particular requirement; and

- (ii) the nature of the requirement is such that a substantially higher proportion of persons of a different race comply, or are able to comply, with the requirement than of those of the other's race,

5 except if it is established by the person that the requirement is reasonable in the circumstances of the case; or

- (2) Section 51—after paragraph (c) insert:

or

- 10 (d) if he or she treats another unfavourably because of an attribute of or a circumstance affecting a relative or associate of the other, being an attribute or circumstance described in the preceding paragraphs.

26—Substitution of heading to Part 4 Division 2

Heading to Part 4 Division 2—delete the heading and substitute:

Division 2—Discrimination against workers

15 27—Amendment of section 53—Discrimination against agents and independent contractors

- (1) Section 53(1)—delete subsection (1) and substitute:

- (1) This section applies to a principal for whom work is done—

- 20 (a) by agents remunerated by commission; or
- (b) by independent contractors engaged under a contract for services.

- (2) Section 53(2)(a)—after "agent" insert:

or independent contractor

- (3) Section 53(3)—after "agent" wherever occurring insert:

25 or independent contractor

- (4) Section 53(3)(b)—after "agent's" insert:

or independent contractor's

28—Amendment of section 54—Discrimination against contract workers

- (1) Section 54(1) and (2)—delete subsections (1) and (2) and substitute:

30 (1) This section applies to a principal for whom work is done by persons (*contract workers*) under a contract between the principal and another where the contract workers are employed or engaged by a person other than the principal.

35 (2) It is unlawful for a principal to enter into a contract or arrangement with another for work to be performed by contract workers under which a person is to discriminate against a contract worker on the ground of race.

(2) Section 54(3)(c)—delete "employment" and substitute:

the employment or position concerned

29—Amendment of section 56—Exemptions

(1) Section 56(1)—delete subsection (1) and substitute:

(1) This Division does not apply in relation to—

(a) an employer employing a person for purposes not connected with a business carried on by the employer; or

(b) a principal engaging a natural person as an independent contractor for purposes not connected with a business carried on by the principal.

(2) Section 56(2)—after "employment" insert:

or engagement

30—Amendment of section 62—Discrimination in relation to accommodation

Section 62—after subsection (2) insert:

(2a) This section does not apply to discrimination in relation to the provision of accommodation if the person who provides, or proposes to provide, the accommodation, or a near relative of that person, resides, and intends to continue to reside, in the same household as the person requiring the accommodation.

31—Amendment of heading to Part 5

Heading to Part 5—delete "the ground of impairment" and substitute:

ground of disability

32—Amendment of section 66—Criteria for establishing discrimination on ground of disability

(1) Section 66—delete "an impairment" wherever occurring and substitute in each case:
a disability

(2) Section 66—delete "impairment" wherever else occurring and substitute in each case:
disability

(3) Section 66(a) and (b)—delete paragraphs (a) and (b) and substitute:

(a) if he or she treats another unfavourably because of the other's disability, or a past disability or a disability that may exist in the future; or

(b) if—

(i) he or she treats another unfavourably because the other does not comply, or is not able to comply, with a particular requirement; and

- (ii) the nature of the requirement is such that a substantially higher proportion of persons who do not have a disability of the kind suffered by the other comply, or are able to comply, with the requirement than of those persons who have a disability of the kind suffered by the other,

except if it is established by the person that the requirement is reasonable in the circumstances of the case; or

- (4) Section 66—after paragraph (c) insert:

or

- (ca) if he or she—

(i) fails to provide a safe and proper means of access to, or use of, a place or facilities for a person who requires special means of access to, or use of, the place or facilities as a consequence of the person's disability; or

(ii) treats another unfavourably because the other requires special means of access to, or use of, a place or facilities as a consequence of the other's disability,

to the extent that he or she is able to effect the provision of access or use; or

- (5) Section 66(e)—delete paragraph (e) and substitute:

(e) if he or she treats a person with a disability unfavourably because the person possesses, or is accompanied by, an assistance animal, or because of a related matter (whether or not it is his or her normal practice to treat unfavourably a person who possesses, or is accompanied by, an animal of the same species as the assistance animal); or

(f) if he or she treats another unfavourably because of an attribute of or a circumstance affecting a relative or associate of the other, being an attribute or circumstance described in the preceding paragraphs.

33—Substitution of heading to Part 5 Division 2

Heading to Part 5 Division 2—delete the heading and substitute:

Division 2—Discrimination against workers

34—Amendment of section 67—Discrimination against applicants and employees

Section 67—delete "impairment" wherever occurring and substitute in each case:
disability

35—Amendment of section 68—Discrimination against agents and independent contractors

- (1) Section 68—delete "impairment" wherever occurring and substitute in each case:
disability

(2) Section 68(1)—delete subsection (1) and substitute:

(1) This section applies to a principal for whom work is done—

(a) by agents remunerated by commission; or

(b) by independent contractors engaged under a contract for services.

(3) Section 68(2)(a)—after "agent" insert:

or independent contractor

(4) Section 68(3)—after "agent" wherever occurring insert:

or independent contractor

(5) Section 68(3)(b)—after "agent's" insert:

or independent contractor's

36—Amendment of section 69—Discrimination against contract workers

(1) Section 69(1) and (2)—delete subsections (1) and (2) and substitute:

(1) This section applies to a principal for whom work is done by persons (*contract workers*) under a contract between the principal and another where the contract workers are employed or engaged by a person other than the principal.

(2) It is unlawful for a principal to enter into a contract or arrangement with another for work to be performed by contract workers under which a person is to discriminate against a contract worker on the ground of disability.

(2) Section 69(3)—delete "impairment" and substitute:

disability

(3) Section 69(3)(c)—delete "employment" and substitute:

the employment or position concerned

37—Amendment of section 70—Discrimination within partnerships

Section 70—delete "impairment" wherever occurring and substitute in each case:

disability

38—Amendment of section 71—Exemptions

(1) Section 71(1)—delete subsection (1) and substitute:

(1) This Division does not apply in relation to—

(a) an employer employing a person for purposes not connected with a business carried on by the employer; or

(b) a principal engaging a natural person as an independent contractor for purposes not connected with a business carried on by the principal.

(2) Section 71—delete "impairment" wherever occurring and substitute in each case:
disability

(3) Section 71(2)—after "employment" first occurring insert:
or engagement

5 **39—Amendment of section 72—Discrimination by associations**

Section 72—delete "impairment" wherever occurring and substitute in each case:
disability

40—Amendment of section 73—Discrimination by qualifying bodies

10 Section 73—delete "impairment" wherever occurring and substitute in each case:
disability

41—Amendment of section 74—Discrimination by educational authorities

Section 74—delete "impairment" wherever occurring and substitute in each case:
disability

15 **42—Amendment of section 75—Discrimination by person disposing of interest
in land**

Section 75—delete "impairment" and substitute:
disability

**43—Amendment of section 76—Discrimination in provision of goods and
services**

20 (1) Section 76—delete "an impairment" wherever occurring and substitute in each case:
a disability

(2) Section 76—delete "impairment" wherever else occurring and substitute in each case:
disability

(3) Section 76—after subsection (1) insert:

25 (1a) For the purposes of the application of subsection (1) to services
comprised of access to or use of a place or facilities that members of
the public are permitted to enter or use (see paragraph (a) of the
definition of *services to which this Act applies*), the owner of the
30 place or facilities and the occupier of the place or the place where the
facilities are provided will each be taken to offer or provide the
services.

44—Amendment of section 77—Discrimination in relation to accommodation

(1) Section 77—delete "impairment" wherever occurring and substitute in each case:
disability

(2) Section 77—after subsection (2) insert:

(2a) This section does not apply to discrimination in relation to the provision of accommodation if the person who provides, or proposes to provide, the accommodation, or a near relative of that person, resides, and intends to continue to reside, in the same household as the person requiring the accommodation.

45—Amendment of section 78—Discrimination in relation to superannuation

Section 78—delete "impairment" and substitute:

disability

46—Amendment of section 79—Exemption in relation to remuneration

Section 79—delete "impairments" and substitute:

disabilities

47—Insertion of section 79A

After section 79 insert:

79A—Exemption in relation to infectious diseases

This Part does not render unlawful a discriminatory act if the act—

- (a) is directed towards ensuring that an infectious disease is not spread; and
- (b) is reasonable in all the circumstances.

