

Equal Opportunity Amendment (Family Responsibilities) Act 2008

No. 1 of 2008

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Equal Opportunity Amendment (Family Responsibilities) Act 2008[†]

No. 1 of 2008

[Assented to 11 February 2008]

The Parliament of Victoria enacts:

1 Purpose

The main purpose of this Act is to amend the **Equal Opportunity Act 1995** to expand the range of what constitutes discrimination against parents or carers in employment or employment-related areas.

2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day to be proclaimed.

- (2) If this Act does not come into operation before 1 September 2008, it comes into operation on that day.

3 Principal Act

In this Act, the **Equal Opportunity Act 1995** is called the Principal Act.

See:
Act No.
42/1995.
Reprint No. 5
as at
10 May 2007
and
amending
Act Nos
24/2006,
69/2006 and
16/2007.
LawToday:
www.
legislation.
vic.gov.au

4 Objectives

In section 3(b) of the Principal Act **omit** "by prohibiting discrimination on the basis of various attributes".

5 Definitions

Insert the following definition in section 4(1) of the Principal Act—

"work arrangements means—

- (a) in the case of a person offered employment, arrangements—
 - (i) that would apply to the person as an employee; or
 - (ii) applying to the workplace; or
- (b) in the case of an employee, arrangements applying to the employee or the workplace; or

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- (c) in the case of a contract worker (within the meaning of section 15), arrangements applying to the contract worker or the workplace of the principal (within the meaning of that section); or
 - (d) in the case of a person invited to become a partner, arrangements—
 - (i) that would apply to the person as a partner; or
 - (ii) applying to the firm's workplace; or
 - (e) in the case of a partner, arrangements applying to the partner or the firm's workplace."

6 Meaning of discrimination

In section 7(1) of the Principal Act, after "attribute" **insert** "or a contravention of section 13A, 14A, 15A, 31A, 51 or 52".

7 New section 13A inserted

After section 13 of the Principal Act **insert**—

"13A Employer must accommodate responsibilities as parent or carer of person offered employment

- (1) An employer must not, in relation to the work arrangements of a person offered employment, unreasonably refuse to accommodate the responsibilities that the person has as a parent or carer.

Example

An employer may be able to accommodate a person's responsibilities as a parent or carer by offering work on the basis that the person could work additional daily hours to provide for a shorter working week or occasionally work from home.

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- (2) In determining whether an employer unreasonably refuses to accommodate the responsibilities that a person has as a parent or carer, all relevant facts and circumstances must be considered, including—
- (a) the person's circumstances, including the nature of his or her responsibilities as a parent or carer; and
 - (b) the nature of the role that is on offer; and
 - (c) the nature of the arrangements required to accommodate those responsibilities; and
 - (d) the financial circumstances of the employer; and
 - (e) the size and nature of the workplace and the employer's business; and
 - (f) the effect on the workplace and the employer's business of accommodating those responsibilities, including—
 - (i) the financial impact of doing so;
 - (ii) the number of persons who would benefit from or be disadvantaged by doing so;
 - (iii) the impact on efficiency and productivity and, if applicable, on customer service of doing so; and
 - (g) the consequences for the employer of making such accommodation; and
 - (h) the consequences for the person of not making such accommodation."
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8 New section 14A inserted

After section 14 of the Principal Act **insert—**

"14A Employer must accommodate employee's responsibilities as parent or carer

- (1) An employer must not, in relation to the work arrangements of an employee, unreasonably refuse to accommodate the responsibilities that the employee has as a parent or carer.

Example

An employer may be able to accommodate an employee's responsibilities as a parent or carer by allowing the employee to work from home on a Wednesday morning or have a later start time on a Wednesday or, if the employee works on a part-time basis, by rescheduling a regular staff meeting so that the employee can attend.

