

Legal Solutions newsletter

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News

NEWS

New Legislation

Sex and Age Discrimination Legislation Amendment Act 2011 (Cth)

The new *Sex and Age Discrimination Legislation Amendment Act 2011 (Cth)* amends both the *Sex Discrimination Act 1984* and the *Age Discrimination Act 2004*.

The Amended Act came into effect as of 21 June 2011. The main features are as follows:

- Extends protection from discrimination on “family responsibilities” to both men and women in all areas of work;
- Provides greater protection from sexual harassment for workers and students;
- Ensures that protections from sex discrimination apply equally to men and women; and
- Establishes breast feeding as a separate ground of discrimination.

In addition, the Hon Susan Ryan has been appointed as the first full-time Age Discrimination Commissioner with the Australian Human Rights and Equal Opportunity Commission (“the Commission”) and commenced as of 8 August 2011 and Dr Helen Szoke (formerly Commissioner of the Victorian Commission) has been appointed as the first full-time Race Discrimination Commissioner and commences as of 5 September 2011.

Equal Opportunity Act 2010

The new *Equal Opportunity Act 2010* (“EO Act”)

commenced as of 1 August 2011, which replaces the previous *Equal Opportunity Act 1995 (Vic)* and strengthens discrimination laws in Victoria and creates new responsibilities for the Victorian Equal Opportunity and Human Rights Commission (“Commission”) in terms of dispute resolution.

The main features of the new Act are as follows:

- Changes in definitions of direct and indirect discrimination
 - Direct discrimination occurring where a person treats, or proposes to treat, a person with a protected personal characteristic unfavourably because of that personal characteristic.
 - Indirect discrimination occurring where an unreasonable requirement, condition or practice that purports to treat everyone the same ends up either actually, or potentially disadvantaging someone with a personal characteristic that is protected.
- Employers have a positive duty to take proactive, reasonable and proportionate measures to eliminate discrimination, sexual harassment and victimisation.
- Employers have a duty to provide reasonable adjustments for persons with disabilities in employment, to help the person with a disability to perform the job. The Act now provides a list of factors that help determine when it might be reasonable for adjustments to be made in the workplace such as:
 1. The employee’s circumstances, including the nature of their disability;
 2. The nature of the role being offered;
 3. The type of adjustment that is needed to accommodate the employee’s needs;

1



4. The financial circumstances of the employer;
 5. The size and nature of the workplace and business;
 6. The effect on the workplace and business of making the adjustments, including the financial impact, the number of people who would be advantaged or disadvantaged by making them, and the impact on efficiency and productivity of staff;
 7. The consequences for the employer if the adjustments are made;
 8. Any relevant action plan that has been made under the *Commonwealth Disability Discrimination Act 1992*; or
 9. Any relevant disability standards made under the *Disability Discrimination Act*.
- Protection of volunteers and unpaid workers from sexual harassment in employment.
 - Powers for the Commission to investigate systemic issues without waiting for an individual complaint to be made, and
 - Complaints can be made by way of the Commission's dispute resolution processes or directly with the Victorian Civil and Administrative Tribunal ("VCAT").

Crimes Act 1958

In September 2006, a 19-year-old waitress, Brodie Panlock tragically ended her life after being subjected to persistent workplace bullying at a café Vamp in Hawthorn. The three men responsible pleaded guilty and were convicted and fined pursuant to the *Occupational Health and Safety Act 2004*. Brodie's family demanded that the law be changed so as to include a custodial sentence for workplace bullying.

From 7 June 2011 amendments have been made to the *Crimes Act 1958* so as to apply to serious bullying, including within the workplace, known as "Brodie's Law".

The existing offence of stalking under section 21A has been expanded to include the following:

- Making threats to the victim;
- Using abusive or offensive words to, or in front of, the victim;

- Performing abusive or offensive acts in the presence of the victim; and
- Directing abusive or offensive acts towards the victim.

Stalking also includes acting in a way that could reasonably be expected to cause physical or mental harm to the victim, including causing the victim to self-harm (including suicide). Mental harm is also now defined as psychological harm or causing a victim to engage in suicidal thoughts.

The maximum penalty for stalking is 10 years' imprisonment.

Amendments have also been made to the *Stalking Intervention Orders Act 2008* and *Personal Safety Intervention Orders Act 2010* to ensure that the intervention order system is consistent with the amendments to the definition of stalking.

If a Magistrate is satisfied that an applicant is being seriously bullied and that it is likely to continue, the Court can issue an intervention order. Breach of the intervention order can be charged as a separate criminal offence.

Given the changes in both the federal and State legislation, Workforce Legal Solutions recommends that your equal opportunity and workplace bullying and harassment policies and procedures are reviewed and updated to ensure that they are consistent with these changes. Please contact our office on (03) 9505 6221 should you require assistance with this task.

New Guide for Women: Taking Action on Human Rights Violation

The Sex Discrimination Commissioner, Elizabeth Broderick has launched a guide to assist women who have experienced human rights violations, to utilise international complaint processes.

The guide is titled "Mechanisms for advancing women's human rights: A guide to using the Optional Protocol to the Convention on the Elimination of all forms of Discrimination against Women".

This guide can be downloaded from the Commission's website:

www.hreoc.gov.au/sex_discrimination/publication/mechanisms/index.html