48—Amendment of section 80—Exemption for charities

Section 80—delete "impairment" and substitute:

disability

49—Amendment of section 81—Exemption in relation to sporting activities

(1) Section 81—delete "an impairment" and substitute:

a disability

(2) Section 81—delete "impairment" wherever else occurring and substitute in each case:

disability

50—Amendment of section 82—Exemption for projects for benefit of persons with particular disability

Section 82—delete "impairment" and substitute:

disability

51—Substitution of section 84

Section 84—delete the section and substitute:

84—Exemption for unjustifiable hardship

- 5 (1) This Part does not render unlawful discrimination by a person on the ground of disability in relation to the provision of access to or use of a place or facilities if the provision of access or use would impose unjustifiable hardship on the person.
- 10 (2) In determining what constitutes unjustifiable hardship, all relevant circumstances of the particular case are to be taken into account including—
- 15 (a) the nature of the benefit or detriment likely to accrue or be suffered by the persons concerned; and
- (b) the effect of the disability of the person concerned; and
- (c) the financial circumstances and the estimated amount of expenditure required to be made by the person claiming unjustifiable hardship.

52—Amendment of section 85—Exemption in relation to insurance

Section 85—delete "impairment" and substitute:

disability

53—Amendment of section 85A—Criteria for establishing discrimination on ground of age

20 (1) Section 85A(b)—delete paragraph (b) and substitute:

(b) if—

- 25 (i) he or she treats another unfavourably because the other does not comply, or is not able to comply, with a particular requirement; and
- 30 (ii) the nature of the requirement is such that a substantially higher proportion of persons of a different age or age group comply, or are able to comply, with the requirement than of those of the other's age or age group,

except if it is established by the person that the requirement is reasonable in the circumstances of the case; or

(2) Section 85A—after paragraph (c) insert:

or

- 35 (d) if he or she treats another unfavourably because of an attribute of or a circumstance affecting a relative or associate of the other, being an attribute or circumstance described in the preceding paragraphs.

54—Substitution of heading to Part 5A Division 2

Heading to Part 5A Division 2—delete the heading and substitute:

Division 2—Discrimination against workers

55—Amendment of section 85C—Discrimination against agents and independent contractors

(1) Section 85C(1)—delete subsection (1) and substitute:

(1) This section applies to a principal for whom work is done—

(a) by agents remunerated by commission; or

(b) by independent contractors engaged under a contract for services.

(2) Section 85C(2)(a)—after "agent" insert:

or independent contractor

(3) Section 85C(3)—after "agent" wherever occurring insert:

or independent contractor

(4) Section 85C(3)(b)—after "agent's" insert:

or independent contractor's

56—Amendment of section 85D—Discrimination against contract workers

(1) Section 85D(1) and (2)—delete subsections (1) and (2) and substitute:

(1) This section applies to a principal for whom work is done by persons (*contract workers*) under a contract between the principal and another where the contract workers are employed or engaged by a person other than the principal.

(2) It is unlawful for a principal to enter into a contract or arrangement with another for work to be performed by contract workers under which a person is to discriminate against a contract worker on the ground of age.

(2) Section 85D(3)(c)—delete "employment" and substitute:

the employment or position concerned

57—Amendment of section 85F—Exemptions

(1) Section 85F(1)—delete subsection (1) and substitute:

(1) This Division does not apply in relation to—

(a) an employer employing a person for purposes not connected with a business carried on by the employer; or

(b) a principal engaging a natural person as an independent contractor for purposes not connected with a business carried on by the principal.

(2) Section 85F(2)—after "employment" insert:

or engagement

(3) Section 85F(3)—after "employment" first occurring insert:

or engagement

5 **58—Amendment of section 85K—Discrimination in provision of goods and services**

(1) Section 85K(2)—delete subsection (2)

(2) Section 85K(3)(a)—delete paragraph (a) and substitute:

10

(a) the charging of a reduced fee, fare or price, or no fee, fare or price, for the benefit of a particular age group if the concession is based on genuine and reasonable grounds; or

(3) Section 85K(3)(b)—after "reasonable basis" insert:

for the benefit of a particular age group

59—Amendment of section 85L—Discrimination in relation to accommodation

15

(1) Section 85L(2)—delete subsection (2)

(2) Section 85L(5)(b) and (c)—delete paragraphs (b) and (c) and substitute:

20

(b) in relation to the provision of accommodation if the person who provides, or proposes to provide, the accommodation, or a near relative of that person, resides, and intends to continue to reside, in the same household as the person requiring the accommodation.

60—Insertion of Part 5B

After Part 5A insert:

Part 5B—Prohibition of discrimination on other grounds

25

Division 1—Discrimination to which Part 5B applies

85T—Criteria for establishing discrimination on other grounds

(1) In this Part—

discriminate means—

30

- (a) discriminate on the ground of marital status; or
- (b) discriminate on the ground of the identity of a spouse; or
- (c) discriminate on the ground of pregnancy; or
- (d) discriminate on the ground of association with a child; or
- (e) discriminate on the ground of caring responsibilities; or
- (f) discriminate on the ground of profession, trade or lawful occupation; or

35

- (g) discriminate on the ground of area of residence; or
- (h) discriminate on the ground of religious appearance or dress, and *discrimination* has a corresponding meaning.

(2) For the purposes of this Act, a person discriminates on the ground of marital status—

(a) if he or she treats another unfavourably because of the other's marital status or past or proposed marital status; or

(b) if—

(i) he or she treats another unfavourably because the other does not comply, or is not able to comply, with a particular requirement; and

(ii) the nature of the requirement is such that a substantially higher proportion of persons of a different marital status comply, or are able to comply, with the requirement than of those of the other's marital status,

except if it is established by the person that the requirement is reasonable in the circumstances of the case; or

(c) if he or she treats another unfavourably on the basis of a characteristic that appertains generally to persons of that marital status, or on the basis of a presumed characteristic that is generally imputed to persons of that marital status; or

(d) if he or she treats another unfavourably because of an attribute of or a circumstance affecting a relative or associate of the other, being an attribute or circumstance described in the preceding paragraphs.

(3) For the purposes of this Act, a person discriminates on the ground of the identity of a spouse if he or she treats another unfavourably because of the identity of the other's spouse, or former or proposed spouse.

(4) For the purposes of this Act, a person discriminates on the ground of pregnancy—

(a) if he or she treats a woman unfavourably because of her pregnancy or potential pregnancy; or

(b) if—

(i) he or she treats a pregnant woman unfavourably because she does not comply, or is not able to comply, with a particular requirement; and

(ii) the nature of the requirement is such that a substantially higher proportion of women who are not pregnant comply, or are able to comply, with the requirement than of those who are pregnant,

except if it is established by the person that the requirement is reasonable in the circumstances of the case; or

- 5
- (c) if he or she treats a pregnant woman unfavourably on the basis of a characteristic that appertains generally to pregnant women, or on the basis of a presumed characteristic that is generally imputed to pregnant women; or
 - (d) if he or she treats another unfavourably because of an attribute of or a circumstance affecting a relative or associate of the other, being an attribute or circumstance described in the preceding paragraphs.
- 10

(5) For the purposes of this Act, a person discriminates on the ground of association with a child—

- 15
- (a) if he or she treats another unfavourably because the person is breast feeding or bottle feeding an infant, or proposes to do so, or is, or proposes to be, accompanied by a child; or
 - (b) if he or she treats another unfavourably because a relative or associate of the other is breast feeding or bottle feeding an infant, or proposes to do so, or is, or proposes to be, accompanied by a child.
- 20

(6) For the purposes of this Act, a person discriminates on the ground of caring responsibilities—

- 25
- (a) if he or she treats another unfavourably because of the other's caring responsibilities or proposed caring responsibilities; or
 - (b) if—
 - (i) he or she treats another unfavourably because the other does not comply, or is not able to comply, with a particular requirement; and
 - (ii) the nature of the requirement is such that a substantially higher proportion of persons without caring responsibilities comply, or are able to comply, with the requirement than of those with caring responsibilities,
- 30

except if it is established by the person that the requirement is reasonable in the circumstances of the case; or

- 35
- (c) if he or she treats another unfavourably on the basis of a characteristic that appertains generally to persons with caring responsibilities, or on the basis of a presumed characteristic that is generally imputed to persons with caring responsibilities; or
 - (d) if he or she treats another unfavourably because of an attribute of or a circumstance affecting a relative or associate of the other, being an attribute or circumstance described in the preceding paragraphs.
- 40

(7) For the purposes of this Act, a person discriminates on the ground of profession, trade or lawful occupation—

- (a) if he or she treats another unfavourably because of the other's profession, trade or lawful occupation, or past or proposed profession, trade or lawful occupation; or
- (b) if he or she treats another unfavourably on the basis of a characteristic that appertains generally to persons of that profession, trade or lawful occupation, or on the basis of a presumed characteristic that is generally imputed to persons of that profession, trade or lawful occupation; or
- (c) if he or she treats another unfavourably because of the profession, trade or lawful occupation, or past or proposed profession, trade of lawful occupation, of a relative or associate of the other.

