

# Amendments to the Equal Opportunity Act

A number of amendments to the Equal Opportunity Act 1995 (Vic) (EOA) became effective on October 11 2006.

The amendments:

- Make it possible for representatives to lodge a complaint to the Equal Opportunity Commission Victoria (Commission) on behalf of an individual or group who believe they have been subjected to discrimination or sexual harassment
- Expand the activities included in the definition of industrial activity
- Revise the definitions of "employer", "employee" and "employment" in line with changes to the Workplace Relations Act 1996 (Cwlth) (WRA) brought about by WorkChoices.

## Representative complaints

Before the amendments only the person (with limited exceptions relating to children and people with disabilities) alleging discrimination or sexual harassment could make a complaint to the Commission. The amendments make it possible for the Commission to receive representative complaints. This provision also exists in the Racial and Religious Tolerance Act 2001 (Vic).

A representative (an advocate, for example) can make a complaint of discrimination or sexual harassment to the Commission on behalf of themselves and an individual or group. A complaint on behalf of more than one person must relate to the same set of circumstances or allegations. For example, a representative complaint may relate to poor access to buildings which affect many people with a disability.

The Commission must accept a complaint from a representative if:

- There is a basis for the complaint (see About the Equal Opportunity Act below)
- The complaint relates to essentially the same conduct or set of circumstances
- The people alleging discrimination or sexual harassment are identified by name and have consented to the complaint being made on their behalf.

A representative body (an advocacy or support organisation for example) can make a complaint of discrimination or sexual harassment to the Commission on behalf of an individual or group. The complaint on behalf of more than one person must relate to the same set of circumstances or allegations.

The Commission must accept a complaint from a representative organisation if:

- There is a basis for the complaint (see About the Equal Opportunity Act below)
- The representative organisation has the consent of the person or group members to make a complaint on their behalf
- The representative organisation has "sufficient interest" in the complaint

A representative organisation has "sufficient interest" in a complaint if the allegations are a matter of genuine concern to the organisation because they adversely affect or potentially affect the interests of the organisation or the interests and welfare of the people represented by the organisation.

### Expanded definition of industrial activity

Under the EOA it is against the law to discriminate against someone on the basis of their industrial activity. This includes discrimination against people who engage in industrial activity as well as people who do not participate in industrial activity.

Before the amendments were introduced the definition of industrial activity was limited to matters involving membership (or non-membership) of industrial organisations (unions, professional associations) and participation (or non participation) in lawful activities organised by an industrial organisation.

Under the amendments the definition of industrial activity has been expanded to include:

- establishing or forming an industrial organisation or association
- organising or promoting a lawful activity on behalf of an industrial organisation or association
- encouraging, assisting or participating in a lawful activity organised or promoted by an industrial organisation or association
- representing or advancing the views, claims or interests of members of an industrial organisation or association.

The amended EOA also recognises less formal "industrial associations" which can include employee associations with no particular connection with a union. For example, employees who meet formally or informally to discuss workplace matters that may lead to industrial action or for advancing claims are covered under this definition.

### Revised definitions of "employer", "employee" and "employment"

The amended EOA revises the definitions of "employer", "employee" and "employment" in line with the terminology used under the WRA, as amended by WorkChoices. The revised EOA definitions recognise employment relationships formed under the range of workplace agreements (including AWAs, certified agreement and awards) recognised under the amended WRA.

### About the Equal Opportunity Act

Under the EOA discrimination is against the law to discriminate against someone on the basis of a number of personal characteristics including age, breastfeeding, carer responsibilities, disability or impairment, gender identity, industrial activity, lawful sexual activity, marital status, parental status, physical features, political belief or activity, pregnancy, race, religious belief or activity, sex, sexual orientation or personal association with someone who has, or is assumed to have one of these personal characteristics.

Sexual harassment is also against the law.

It is against the law to hassle or victimise someone because they have made an allegation or formal complaint of discrimination or sexual harassment. It is also against the law to authorise or assist another person to discriminate or sexually harass someone. That means that a person must not ask, instruct or encourage anyone person to discriminate against or sexually harass another person.

Discrimination is against the law in a number of public areas of life including accommodation, clubs, education, employment, the provision of goods and services, selling and transferring land and sport.

### About the Equal Opportunity Commission Victoria

The Commission helps people resolve complaints of discrimination or sexual harassment by providing a conciliation service that is confidential, impartial, free and simple. The Commission is not a tribunal or court. It helps people resolve complaints by mutual agreement. The Commission does not prosecute, make judgments for or against either side, nor can it award compensation.

The amended EOA can be accessed at:  
<http://www.equalopportunitycommission.vic.gov.au/publications>