

The Equal Opportunity Act 2010 Investigations Policy

This document explains how the Victorian Equal Opportunity and Human Rights Commission will exercise its investigation function under the *Equal Opportunity Act 2010*.

A. Background

The role of the Commission

The Victorian Equal Opportunity and Human Rights Commission (the **Commission**) has a number of functions under the *Equal Opportunity Act 2010*, including an investigation function. Under sections 127 and 128 of the Equal Opportunity Act, the Commission may investigate suspected breaches of the Act on its own accord or after a matter has been referred by the Victorian Civil and Administrative Tribunal (the **Tribunal**). This applies to issues of discrimination, sexual harassment and victimisation.

The Commission's investigation function supports the objectives of the Equal Opportunity Act to:

- eliminate discrimination, sexual harassment and victimisation to the greatest extent possible
- encourage the identification and elimination of systemic causes of discrimination, sexual harassment and victimisation, and
- enable the Commission to encourage best practice and facilitate compliance.

The Equal Opportunity Act gives the Commission a discretion about what matters it will investigate and allows flexibility in conducting an investigation. However, various checks and balances have also been built into the Equal Opportunity Act to ensure the Commission exercises its functions appropriately and in accordance with the principles of natural justice.

B. Commencing Investigations

An investigation is an inquiry conducted in order to collect facts or information. In the context of the work of the Commission, the investigation function serves as a means of collecting facts and information into suspected breaches of the Equal Opportunity Act.

Possible breaches of the Equal Opportunity Act that may be the subject of an investigation can come to the Commission's attention in a variety of ways. These include, but are not limited to the following:

- the Commission's own general Enquiry Line
- through reports in the media
- in the course of performing the Commission's functions under the Act (such as research or patterns that emerge through dispute resolution)

- through submissions from stakeholders or community groups
- referral by the Victorian Civil and Administrative Tribunal.

The Board of the Commission is responsible for making the decision about whether the Commission should commence an investigation. To commence an investigation, the Board must be satisfied that the matter –

1. Raises an issue that is serious in nature; and
2. Relates to a class or group of persons; and
3. Cannot reasonably be expected to be resolved by dispute resolution or by making an application to the Tribunal under section 122; and
4. There are reasonable grounds to suspect that one or more contraventions of the Equal Opportunity Act have occurred; and
5. The investigation would advance the objectives of the Act.

These requirements are set out in s 127 of the Equal Opportunity Act.

In addition to these factors, the Board will also consider from a practical perspective whether the Commission is in a position to investigate a particular matter. Regulatory constraints, limitations on resources, the jurisdiction of other authorities and regulators, and the size of issues will mean that the Commission is not in a position to investigate every matter brought to its attention. For these reasons, the Board will also consider some or all of the following factors –

- The nature and seriousness of the alleged breach of the Equal Opportunity Act.
- Would the Commission within its functions be likely to obtain sufficient evidence to support a finding of a breach of the Act?
- What are the resource requirements in conducting the investigation including how much is the investigation likely to cost, does the Commission have the required staff to undertake the investigation, and can the workload involved in the investigation be managed?
- What is the likelihood of obtaining a satisfactory outcome?
- Will action taken by the Commission set an example to other individuals and organisations about conduct that is not acceptable under the Equal Opportunity Act, i.e. will the outcome of the investigation have a broader impact?
- Are there other ways of addressing the issue raised?

C. Conducting Investigations

When conducting an investigation, the manner in which the Commission goes about collecting information will depend on the circumstances of each investigation. For example, the Commission may collect information by –

- asking any party to provide information in relation to an investigation on a voluntary basis
- through direct observation
- collecting publicly available information and documents
- calling for public comments or submissions
- seeking stakeholder input
- applying to the Tribunal for an order requiring a person to provide information or a document or both to the Commission

- applying to the Tribunal for an order that a person attend before the Commission, at a reasonable time and place, to answer questions, or
- any other means it considers appropriate in the circumstances of the case and within the powers given to the Commission under the Act.

In cases where the Commission makes an application to the Tribunal for an order compelling production or a person's attendance, the Commission will need to show that a person has a document and/or information and it is relevant to the investigation and necessary for the conduct of that investigation. Other factors that the Tribunal will consider include whether the production or attendance may have an adverse impact on the person's business or other activities and the extent of disruption or inconvenience that is likely to be caused to the person if they were required to produce the document or attend the Commission.

The decision to go to the Tribunal and ask for such orders will be made on a case-by-case basis and depend on the circumstances of each case.

The Equal Opportunity Act also provides that when conducting an investigation the Commission must act in accordance with the principles of natural justice. In doing so, the Commission will act fairly and ensure that it will –

- Give a person whose interests may be adversely affected by an investigation an opportunity to present his or her case.
- Act without bias.
- Base any conclusions arising from the investigation on logically probative evidence.

D. Outcomes of Investigations

The Equal Opportunity Act provides the Commission with a number of options that it may take both during the course of and at the conclusion of an investigation. This may include –

- Entering into an agreement with a person about action required to rectify the contravention (the Commission will only enter into an agreement that is consistent with the Act).
- Referring the matter to the Tribunal for determination (in which case the Commission is an applicant).
- Providing a report with respect to the matter to the Attorney-General or directly to Parliament.
- Take no further action.

The decision about what approach or approaches is best suited to the investigation will depend on the circumstances of each case.

E. Review of the Policy

This policy will be subject to regular review and we invite your feedback about the policy and the use of our functions more generally.

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