(8) For the purposes of this Act, a person discriminates on the ground of area of residence—

- (a) if he or she treats another unfavourably because of the other's area of residence or past or proposed area of residence; or
- (b) if he or she treats another unfavourably on the basis of a characteristic that appertains generally to persons of a particular area of residence, or on the basis of a presumed characteristic that is generally imputed to persons of a particular area of residence.

(9) For the purposes of this Act, a person discriminates on the ground of religious appearance or dress—

- (a) if he or she treats another unfavourably because of the other's appearance or dress and that appearance or dress is required by, or symbolic of, the other's religious beliefs; or
- (b) if he or she requires a person to alter the person's appearance or dress and that appearance or dress is required by, or symbolic of, the other's religious beliefs; or
- (c) if he or she treats another unfavourably because of the appearance or dress of a relative or associate of the other and that appearance or dress is required by, or symbolic of, the relative or associate's religious beliefs.

Division 2—Discrimination against workers

85U—Application of Division

This Division applies to discrimination on the ground of marital status, identity of spouse, pregnancy, caring responsibilities, area of residence or religious appearance or dress.

85V—Discrimination against applicants and employees

- (1) It is unlawful for an employer to discriminate against a person—
- (a) in determining, or in the course of determining, who should be offered employment; or
 - (b) in the terms or conditions on which employment is offered.
- (2) It is unlawful for an employer to discriminate against an employee—
- (a) in the terms or conditions of employment; or
 - (b) by denying or limiting access to opportunities for promotion, transfer or training, or to other benefits connected with employment; or
 - (c) by dismissing the employee; or
 - (d) by subjecting the employee to other detriment.

85W—Discrimination against agents and independent contractors

- (1) This section applies to a principal for whom work is done—
- (a) by agents remunerated by commission; or
 - (b) by independent contractors engaged under a contract for services.
- (2) It is unlawful for the principal to discriminate against a person—
- (a) in determining, or in the course of determining, who should be engaged as an agent or independent contractor; or
 - (b) in the terms or conditions on which such an engagement is offered.
- (3) It is unlawful for the principal to discriminate against an agent or independent contractor—
- (a) in the terms or conditions on which the agent or independent contractor is engaged; or
 - (b) by denying or limiting access to opportunities for promotion, transfer or training or other benefits connected with the agent's or independent contractor's position; or
 - (c) by terminating the engagement; or
 - (d) by subjecting the agent or independent contractor to other detriment.

85X—Discrimination against contract workers

- (1) This section applies to a principal for whom work is done by persons (*contract workers*) under a contract between the principal and another where the contract workers are employed or engaged by a person other than the principal.

- 5
- (2) It is unlawful for a principal to enter into a contract or arrangement with another for work to be performed by contract workers under which a person is to discriminate against a contract worker.
- (3) It is unlawful for the principal to discriminate against a contract worker—
- 10
- (a) in the terms or conditions on which the contract worker is allowed to work; or
- (b) by not allowing the contract worker to work; or
- (c) by denying or limiting access to a benefit connected with the employment or position concerned; or
- (d) by subjecting the contract worker to other detriment.

85Y—Discrimination within partnerships

- 15
- (1) It is unlawful for a firm, or a person promoting the formation of a firm, to discriminate against a person—
- (a) in determining, or in the course of determining, who should be offered a position as partner in the firm; or
- (b) in the terms or conditions on which that person is offered a position as partner in the firm.
- (2) It is unlawful for a firm to discriminate against a partner—
- 20
- (a) in the terms or conditions of membership of the firm; or
- (b) by denying or limiting access to a benefit arising from membership of the firm; or
- (c) by expelling the partner from the firm; or
- (d) by subjecting the partner to other detriment.

85Z—Exemptions

- 25
- (1) This Division does not apply in relation to—
- (a) an employer employing a person for purposes not connected with a business carried on by the employer; or
- 30
- (b) a principal engaging a natural person as an independent contractor for purposes not connected with a business carried on by the principal.
- (2) This Division does not apply to discrimination against a pregnant woman on the ground of pregnancy if—
- 35
- (a) the discrimination is based on the fact that the woman is not, or would not be, able—
- (i) to perform adequately, and without endangering herself, the unborn child or other persons, the work genuinely and reasonably required of her; or

- 5
- (ii) to respond adequately to situations of emergency that should reasonably be anticipated in connection with her duties; and
- (b) in the case of discrimination arising out of dismissal from employment—
- 10
- (i) there is no other work that the employer could reasonably be expected to offer the woman; and
- (ii) the woman has been offered leave for the period that would result in her being unable—
- 15
- (A) to perform adequately, and without endangering herself, the unborn child or other persons, the work genuinely and reasonably required of her; or
- (B) to respond adequately to situations of emergency that should reasonably be anticipated in connection with her duties, and the woman has declined to take the leave.
- (3) This Division does not apply to discrimination on the ground of area of residence in relation to employment or engagement for which it is a genuine occupational requirement that a person have a particular area of residence.
- 20
- (4) This Division does not apply to discrimination on the ground of religious appearance or dress if, by reason of the person's appearance or dress, the person is not, or would not be, able—
- 25
- (a) to perform adequately, and without endangering himself or herself or other persons, the work genuinely and reasonably required for the employment or position in question; or
- (b) to respond adequately to situations of emergency that should reasonably be anticipated in connection with the employment or position in question.
- 30

Division 3—Discrimination by other bodies

85ZA—Application of Division

This Division applies to discrimination on the ground of marital status, identity of spouse, pregnancy or caring responsibilities.

85ZB—Discrimination by associations

- 35
- (1) It is unlawful for an association to discriminate—
- (a) against an applicant for membership—
- 40
- (i) by refusing or failing to admit the applicant to membership, or to a particular class of membership, of the association; or

(ii) in the terms on which the applicant is, or may be, admitted to membership, or to a particular class of membership; or

(b) against a member of the association—

(i) by refusing or failing to provide a particular service or benefit to that member; or

(ii) in the terms on which a particular service or benefit is provided to that member; or

(iii) by expelling that member from the association or subjecting him or her to other detriment.

(2) This section does not render unlawful an association established—

(a) for persons of a particular marital status; or

(b) for spouses of a particular class of persons; or

(c) for persons with caring responsibilities or particular caring responsibilities,

and, consequently, such an association may discriminate against an applicant for membership so as to exclude from membership persons other than those for whom the association is established.

85ZC—Discrimination by qualifying bodies

It is unlawful for an authority or body empowered to confer an authorisation or qualification that is needed for, or facilitates, the practice of a profession, or the carrying on or engaging in of a trade or occupation, to discriminate against a person—

(a) by refusing or failing to confer or renew that authorisation or qualification; or

(b) in the terms or conditions on which it confers the authorisation or qualification; or

(c) by withdrawing the authorisation or qualification, or varying the terms or conditions on which it is held.

Division 4—Discrimination in education

85ZD—Application of Division

This Division applies to discrimination on the ground of marital status, identity of spouse, pregnancy, caring responsibilities, profession, trade or lawful occupation or religious appearance or dress.

