

Equal Opportunity (Gender Identity and Sexual Orientation) Act 2000

Act No. 52/2000

TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
1. Purpose	1
2. Commencement	1
3. Principal Act	2
4. Definitions	2
5. Discrimination on the basis of gender identity or sexual orientation	3
6. New section 27B inserted	3
27B. Exception—gender identity	3
7. Discrimination in competitive sporting activities	4
8. New section 224 inserted	4
224. Transitional provisions— Equal Opportunity (Gender Identity and Sexual Orientation) Act 2000	4
ENDNOTES	6



Victoria

No. 52 of 2000

Equal Opportunity (Gender Identity and Sexual Orientation) Act 2000[†]

[Assented to 12 September 2000]

The Parliament of Victoria enacts as follows:

1. *Purpose*

The purpose of this Act is to amend the **Equal Opportunity Act 1995** to prohibit discrimination on the basis of gender identity or sexual orientation.

2. *Commencement*

- (1) Subject to sub-section (2), this Act comes into operation on a day or days to be proclaimed.

*Equal Opportunity (Gender Identity and Sexual Orientation) Act
2000*

s. 3

Act No. 52/2000

- (2) If a provision of this Act does not come into operation before 1 January 2001, it comes into operation on that day.

3. *Principal Act*

No. 42/1995.
Reprint No. 3
as at 1 July
1998.

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

4. *Definitions*

- (1) In section 4 of the Principal Act, after the definition of "firm" **insert**—

' "**gender identity**" means—

- (a) the identification on a bona fide basis by a person of one sex as a member of the other sex (whether or not the person is recognised as such)—
- (i) by assuming characteristics of the other sex, whether by means of medical intervention, style of dressing or otherwise; or
- (ii) by living, or seeking to live, as a member of the other sex; or
- (b) the identification on a bona fide basis by a person of indeterminate sex as a member of a particular sex (whether or not the person is recognised as such)—
- (i) by assuming characteristics of that sex, whether by means of medical intervention, style of dressing or otherwise; or
- (ii) by living, or seeking to live, as a member of that sex;'

- (2) In section 4 of the Principal Act, after the definition of "services" **insert**—
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*Equal Opportunity (Gender Identity and Sexual Orientation) Act
2000*

Act No. 52/2000

s. 5

' "**sexual orientation**" means homosexuality (including lesbianism), bisexuality or heterosexuality;'

5. Discrimination on the basis of gender identity or sexual orientation

- (1) In section 6 of the Principal Act, before paragraph (b) **insert**—
"(ac) gender identity;"
- (2) In section 6 of the Principal Act, after paragraph (e) **insert**—
"(ea) parental status or status as a carer;"
- (3) In section 6 of the Principal Act, for paragraph (l) **substitute**—
"(l) sexual orientation;"

6. New section 27B inserted

After section 27A of the Principal Act **insert**—

"27B. Exception—gender identity

- (1) An employer may discriminate against another person on the basis of gender identity in any of the areas specified in section 13 or 14 if—
 - (a) the person does not give the employer adequate notice of the person's gender identity; or
 - (b) the person gives the employer adequate notice of the person's gender identity but it is unreasonable in the circumstances for the employer not to discriminate against the person.
- (2) In determining whether or not it is unreasonable for the employer not to discriminate against the person, all relevant

*Equal Opportunity (Gender Identity and Sexual Orientation) Act
2000*

s. 7

Act No. 52/2000

facts and circumstances must be considered, including—

- (a) the cost to the employer of not discriminating;
- (b) the feasibility of the employer not discriminating;
- (c) the financial impact on the employer of not discriminating;
- (d) the financial circumstances of the employer;
- (e) the impact of the proposed discrimination on the person;
- (f) any other relevant factors."

7. *Discrimination in competitive sporting activities*

In section 66(1) of the Principal Act, after "sex" insert "or with a gender identity".

8. *New section 224 inserted*

At the end of Part 12 of the Principal Act insert—

"224. *Transitional provisions—Equal Opportunity (Gender Identity and Sexual Orientation) Act 2000*

- (1) Subject to this Act, a complaint may be lodged after the commencement of section 5(3) of the **Equal Opportunity (Gender Identity and Sexual Orientation) Act 2000** alleging a contravention of this Act constituted by discrimination on the basis of sexual orientation, whether the alleged contravention took place before or after that commencement.
 - (2) A complaint cannot be lodged as provided by sub-section (1) if the alleged contravention—
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*Equal Opportunity (Gender Identity and Sexual Orientation) Act
2000*

Act No. 52/2000

s. 8

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- (a) took place before the commencement of section 5(3) of the **Equal Opportunity (Gender Identity and Sexual Orientation) Act 2000**; and
- (b) had been the subject matter of a complaint lodged with the Commission before that commencement.
- (3) A complaint lodged with the Commission before the commencement of section 5(3) of the **Equal Opportunity (Gender Identity and Sexual Orientation) Act 2000** but not finally disposed of immediately before that commencement must continue to be dealt with under this Act as if section 5(3) of that Act had not come into operation."
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*Equal Opportunity (Gender Identity and Sexual Orientation) Act
2000*

Endnotes

Act No. 52/2000

ENDNOTES

† *Minister's second reading speech—*

Legislative Assembly: 13 April 2000

Legislative Council: 30 August 2000

The long title for the Bill for this Act was "to amend the **Equal Opportunity Act 1995** to prohibit discrimination on the basis of gender identity or sexual orientation and for other purposes."