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Australia: Anti-Discrimination Act 1991 (Act n° 85 of 1991)

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CHAPTER 2-DISCRIMINATION PROHIBITED BY

THIS ACT (COMPLAINT)

PART 1-ACT'S ANTI-DISCRIMINATION

PURPOSE

Act's anti-discrimination purpose and how it is to be achieved

6.(1) One of the purposes of the Act is to promote equality of opportunity for everyone by protecting them from unfair discrimination in certain areas of activity, including work, education and accommodation.

(2) This purpose is to be achieved by

(a) prohibiting discrimination that is

(i) on a ground set out in Part 2; and

(ii) of a type set out in Part 3; and.

(iii) in an area of activity set out in Part 4;

unless an exemption set out in Part 4 or 5 applies; and

(b) allowing a complaint to be made under Chapter 7 against the person who has unlawfully discriminated; and

(c) using the agencies and procedures established under Chapter 7 to deal with the complaint

PART 2-PROHIBITED GROUNDS OF

DISCRIMINATION

Discrimination on the basis of certain attributes prohibited

7.(1) The Act prohibits discrimination on the basis of the following attributes

- a. sex;
- b. marital status;
- c. pregnancy

- d. parental status
- e. breast feeding
- f. age
- g. race
- h. impairment;
- i. religion;
- j. political belief or activity;
- k. trade union activity;
- l. lawful sexual activity;
- m. association with, or relation to, a person identified on the basis of any of the above attributes.

(2) Breastfeeding is an attribute for which discrimination is prohibited only for the purposes of Division 4 of Part 4 (Goods and services area).

Meaning of discrimination on the basis of an attribute

8. Discrimination on the basis of an attribute includes direct and indirect discrimination on the basis of

- a. a characteristic that a person with any of the attributes generally has; or
- b. a characteristic that is often imputed to a person with any of the attributes;
or
- c. an attribute that a person is presumed to have, or to have had at any time, by the person discriminating; or
- d. an attribute that a person had, even if the person did not have it at the time of the discrimination.

Example of paragraph (c)

If an employer refused to consider a written application from a person called Viv because it assumed Viv was female, the employer would have discriminated on the basis of an attribute (female sex) that Viv (a male) was presumed to have.

PART 4-AREAS OF ACTIVITY IN WHICH DISCRIMINATION IS PROHIBITED

Division 1-Part's structure

Explanatory provision (structure)

12.(1) This Part specifies the areas of activity in which discrimination is prohibited and the exemptions that apply in relation to those areas.

(2) Part 5 specifies general exemptions that apply to all the areas.

Division 2-Work and work-related areas

Subdivision A-Prohibitions in work and work-related areas

Explanatory provision (prohibitions)

13.(1) A person must not discriminate in the work or work-related area if a prohibition in sections 14 to 23 applies.

(2) This Subdivision does not apply to discrimination in connection with superannuation or insurance.

(3) Discrimination in connection with superannuation or insurance is dealt with in sections 52 to 75.

Discrimination in the pre-work area

14.(1) A person must not discriminate

- a. in the arrangements made for deciding who should be offered work; or
- b. in deciding who should be offered work; or
- c. in the terms of work that is offered; or
- d. in failing to offer work; or
- e. by denying a person seeking work access to a guidance program, an apprenticeship training program or other occupational training or retraining program; or
- f. in developing the scope or range of such a program.

(2) Subsection (1) does not apply to discrimination on the basis of trade union activity if section 13.107 or 13.108 of the *Industrial Relations Act* 1990 applies.

Discrimination in work area

15.(1) A person must not discriminate

- a. in any variation of the terms of work; or
- b. in denying or limiting access to opportunities for promotion, transfer, training or other benefit to a worker; or
- c. in dismissing a worker; or
- d. by denying access to a guidance program, an apprenticeship training program or other occupational training or retraining program; or
- e. in developing the, scope or range of such a program; or
- f. by treating a worker unfavourably in any way in connection with

work.

(2) Subsection (1) does not apply to discrimination on the basis of trade union activity if section 13.107 or 13.108 of the *Industrial Relations Act* 1990 applies.

Discrimination by proposed partnership in pre-partnership area

16. Six or more people who propose to form themselves into a partnership must not discriminate

(a) in deciding who should be invited to become a partner; or

(b) in the terms on which a person is invited to become a partner.

Discrimination by existing partnership in pre-partnership area

17. A partner in a partnership that consists of 6 or more people must not discriminate