85ZE—Discrimination by educational authorities

(1) It is unlawful for an educational authority to discriminate against a person—

(a) by refusing or failing to accept an application for admission as a student; or

- (b) in the terms or conditions on which it offers to admit the person as a student.
- (2) It is unlawful for an educational authority to discriminate against a student—
- 5 (a) in the terms or conditions on which it provides the student with education or training; or
- (b) by denying or limiting access to a benefit provided by the authority; or
- (c) by expelling the student; or
- 10 (d) by subjecting the student to other detriment.
- (3) This section does not apply to discrimination against a pregnant woman on the ground of pregnancy in respect of participation in a particular activity or admission as a student to a course requiring participation in a particular activity if the woman is not, or would not be, able—
- 15 (a) to perform adequately, and without endangering herself, the unborn child or other persons, the activity; or
- (b) to respond adequately to situations of emergency that should reasonably be anticipated in connection with the activity.
- 20 (4) This section does not apply to discrimination on the ground of profession, trade or lawful occupation in respect of admission as a student to an educational institution or course if the admission is determined wholly or in part by the applicant's current or past profession, trade or lawful occupation and that is reasonable in all the
- 25 circumstances.
- (5) This section does not apply to discrimination on the ground of religious appearance or dress in respect of participation in a particular activity if, by reason of the person's appearance or dress, the person is not, or would not be, able—
- 30 (a) to perform adequately, and without endangering himself or herself or other persons, the activity; or
- (b) to respond adequately to situations of emergency that should reasonably be anticipated in connection with the activity.

35 **Division 5—Discrimination in relation to land, goods, services and accommodation**

85ZF—Discrimination by person disposing of an interest in land

- (1) This section applies to discrimination on the ground of marital status, identity of spouse, pregnancy, caring responsibilities or profession, trade or lawful occupation.

- 5
- (2) It is unlawful for a person to discriminate against another—
 - (a) by refusing or failing to dispose of an interest in land to the other person; or
 - (b) in the terms or conditions on which an interest in land is offered to the other person.
 - (3) This section does not apply to the disposal of an interest in land by way of, or under, a testamentary disposition or gift.

85ZG—Discrimination in provision of goods and services

- 10
- (1) This section applies to discrimination on the ground of marital status, identity of spouse, pregnancy, association with a child, caring responsibilities or profession, trade or lawful occupation.
 - (2) It is unlawful for a person who offers or provides—
 - (a) goods; or
 - (b) services to which this Act applies,(whether for payment or not) to discriminate against another—
 - (c) by refusing or failing to supply the goods or perform the services; or
 - (d) in the terms or conditions on which or the manner in which the goods are supplied or the services are performed.
- 15

20 **85ZH—Discrimination in relation to accommodation**

- (1) This section applies to discrimination on the ground of marital status, identity of spouse, pregnancy, caring responsibilities or profession, trade or lawful occupation.
 - (2) It is unlawful for a person to discriminate against another—
 - (a) in the terms or conditions on which accommodation is offered; or
 - (b) by refusing an application for accommodation; or
 - (c) by deferring such an application or according the applicant a lower order of precedence on a list of applicants for that accommodation.
 - (3) It is unlawful for a person to discriminate against a person for whom accommodation has been provided—
 - (a) in the terms or conditions on which accommodation is provided; or
 - (b) by denying or limiting access to a benefit connected with the accommodation; or
 - (c) by evicting the person; or
 - (d) by subjecting the person to other detriment.
- 25
- 30
- 35

- 5 (4) This section does not apply to discrimination in relation to the provision of accommodation if the person who provides, or proposes to provide, the accommodation, or a near relative of that person, resides, and intends to continue to reside, in the same household as the person requiring the accommodation.
- 10 (5) This section does not apply to discrimination on the ground of marital status, pregnancy or caring responsibilities in relation to the provision of accommodation by an organisation that does not seek to secure a pecuniary profit for its members, if that accommodation is provided only for persons of a particular marital status, pregnant women or persons with caring responsibilities.
- 15 (6) This section does not apply to discrimination on the ground of profession, trade or lawful occupation in relation to the provision of accommodation if that accommodation is provided to a person as a benefit associated with that person's profession, trade or lawful occupation.

Division 6—General exemptions from Part 5B

85ZI—Charities

This Part does not—

- 20 (a) affect a provision in a charitable instrument for conferring benefits wholly or mainly on—
- (i) persons of a particular marital status; or
 - (ii) pregnant women; or
 - (iii) spouses of persons of a particular class; or

25 (iv) persons with caring responsibilities or particular caring responsibilities; or

 - (v) persons of a particular profession, trade or lawful occupation; or
 - (vi) persons of a particular area of residence; or
- 30 (b) render unlawful an act done to give effect to such a provision.

85ZJ—Rights in connection with pregnancy

This Part does not render unlawful the granting to women of rights or privileges in connection with pregnancy or childbirth.

85ZK—Measures intended to achieve equality

5 This Part does not render unlawful an act done for the purpose of carrying out a scheme or undertaking intended to ensure that persons of a particular marital status, or persons with caring responsibilities, or persons of a particular profession, trade or lawful occupation, or persons of a particular area of residence, have equal opportunities with, respectively, persons of another marital status, or persons without caring responsibilities, or persons of another profession, trade or lawful occupation, or persons of another area of residence, in any of the circumstances to which this Part applies.

85ZL—Exemption relating to identity of spouse

15 This Part does not apply to discrimination on the ground of the identity of a spouse if the discrimination is, having regard to all the circumstances of the particular case, reasonably necessary to preserve confidentiality, avoid conflicts of interest or nepotism or reasonably apprehended conflicts of interest or nepotism or protect the health or safety of persons.

85ZM—Religious bodies

20 This Part does not render unlawful discrimination on the ground of marital status in relation to—

- (a) the ordination or appointment of priests, ministers of religion or members of a religious order; or
- (b) the training or education of persons seeking ordination or appointment as priests, ministers of religion or members of a religious order.

61—Amendment of section 86—Victimisation is unlawful

Section 86—after subsection (3) insert:

- (4) For the purposes of this section, a person also commits an act of victimisation against another person if he or she engages in a public act inciting hatred, serious contempt or severe ridicule of the person or a group of persons of which the person is a member on a ground of discrimination that is unlawful by virtue of this Act.
- (5) However, an act is not an act of victimisation under subsection (4) if it is one of the following:
 - (a) publication of a fair report of the act of another person;
 - (b) publication of material in circumstances in which the publication would be subject to a defence of absolute privilege in proceedings for defamation;
 - (c) a reasonable act, done in good faith, for academic, artistic, scientific or research purposes or for other purposes in the public interest (including reasonable public discussion, debate or expositions).

(6) It is unlawful for an educational authority administering a secondary education institution to fail to have a written policy against victimisation by students that incorporates procedures for resolving complaints and is made readily available to students.

5

(7) In this section—

public act means—

- (a) any form of communication with the public; or
- (b) conduct in a public place.

62—Amendment of section 87—Sexual harassment

10

(1) Section 87(1) to (5)—delete subsections (1) to (5) and substitute:

(1) It is unlawful for a person to subject to sexual harassment—

- (a) a person with whom he or she works; or
- (b) a person who is seeking to become a fellow worker,

15

while in attendance at a place that is a workplace of both the persons or in circumstances where the person was, or ought reasonably to have been, aware that the other person was a fellow worker or seeking to become a fellow worker.

(2) It is unlawful for a person who works for an educational authority to subject a student of the educational authority, or a person applying to become a student of the educational authority, to sexual harassment while in attendance at a place in connection with the student's education or the applicant's prospective education or in circumstances where the person was, or ought reasonably to have been, aware that the person was a student, or a person applying to become a student, of the educational authority.

20

25

(3) It is unlawful for a student enrolled in a course of secondary education, while in attendance at a place in connection with his or her education, to subject a person who works at the educational institution at which the student is enrolled or a fellow student to sexual harassment.

30

(2) Section 87—after subsection (6) insert:

(6aa) It is unlawful for a person to whom goods, services to which this Act applies or accommodation are being offered, supplied, performed or provided by another person to subject that other person to sexual harassment.

35

(3) Section 87—after subsection (6e) insert:

(6f) It is unlawful for a member of an authority or body empowered to confer an authorisation or qualification that is needed for, or facilitates, the practice of a profession, or the carrying on or engaging in of a trade or occupation to subject an applicant for the conferral of such an authorisation or qualification to sexual harassment.

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(6g) It is unlawful for a member of the governing body of an association to subject a member of the association, or a person applying to become a member of the association, to sexual harassment.