- (2) In determining whether an employer unreasonably refuses to accommodate the responsibilities that an employee has as a parent or carer, all relevant facts and circumstances must be considered, including—
- (a) the employee's circumstances, including the nature of his or her responsibilities as a parent or carer; and
 - (b) the nature of the employee's role; and
 - (c) the nature of the arrangements required to accommodate those responsibilities; and
 - (d) the financial circumstances of the employer; and
 - (e) the size and nature of the workplace and the employer's business; and

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- (f) the effect on the workplace and the employer's business of accommodating those responsibilities, including—
 - (i) the financial impact of doing so;
 - (ii) the number of persons who would benefit from or be disadvantaged by doing so;
 - (iii) the impact on efficiency and productivity and, if applicable, on customer service of doing so; and
 - (g) the consequences for the employer of making such accommodation; and
 - (h) the consequences for the employee of not making such accommodation."

9 New section 15A inserted

After section 15 of the Principal Act **insert**—

"15A Principal must accommodate contract worker's responsibilities as parent or carer

- (1) A principal must not, in relation to the work arrangements of a contract worker, unreasonably refuse to accommodate the responsibilities that the contract worker has as a parent or carer.

Example

A principal may be able to accommodate a contract worker's responsibilities as a parent or carer by allowing the contract worker to have flexible start, finish or break times.

- (2) In determining whether a principal unreasonably refuses to accommodate the responsibilities that a contract worker has as a parent or carer, all relevant facts and circumstances must be considered, including—

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- (a) the contract worker's circumstances, including the nature of his or her responsibilities as a parent or carer; and
 - (b) the nature of the work contracted for; and
 - (c) the nature of the arrangements required to accommodate those responsibilities; and
 - (d) the financial circumstances of the principal; and
 - (e) the size and nature of the workplace and the principal's business; and
 - (f) the effect on the workplace and the principal's business of accommodating those responsibilities, including—
 - (i) the financial impact of doing so;
 - (ii) the number of persons who would benefit from or be disadvantaged by doing so;
 - (iii) the impact on efficiency and productivity and, if applicable, on customer service of doing so; and
 - (g) the consequences for the principal of making such accommodation; and
 - (h) the consequences for the contract worker of not making such accommodation.
- (3) In this section *contract worker* and *principal* have the same meanings as in section 15."
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10 New section 31A inserted

After section 31 of the Principal Act **insert—**

"31A Firm must accommodate responsibilities as parent or carer of person invited to become a partner or of a partner

- (1) A firm comprising 5 or more partners must not, in the work arrangements of a person invited to become a partner or of a partner, unreasonably refuse to accommodate the responsibilities that the person or partner has as a parent or carer.

Example

A firm may be able to accommodate the responsibilities that a person or partner has as a parent or carer by allowing the person or partner to have flexible attendance arrangements.

- (2) In determining whether a firm unreasonably refuses to accommodate the responsibilities that a person or partner has as a parent or carer, all relevant facts and circumstances must be considered, including—
- (a) the circumstances of the person or partner, including the nature of his or her responsibilities as a parent or carer; and
 - (b) the nature of the partnership role; and
 - (c) the nature of the arrangements required to accommodate those responsibilities; and
 - (d) the financial circumstances of the firm; and
 - (e) the size and nature of the workplace and the firm's business; and

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- (f) the effect on the workplace and the firm's business of accommodating those responsibilities, including—
 - (i) the financial impact of doing so;
 - (ii) the number of persons who would benefit from or be disadvantaged by doing so;
 - (iii) the impact on efficiency and productivity and, if applicable, on customer service of doing so; and
 - (g) the consequences for the firm of making such accommodation; and
 - (h) the consequences for the person or partner of not making such accommodation."

11 Repeal of Act

This Act is **repealed** on 1 September 2009.

ENDNOTES

[†] *Minister's second reading speech—*

Legislative Assembly: 11 October 2007

Legislative Council: 1 November 2007

The long title for the Bill for this Act was "A Bill for an Act to amend the **Equal Opportunity Act 1995** to expand the range of what constitutes discrimination against parents or carers in employment or employment-related areas and for other purposes."