

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

Act No. 52/2000

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Victoria

No. 52 of 2000

## **Equal Opportunity (Gender Identity and Sexual Orientation) Act 2000<sup>†</sup>**

[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.

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- (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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' "**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

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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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- (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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Endnotes

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**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."