(4) Section 87(7) to (11)—delete subsections (7) to (11) and substitute:

5 (7) If an employee reports to his or her employer specific circumstances in which the employee was subjected, in the course of his or her employment, to sexual harassment by a person other than a fellow worker, and it is reasonable in all the circumstances to expect that further sexual harassment of the employee by the same person is likely to occur, it is unlawful for the employer to fail to take reasonable steps to prevent the further sexual harassment.

10 (8) It is unlawful for an educational authority administering a secondary education institution to fail to have a written policy against sexual harassment by students that incorporates procedures for resolving complaints and is made readily available to students.

15 (9) For the purposes of this section—

(a) a person *sexually harasses* another (the *person harassed*) if—

20 (i) the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed; or

(ii) engages in other unwelcome conduct of a sexual nature in relation to the person harassed,

25 in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the person harassed would be offended, humiliated or intimidated; and

30 (b) *conduct of a sexual nature* includes making a statement of a sexual nature to a person, or in the presence of a person, whether the statement is made orally or in writing; and

(c) a person *works with another* if both carry out duties or perform functions, in whatever capacity and whether for payment or not, in or in relation to the same business or organisation; and

35 (d) a person *works for* an authority if he or she carries out duties or performs functions, in whatever capacity and whether for payment or not, in or in relation to that authority; and

40 (e) *workplace* means a place (including a ship, aircraft or vehicle) at which a person works or attends in connection with the person's work.

63—Substitution of section 88

Section 88—delete the section and substitute:

87A—Sharing accommodation with child

(1) It is unlawful for a person—

- 5 (a) to refuse an application for accommodation; or
 (b) to defer such an application or accord the applicant a late
 order of precedence on a list of applicants for that
 accommodation,

10 on the ground that the applicant intends to share that accommodation
 with a child.

(2) Subsection (1) does not apply—

- 15 (a) in relation to the provision of accommodation for
 recreational purposes, if the use of that accommodation is
 limited, on a genuine and reasonable basis, to persons other
 than children or persons of a particular age group; or
 (b) in relation to the provision of accommodation, if the person
 who provides, or proposes to provide, the accommodation,
 or a near relative of that person, resides, and intends to
20 continue to reside, in the same household as the person
 requiring the accommodation.

87B—Student breast feeding infant

(1) It is unlawful for an educational authority to discriminate against a
25 student by denying or limiting access to the educational services
 provided by the authority on the ground that the student is breast
 feeding an infant or proposes to do so.

(2) This section does not apply to discrimination in respect of a
 particular activity if, the student is not, or would not be, able—

- 30 (a) to perform adequately, and without endangering herself or
 other persons, the activity; or
 (b) to respond adequately to situations of emergency that should
 reasonably be anticipated in connection with the activity.

88—Assistance animals

Subject to this Act—

- 35 (a) it is unlawful to impose a condition or requirement that
 would result in a person with a disability being separated
 from his or her assistance animal; and
 (b) a person who imposes such a condition or requirement is, in
 addition to civil liability that might be incurred under this
40 Act, guilty of an offence.

Maximum penalty: \$2 500.

88A—Therapeutic animals

- (1) It is unlawful for a person—
- (a) to refuse an application for accommodation; or
 - (b) to defer such an application or accord the applicant a late order of precedence on a list of applicants for that accommodation,
- on the ground that the applicant intends to keep a therapeutic animal at that accommodation.
- (2) Subsection (1)(a) does not apply if the respondent establishes that in the circumstances of the case the refusal was reasonable.
- (3) In this section—
- therapeutic animal* means—
- (a) an animal certified by a medical practitioner as being required to assist a person as a consequence of the person's disability; or
 - (b) an animal of a class prescribed by regulation,
- but does not include an assistance animal, a dangerous dog within the meaning of the *Dog and Cat Management Act 1995* or a dog of a prescribed breed within the meaning of the *Dog and Cat Management Act 1995*.

64—Substitution of section 91

Section 91—delete the section and substitute:

91—Civil liability of employers and principals

- (1) Subject to this section, a person is, for the purposes of this Act, vicariously liable for a discriminatory or unlawful act of an agent or employee of the person committed while acting in the course of their agency or employment.
- (2) In proceedings brought under this Act against a person in respect of an act alleged to have been committed by an agent or employee while acting in the course of their agency or employment, it is a defence to prove that the person took reasonable steps to ensure that the agent or employee would not act in contravention of this Act.
- (3) Without limiting subsection (2), a defence is established under that subsection in relation to an alleged discriminatory or unlawful act if the person—
- (a) had in force at the relevant time an appropriate policy for the prevention of such an act; and
 - (b) had taken reasonable steps to implement and enforce the policy including—
 - (i) reasonable steps to make the employees and agents of the person aware of the terms of the policy; and

- (ii) prompt investigation of any alleged act and taking appropriate action.

65—Substitution of heading to Part 8 Division 1

Heading to Part 8 Division 1—Delete the heading and substitute:

5

Division 1—Proceedings before Commissioner and Tribunal

66—Amendment of section 93—Making of complaints

- (1) Section 93(1)(c)—delete "has an intellectual impairment" and substitute:
is a child or has an intellectual disability
- 10 (2) Section 93(1)—after paragraph (c) insert:
 - (d) by a person who is, in the opinion of the Commissioner, a suitable representative of the interests of a person or persons aggrieved by the act.
- (3) Section 93(1a)—delete "pursuant to subsection (1)(b)" and substitute:
15 under subsection (1)(b) or (d)
- (4) Section 93(2)(a)—delete "six" and substitute:
12
- (5) Section 93(2)(b)—delete "six" and substitute:
12
- 20 (6) Section 93—after subsection (2) insert:
 - (2a) The Commissioner may, on application, extend the time for lodging a complaint, even if the time for lodging the complaint has expired, if the Commissioner is satisfied—
 - 25 (a) that there is good reason why the complaint was not made within the stipulated time period; and
 - (b) that in all the circumstances it is just and equitable to do so.
 - (2b) If the Commissioner decides to refuse an application to extend the time for lodging a complaint, the Commissioner must give the applicant notice in writing of the decision and of the applicant's right
30 to have the decision reviewed.
 - (2c) A complaint alleging that a student enrolled in a course of secondary education has committed an act of sexual harassment or victimisation against a fellow student of the educational institution at which the student is enrolled may not be lodged unless the complainant satisfies the Commissioner that the complainant has made a
35 reasonable attempt to resolve the matter through procedures available at the institution or that there is good reason for not doing so.
- (7) Section 93(3)—delete ", personally or by post, upon" and substitute:
on

67—Amendment of section 93A—Investigation initiated by Commissioner

Section 93A(1) and (2)—delete subsections (1) and (2) and substitute:

- 5
- (1) If it appears to the Commissioner that a person may have acted in contravention of this Act, the Commissioner may investigate the matter notwithstanding that a complaint has not been lodged.
 - (2) The Commissioner must, by notice in writing to the person the subject of an investigation under this section, inform the person of the investigation and the details of the alleged contravention.

10 **68—Amendment of section 94—Investigations of complaints or matters initiated by Commissioner**

(1) Section 94(1)—delete "or a matter being referred" and substitute:

or the Commissioner determining that a matter requires investigation

(2) Section 94—delete subsection (2) and substitute:

- 15
- (2) An investigation by the Commissioner into an alleged contravention of this Act is to be conducted—
 - 20 (a) in the case of an investigation on a complaint—for the purpose of enabling the Commissioner to determine whether the complaint is one on which action should be taken by the Commissioner and, if so, enabling resolution of the matter by conciliation or enabling referral of the matter to the Tribunal; and
 - 25 (b) in the case of an investigation initiated by the Commissioner—for the purpose of enabling the Commissioner to determine whether the matter should be referred to the Tribunal and, if so, enabling that referral.
 - (2a) For the purposes of an investigation, the Commissioner may, by notice in writing, require a person whom the Commissioner reasonably believes may have in his or her possession or control books, papers or other documents relevant to the subject matter of the investigation, to produce to the Commissioner such of those books, papers or other documents as may be specified in the notice.
 - 30 (2b) The Commissioner cannot, without the consent of the person concerned, require production of—
 - 35 (a) records of counselling or therapy sessions undergone by the person; or
 - (b) records or notes made by an advocate for the person in relation to the subject matter of the alleged contravention of the Act.

