



LAWFUL SEXUAL ACTIVITY DISCRIMINATION

What is Discrimination on the basis of Lawful Sexual Activities?

Under the Victorian Equal Opportunity Act 1995, it is unlawful to discriminate against someone or treat them unfairly because of their actual or presumed lawful sexual activity or orientation.

Lawful sexual activity is defined as including either:

- taking part in or not taking part or
- refusing to take part in any form of sexual activity not prohibited by Victorian law.

This covers homosexuals, lesbians and heterosexuals, legal prostitution and people perceived to fall into one of these groups.

Unlawful sexual activities such as paedophilia, incest, bestiality or sexual assault are not covered, regardless of the gender or sexual preference of the person claiming discrimination.

Discrimination on the basis of lawful sexual activity or orientation may be **direct** or **indirect**.

Direct discrimination on the basis of actual or presumed lawful sexual activity or orientation means treating a person less favourably than a person who takes part in other lawful sexual activities or is of a different sexual orientation, in the same or similar circumstances.

Indirect discrimination happens when a requirement, condition or practice which does not appear to be unfair, in fact does discriminate against people who take part in a particular lawful sexual activity or who are of a particular sexual orientation.

Where is discrimination on the basis of Lawful Sexual Activity unlawful?

It is unlawful to discriminate on the basis of a person's actual or presumed lawful sexual activity or orientation in the areas of:

■ ACCOMMODATION

which covers renting, buying, offering or providing temporary or permanent accommodation such as business premises, a house, flat, hotel or motel room, boarding house or hostel, caravan, mobile home or camping site.

However a person may refuse to provide accommodation to another person if the other person intends to use the accommodation for, or in connection with, a lawful sexual activity on a commercial basis.

■ CLUBS & CLUB MEMBERS

which covers social, recreational, sporting or community service clubs that are located on Crown land or receive any financial assistance from the Government or a municipal council.

Fran and Meg were members of a local golf club which occupies crown land. When it became obvious that the pair were a couple, they began to experience discriminatory treatment from the club. For example, when the couple telephoned the club to book a time to play golf, they were always told that no time slots were available. The couple could lodge a complaint with the Commission, claiming discrimination by the club.

■ EDUCATION

which includes refusing to admit a student to an educational institution, setting unfair entry terms, denying or limiting access to benefits, expelling the student or subjecting the student to any other unfair treatment because of their actual or presumed lawful sexual activity or orientation.

■ EMPLOYMENT

which includes job applicants, employees and contract workers.

Susan applied for a position as a receptionist with a large company. At the interview, Susan was asked about her outside interests. Susan listed a number of hobbies including her membership of a gay/lesbian choir. At this point the interviewer concluded the interview saying that he did not feel that Susan would fit into the workplace environment.

*The company is **directly** discriminating against Susan on the basis of sexual orientation. Susan could lodge a complaint with the Commission.*

■ GOODS & SERVICES & DISPOSAL OF LAND

which includes refusing to supply a person with goods or services, supplying a person with goods or services on less favourable terms or subjecting a person to any other unfair treatment because of their actual or presumed lawful sexual activity or orientation. It does not matter whether the goods and services are provided for money or not.

■ SPORT

which includes refusing to select a person for a sporting team or excluding them from participating in a sporting activity.

■ SEXUAL HARASSMENT

it is also unlawful to sexually harass another person in the same areas of public life where discrimination is against the law.

The sexual orientation of the perpetrator or victim is irrelevant.

Sexual harassment is behaviour of a sexual nature that is unwelcome, unsolicited and unreciprocated. It can be physical, verbal, written, displayed or transmitted and can consist of

- unwelcome comments about a person's sex life or physical appearance
- suggestive behaviour such as leering and ogling
- unnecessary physical intimacy such as brushing up against a person
- sexual jokes or remarks, offensive telephone calls, photographs, e-mails, posters, computer-generated or displayed materials, reading matter or objects
- sexual propositions or continued requests for dates
- physical contact such as touching or fondling
- indecent assault or rape (which are also criminal offences)

Andy, who was gay, worked along side Don who constantly planted postcards of nude men on Andy's desk and constantly asked male co-workers if Andy made passes at them. Andy could lodge a sexual harassment complaint with the Commission. Possible outcomes might include compensation, an apology by Don and/or his transfer to another branch and an undertaking by their employer to put an effective sexual harassment policy in place.



DEALING WITH DISCRIMINATION

Where is discrimination unlawful in Victoria?

Under the Victorian Equal Opportunity Act 1995, it is against the law to discriminate directly or indirectly against someone because of their:

- Age
- Carer status
- Disability
- Lawful sexual activity / sexual orientation
- Personal association with a person who could be discriminated against because of any of the characteristics listed here
- Physical features
- Political or Industrial activity or beliefs
- Pregnancy, Parental or Marital status
- Race
- Sex

or

- To sexually harass another person

It is unlawful to discriminate against someone on the basis of any of these personal characteristics or attributes or to sexually harass them in the areas of:

- Employment
- Goods and services and disposal of land
- Education
- Accommodation
- Clubs and club memberships
- Sport

What can you do if you have been discriminated against?

The first step is to tell the person who is treating you unfairly that such discrimination is unlawful.

If you are unable to do so or if they still refuse to treat you fairly, you should contact the Victorian Equal Opportunity Commission for free and confidential advice about how to deal with the situation.

You can also lodge a formal complaint of discrimination with the Commission under the Victorian Equal Opportunity Act or federal anti-discrimination laws.

The complaint will be dealt with through the Commission's confidential, impartial and free complaints resolution service.

Most complaints are settled through conciliation, where you and the person who discriminated against you are brought together with a conciliator from the Commission to discuss the problem and try to work out a solution. This may include job reinstatement, an agreement to provide what was previously refused, an apology, policy changes or compensation.

If conciliation is not successful, you can ask to have the matter referred to the Victorian Civil and Administrative Tribunal or the federal Human Rights and Equal Opportunity Commission for a public hearing. The Tribunal has the power to hear evidence and to make an order to resolve the situation.

It is also against the law for anyone to hassle or "victimise" a person because they have lodged a complaint with the Commission.

How to contact the Victorian Equal Opportunity Commission

Level 3
380 Lonsdale St
Melbourne
VIC 3000
eoc@vicnet.net.au

Enquiries line
(03) 9281 7100
Fax
(03) 9281 7171
www.eoc.vic.gov.au

Toll free country calls
1800 134 142
TTY
(03) 9281 7110

Free interpreters and Aboriginal Commission staff are available on request.