(3) Section 94(3)—delete "pursuant to subsection (2)" and substitute:

40 under subsection (2a)

(4) Section 94(3), penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$2 500.

(5) Section 94(4)—delete subsection (4) and substitute:

- (4) A person is not obliged to produce books, papers or documents under this section if—
- (a) their contents would tend to incriminate the person of an offence; or
 - (b) by producing them the person would commit a breach of legal professional privilege.

69—Substitution of section 95

Section 95—delete the section and substitute:

95—Conciliation of complaints lodged with Commissioner

- (1) If the Commissioner is of the opinion that a matter the subject of a complaint (other than a complaint declined by the Commissioner under section 95A) may be resolved by conciliation, the Commissioner must make all reasonable endeavours to resolve the matter by conciliation.
- (2) If the Commissioner—
- (a) has received more than 1 complaint against the same respondent alleging the same or similar issues of law or fact; and
 - (b) is of the opinion that the most appropriate form of conciliation is by way of joint conciliation,
- the Commissioner may conciliate the matters jointly.
- (3) The Commissioner may, by notice in writing to the complainant or the person who is alleged to have contravened this Act, require that person to attend at a time and place specified in the notice for the purpose of conciliation.
- (4) A person who refuses or fails to comply with a requirement of the Commissioner under this section is guilty of an offence.
Maximum penalty: \$2 500.
- (5) The Commissioner may conduct conciliation proceedings as the Commissioner thinks fit, including—
- (a) by conciliating the matter without bringing the parties into direct contact with one another; and
 - (b) by inviting persons other than the parties to attend the conciliation proceedings (for example, by inviting representatives of an educational authority to attend conciliation proceedings in a case involving sexual harassment between students).
- (6) A party to proceedings is not entitled to be represented, or assisted, by a legal practitioner in conciliation proceedings except with the authority of the Commissioner.

- 5
- (7) If a child is a party to proceedings, the child is entitled to be supported in conciliation proceedings by an adult who, in the opinion of the Commissioner, would be of assistance in that role.
- (8) For the purposes of conciliating a matter, the Commissioner may make available to a particular party to the proceedings books, papers or documents produced by other persons for the purposes of an investigation that are likely, in the Commissioner's opinion, to facilitate resolution of the matter (but the Commissioner must not make records referred to in section 94(2b), or other documents containing confidential or personal information, available without the consent of the person concerned).
- 10
- (9) Evidence of anything said or done in the course of conciliation proceedings is not admissible in proceedings under this Act or any other Act or law.

15

95A—Commissioner may decline complaints in certain circumstances

- (1) The Commissioner may, by notice in writing to the complainant, decline to recognise a complaint as one on which action should be taken by the Commissioner if, in the opinion of the Commissioner—
- 20
- (a) the complaint is frivolous, vexatious, misconceived or lacking in substance; or
- (b) the complaint has ceased to be a complaint that should be proceeded with because the complainant—
- 25
- (i) has died; or
- (ii) is unable to be contacted; or
- (iii) has expressed an intention not to proceed, or otherwise evidenced a lack of interest in proceeding, with the complaint; or
- (iv) has unreasonably refused or failed to cooperate; or
- 30
- (c) representation for the complainant before the Tribunal should not be provided at public expense because, in all the circumstances of the case, there is no reasonable prospect of an order being made by the Tribunal under section 96(1) or of an order being made by the Tribunal that is more favourable to the complainant than offers refused by the complainant in conciliation proceedings.
- 35
- (2) A decision by the Commissioner not to recognise a complaint as one on which action should be taken may be made at any time, despite the fact that to some extent action has already been taken on the complaint.
- 40
- (3) If—
- (a) the Commissioner has determined that a complaint has ceased to be a complaint that should be proceeded with under subsection (1)(b); and

- (b) the complainant contacts the Commissioner within 12 months after the date of that determination requesting that the complaint proceed,

the Commissioner may reinstate the complaint.

5 **95B—Referral of complaints to Tribunal**

- (1) If, in respect of a complaint, the Commissioner—

- (a) is of the opinion that the matter cannot be resolved by conciliation; or
10 (b) has attempted to resolve the matter by conciliation but has not been successful in that attempt; or
15 (c) has declined to recognise the complaint as one on which action should be taken and the complainant has, within 3 months of being notified of the Commissioner's decision, by notice in writing, required the Commissioner to refer the complaint to the Tribunal,

the Commissioner must refer the matter to the Tribunal for hearing and determination.

- (2) However, if the complaint alleges that a person has committed an act of victimisation on the ground of race—

- 20 (a) the Commissioner may only refer the matter to the Tribunal with the consent of the victim; and
25 (b) the referral of the matter to the Tribunal prevents the victim from bringing civil proceedings under section 73 of the *Civil Liability Act 1936* in respect of the subject matter of the complaint.

- (3) The Minister must ensure that assistance by way of representation is offered to the complainant in proceedings before the Tribunal (except if the Commissioner has declined to recognise the complaint).

30 **95C—Referral of matters initiated by Commissioner to Tribunal**

- (1) If, following an investigation initiated by the Commissioner, the Commissioner is of the opinion that the matter should be referred to the Tribunal for hearing and determination, the Commissioner will lodge a complaint with the Tribunal in respect of the matter.
35 (2) If, following an investigation initiated by the Commissioner, the Commissioner determines that the matter should not be referred to the Tribunal, the Commissioner must, by notice in writing to the person the subject of the investigation, inform the person of that determination.

40 **70—Amendment of section 96—Power of Tribunal to make certain orders**

- (1) Section 96(1)(a)—before "an order" insert:
subject to this section,

(2) Section 96(1)(c)—after "contravention" insert:

or remedying a discriminatory or unlawful act

(3) Section 96(3)—after subsection (3) insert:

(3a) In awarding compensation the Tribunal must take into account the amount of damages or compensation (if any) awarded in other proceedings (criminal or civil) in respect of the same act or series of acts.

(3b) An award of compensation may not be made against a child for an act in contravention of this Act (but an award of compensation may be made against a person who is vicariously liable for the act of the child).

(4) Section 96(4), penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$5 000.

(5) Section 96—after subsection (5) insert:

(6) The Commissioner may, at the request or with the leave of the Tribunal, assist the Tribunal in proceedings.

71—Insertion of section 96A

After section 96 insert:

96A—Limitation on publicity relating to child

A person must not publish, by radio, television or newspaper, on the internet or in any other way, a report of proceedings under this Act to which a child is a party if the report identifies the child or contains information tending to identify the child.

Maximum penalty: \$10 000.

72—Amendment of heading to Part 8 Division 2

Heading to Part 8 Division 2—delete the heading and substitute:

Division 2—Review and appeal

73—Insertion of section 96B

Before section 97 insert:

96B—Review of refusal to extend time

(1) If the Commissioner has refused an application for an extension of time within which to lodge a complaint, the applicant may apply to the Tribunal for a review of the decision.

(2) An application for review must be made within 1 month after notification of the decision.

(3) The Tribunal may confirm the decision of the Commissioner or substitute its own decision.

74—Insertion of section 99A

After section 99 insert:

99A—Reasonable standards of appearance and dress

Nothing in this Act prevents the imposition or enforcement of a requirement for a worker or student to comply with a standard of appearance or dress that is reasonable for the circumstances to which the requirement relates (but such a standard will not be reasonable if it would result in unlawful discrimination).

75—Amendment of section 100—Proceedings under *Fair Work Act 1994*

- (1) Section 100(3)—delete "the sex, sexuality, marital status, pregnancy, race, impairment or age of the person" and substitute:

a ground of discrimination under this Act

- (2) Section 100(5)—delete "the sex, sexuality, marital status, pregnancy, race, impairment or age of the person" and substitute:

a ground of discrimination under this Act

- (3) Section 100—after subsection (5) insert:

- (6) The Commissioner may, with leave of the Industrial Relations Commission of South Australia, make submissions and present evidence in proceedings before the Commission under the *Fair Work Act 1994*.

76—Amendment of section 102—Offences against Commissioner

Section 102, penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$5 000.

77—Amendment of section 103—Discriminatory advertisements

Section 103(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$2 500.

78—Substitution of section 104

Section 104—delete the section and substitute:

104—Service of documents

A notice or document required or authorised to be given or sent to, or served on, a person for the purposes of this Act may—

- (a) be given to the person personally; or
- (b) be posted in an envelope addressed to the person at the person's last known address; or
- (c) if the person is a party to proceedings under this Act, be transmitted to the person by fax transmission or email to the fax number or email address last provided to the Commissioner by the person for that purpose; or

- (d) in the case of a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth, be given in accordance with that Act.

79—Amendment of section 106—Regulations

- 5 (1) Section 106(1)—after "regulations" insert:
as are contemplated by or
- (2) Section 106(2)(c)—delete paragraph (c) and substitute:
(c) impose fines, not exceeding \$2 500, for offences against the regulations.

10 Schedule 1—Related amendments

Part 1—Amendment of *Civil Liability Act 1936*

1—Amendment of section 73—Racial victimisation

Section 73—after subsection (6) insert:

- 15 (7) An action for damages for racial victimisation brought under this section (before or after the commencement of this subsection) prevents the making of a complaint under section 86 of the *Equal Opportunity Act 1984* in respect of the subject matter of the action.

Part 2—Amendment of *Racial Vilification Act 1996*

2—Amendment of section 6—Damages

- 20 Section 6(4)—after "racial victimisation" insert:
within the meaning of the *Civil Liability Act 1936*, or the settlement reached or compensation awarded on a complaint under the *Equal Opportunity Act 1984* for an act of victimisation on the ground of race,

25 Schedule 2—Further amendments of *Equal Opportunity Act 1984*

Provision amended	How amended
Section 2	Delete the section
Section 5(1) <i>the Commissioner</i> <i>council</i>	Delete "the" from the defined term Delete "established under the <i>Local Government Act 1934</i> " and substitute: constituted under the <i>Local Government Act 1999</i>
<i>educational authority</i>	Delete "any" and substitute: a
<i>the panel</i>	Delete "the" from the defined term

Provision amended	How amended
<i>the Registrar</i>	Delete "the" from the defined term
<i>services to which this Act applies</i> , (c)	Delete "banking" and substitute: services provided in the course of a banking business
<i>services to which this Act applies</i> , (i)	Delete "any" and substitute: a
<i>services to which this Act applies</i> , (j)	Delete "municipal or district"
<i>the Tribunal</i>	Delete "the" from the defined term
<i>unpaid worker</i>	Delete "any"
Heading to Part 2	Delete "the"
Heading to Part 2 Division 1	Delete "The"
Section 12	Delete the section
Section 15(1)	Delete "any" and substitute: a
Section 15(2)	Delete "any" and substitute: a
Heading to Part 2 Division 2	Delete "The"
Section 18(5)	Delete "Where" and substitute: If
Section 18(6)	Delete "Where" and substitute: If
Section 21(2)	Delete "any" and substitute: an
Section 23(1)	Delete "Where" and substitute: If
Section 23(1)(b)	Delete "any questions relating to the admissibility of evidence or any question" and substitute: questions relating to the admissibility of evidence or other questions
Section 23(1)(c)	Delete "any other question" and substitute: other questions
Section 23(2)	Delete "any" and substitute: a
Section 23(4)	Delete "any"
Section 24(1)	Delete "any person who is"
Section 24(3)	Delete "Where" and substitute: If

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Schedule 2—Further amendments of *Equal Opportunity Act 1984*

Provision amended	How amended
Section 25(1)(a)	Delete "any" and substitute: a
Section 25(1)(b)	Delete "any"
Section 25(1)(c)	Delete "any" first occurring Delete "any of them, or of any of their contents" and substitute: them or their contents
Section 25(1)(d)	Delete "any person to make oath" and substitute: a person to make an oath Delete "any matter" and substitute: a matter
Section 25(1)(e)	Delete "any person" and substitute: a person Delete "any relevant" and substitute: relevant Delete "any member" and substitute: a member Delete "any other person" and substitute: a person
Section 25(2)(b)	Delete "any"
Section 26(1)	Delete "any" Delete "where" wherever occurring and substitute in each case: if
Section 26(2)	Delete "Where" and substitute: If Delete "upon" and substitute: on
Section 27(1)	Delete "any" first occurring
Section 27(1)(a)	Delete "any person who may be representing any of them" and substitute: their representatives
Section 27(3)	Delete "Where" and substitute: If
Heading to Part 2 Division 3	Delete "The"
Heading to Part 3 Division 1	Delete "this Part" and substitute: Part 3
Section 29(2)(a)	Delete "person"
Section 29(2)(c)	Delete "person"
Section 29(3)(a)	Delete "person"

Provision amended	How amended
Section 29(3)(c)	Delete "person"
Section 30(1)	After "against a person" insert: on the ground of sex, chosen gender or sexuality
Section 30(2)	After "against an employee" insert: on the ground of sex, chosen gender or sexuality
Section 31(2)	Delete "any" wherever occurring After "against a person" insert: on the ground of sex, chosen gender or sexuality
Section 31(3)	After "against an agent" insert: on the ground of sex, chosen gender or sexuality
Section 31(3)	Delete "any" wherever occurring
Section 32(3)	After "against a contract worker" insert: on the ground of sex, chosen gender or sexuality
Section 32(3)(c)	Delete "any" and substitute: a
Section 32(3)(d)	Delete "any"
Section 33(1)	After "against a person" insert: on the ground of sex, chosen gender or sexuality
Section 33(3)	After "against a person" insert: on the ground of sex, chosen gender or sexuality
Section 33(4)	After "against a partner" insert: on the ground of sex, chosen gender or sexuality
Section 33(4)(b)	Delete "any" and substitute: a
Section 33(4)(d)	Delete "any"
Section 35(1)(b)(iii)	Delete "any"
Section 35(2)	Delete "where" wherever occurring and substitute in each case: if
Section 35(3)	Delete "upon" and substitute: on
Section 36	After "against a person" insert: on the ground of sex, chosen gender or sexuality Delete "upon" and substitute: on
Section 37(1)	After "against a person" insert: on the ground of sex, chosen gender or sexuality

Equal Opportunity (Miscellaneous) Amendment Bill 2006
Schedule 2—Further amendments of *Equal Opportunity Act 1984*

Provision amended	How amended
Section 37(2)	After "against a student" insert: on the ground of sex, chosen gender or sexuality
Section 37(2)(b)	Delete "any" and substitute: a
Section 37(2)(d)	Delete "any"
Section 37(3)(b)	Delete "where" and substitute: if
Section 38(1)	After "against another" insert: on the ground of sex, chosen gender or sexuality
Section 39(1)	After "against another" insert: on the ground of sex, chosen gender or sexuality
Section 39(2)	Delete "Where" and substitute: If
Section 40(1)	After "against another" insert: on the ground of sex, chosen gender or sexuality
Section 40(1)(c)	Delete "any" and substitute: a
Section 40(2)	After "has been provided" insert: on the ground of sex, chosen gender or sexuality
Section 40(2)(b)	Delete "any" and substitute: a
Section 40(2)(d)	Delete "any"
Section 40(4)	Delete "where" and substitute: if
Part 3 Division 6 (sections 41 to 44)	Delete the Division
Heading to Part 3 Division 7	Delete "this Part" and substitute: Part 3
Section 45(a)	Delete "upon" and substitute: on
Section 45(b)	Delete "any" and substitute: an
Section 49	Delete "any" Delete "where" and substitute: if Delete "upon" and substitute: on

Provision amended	How amended
Heading to Part 4	Delete "the"
Heading to Part 4 Division 1	Delete "this Part" and substitute: Part 4
Section 51(a)	Delete "person"
Section 51(c)	Delete "person"
Section 52(2)	Delete "any" wherever occurring
Section 53(3)	Delete "any" wherever occurring
Section 54(3)(c)	Delete "any" and substitute: a
Section 54(3)(d)	Delete "any"
Section 55(1)	Delete "consisting of one or more members, or for one or more persons" and substitute: , or a person
Section 55(2)	Delete "consisting of two or more partners"
Section 55(2)(b)	Delete "any" and substitute: a
Section 55(2)(d)	Delete "any"
Section 57(1)(b)(iii)	Delete "any"
Section 58(1)(c)	Delete "upon" and substitute: on
Section 59(2)(b)	Delete "any" and substitute: a
Section 59(2)(d)	Delete "any"
Section 62(1)(c)	Delete "any" and substitute: a
Section 62(2)(b)	Delete "any" and substitute: a
Section 62(2)(d)	Delete "any"
Heading to Part 4 Division 7	Delete "this Part" and substitute: Part 4
Section 64	Delete "upon" and substitute: on Delete "any" and substitute: an
Heading to Part 5 Division 1	Delete "this Part" and substitute: Part 5
Section 67(2)	Delete "any" wherever occurring

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Schedule 2—Further amendments of *Equal Opportunity Act 1984*

Provision amended	How amended
Section 68(3)	Delete "any" wherever occurring
Section 69(3)(c)	Delete "any" and substitute: a
Section 69(3)(d)	Delete "any"
Section 70(1)	Delete "consisting of one or more members, or for one or more persons" and substitute: , or a person
Section 70(2)	Delete "consisting of two or more partners"
Section 70(2)(b)	Delete "any" and substitute: a
Section 70(2)(d)	Delete "any"
Section 72	Delete "any"
Section 73(1)(c)	Delete "upon" and substitute: on
Section 74(2)(b)	Delete "any" and substitute: a
Section 74(2)(d)	Delete "any"
Section 76(2)	Delete "Where" and substitute: If
Section 76(3)	Delete "where" and substitute: if
Section 77(1)(c)	Delete "any" and substitute: a
Section 77(2)(b)	Delete "any" and substitute: a
Section 77(2)(d)	Delete "any"
Section 78(1)	Delete "any" wherever occurring
Section 78(1)(c)(i)	Delete "upon" wherever occurring and substitute in each case: on
Section 78(1)(d)	Delete "where" and substitute: if
Heading to Part 5 Division 7	Delete "this Part" and substitute: Part 5
Section 80(a)	Delete "upon" and substitute: on
Section 80(b)	Delete "any" and substitute: an

Provision amended	How amended
Section 85	Delete "any" wherever occurring Delete "where" wherever occurring and substitute in each case: if Delete "upon" and substitute: on
Heading to Part 5A	Delete "the"
Heading to Part 5A Division 1	Delete "this Part" and substitute: Part 5A
Section 85A(a)	Delete "person"
Section 85A(c)	Delete "person"
Section 85B(2)	Delete "any" wherever occurring
Section 85C(3)	Delete "any" wherever occurring
Section 85D(3)(c)	Delete "any" and substitute: a
Section 85D(3)(d)	Delete "any"
Section 85E(1)	Delete "consisting of one or more members, or for one or more persons" and substitute: , or a person
Section 85E(2)	Delete "consisting of two or more partners"
Section 85E(2)(b)	Delete "any" and substitute: a
Section 85E(2)(d)	Delete "any"
After section 85E	Insert:

85EA—No compulsory retiring age

Despite any Act or law to the contrary, an industrial or enterprise award, determination or agreement made or approved under the *Fair Work Act 1994* that—

- (a) imposes, or requires or authorises an employer to impose, a compulsory retiring age in respect of employment of any kind; or
- (b) requires or authorises an employer to terminate the employment of a person on the basis of the person's age,

is void and of no effect.

Section 85F(4)(a)	Delete "award or industrial agreement made or approved under the <i>Industrial Relations Act (S.A.) 1972</i> " and substitute: industrial or enterprise award, determination or agreement made, approved or certified under the <i>Fair Work Act 1994</i> or the <i>Workplace Relations Act 1996</i> of the Commonwealth
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Equal Opportunity (Miscellaneous) Amendment Bill 2006
Schedule 2—Further amendments of *Equal Opportunity Act 1984*

Provision amended	How amended
Section 85F(4)(b)	Delete "where" and substitute: if Delete "award or industrial agreement made, approved or certified under the <i>Industrial Relations Act (S.A.) 1972</i> or under the <i>Industrial Relations Act 1988</i> of the Commonwealth" and substitute: industrial or enterprise award, determination or agreement made, approved or certified under the <i>Fair Work Act 1994</i> or the <i>Workplace Relations Act 1996</i> of the Commonwealth
Section 85F(4a) to (6)	Delete these subsections
Section 85G(1)	Delete "After the expiration of one year from the commencement of this Part, it will be" and substitute: It is
Section 85G(1)(b)(iii)	Delete "any"
Section 85G(2)	Delete "where" and substitute: if
Section 85G(3)	Delete "does" and substitute: do Delete "where" and substitute: if
Section 85I(2)(b)	Delete "any" and substitute: a
Section 85I(2)(d)	Delete "any"
Section 85I(3)	Delete "where" and substitute: if
Section 85K(3)(b)	Delete "any" and substitute: a Delete "where" and substitute: if
Section 85L(1)(c)	Delete "any" and substitute: a
Section 85L(3)(b)	Delete "any" and substitute: a
Section 85L(3)(d)	Delete "any" and substitute: other
Section 85L(4)	Delete "where" and substitute: if
Section 85L(5)(a)	Delete "where" and substitute: if

Provision amended	How amended
Heading to Part 5A Division 6	Delete "this Part" and substitute: Part 5A
Section 85N(b)	Delete "any" and substitute: an
Part 5A Division 7 (section 85S)	Delete the Division
Section 86(2)(a)	Delete "any" and substitute: a
Section 86(2)(b) and (d)	Delete "any"
Section 89	Delete "Where" and substitute: If
Section 90	Delete "Where" and substitute: If
Section 92	Delete "upon" wherever occurring and substitute in each case: on
Section 92(1)	Delete "any of the provisions" and substitute: a provision
Section 92(1)(c)	Delete "any"
Section 92(4)(b)	Delete "where" and substitute: if
Section 92(4)(c)	Delete "any" and substitute: a
Section 92(6)(b)	Delete "any"
Heading to Part 8	Delete "of this Act"
Section 93(1)(a)	Delete "any" and substitute: a
Section 93(1)(b)	Delete "any" first occurring and substitute: a
Section 93(1)(c)	Delete "where" and substitute: if
Section 93(2)(a)	Delete "when" and substitute: if
Section 93(3)	Delete "Upon" and substitute: On
Section 93AA(6) and (7)	Delete subsections (6) and (7)
Section 94(5)	Delete "any books, papers or documents produced pursuant to" and substitute: books, papers or documents produced under

Equal Opportunity (Miscellaneous) Amendment Bill 2006
Schedule 2—Further amendments of *Equal Opportunity Act 1984*

Provision amended	How amended
Section 94(6)	Delete "any" and substitute: a
Section 94(7)	Delete "any"
Section 96(1)	Delete "any" first occurring
Section 96(1)(a)	Delete "any" and substitute: a
Section 96(1)(b)	Delete "any"
Section 96(2)(a)	Delete "any" and substitute: a
Section 96(5)	Delete "Any" and substitute: An
Section 97	Delete "any" first occurring and substitute: a Delete "any" second occurring
Section 98(1)(a)	Delete "upon" and substitute: on
Section 98(2)	Delete "any" and substitute: a
Section 98(5)(a)	Delete "any" and substitute: a
Section 100(1)	Delete "section 31 of the <i>Industrial Conciliation and Arbitration Act 1972</i> " and substitute: the <i>Fair Work Act 1994</i>
Section 100(2)	Delete "Where" and substitute: If Delete "section 31 of the <i>Industrial Conciliation and Arbitration Act 1972</i> " and substitute: the <i>Fair Work Act 1994</i>
Section 100(3)	Delete "where" and substitute: if Delete " <i>Industrial Conciliation and Arbitration Act 1972</i> " and substitute: <i>Fair Work Act 1994</i>
Section 100(4)	Delete "Where" and substitute: If Delete "section 31 of the <i>Industrial Conciliation and Arbitration Act 1972</i> " and substitute: the <i>Fair Work Act 1994</i>

Provision amended	How amended
Section 100(5)	Delete "where" and substitute: if Delete " <i>Industrial Conciliation and Arbitration Act 1972</i> " and substitute: <i>Fair Work Act 1994</i>
Section 101	Delete the section
Section 106(2)(a)	Delete "any form" and substitute: forms
Section 106(2)(b)	Delete "any" and substitute: a