



Employment: Discrimination, Disclosure and the law

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An overview of Discrimination

The Equal Opportunity Act (Vic)

What is Discrimination?

The Equal Opportunity Act (Vic) sets out prohibited attributes which may form the basis for discrimination including:

- (a) Disability;



Discrimination of section 6 attributes:



Direct Discrimination:

Section 8(1):

Direct discrimination occurs if a person treats, or proposes to treat, a person with an attribute unfavourably because of that attribute.



Indirect Discrimination:

Section 9(1):

Indirect discrimination occurs if a person imposes, or proposes to impose, a requirement, condition or practice—

- a) that has, or is likely to have, the effect of disadvantaging persons with an attribute; and
- b) that is not reasonable.

Part 5 General exceptions:

- Part 5 includes some general exceptions to the prohibition on discrimination including:
 - Section 86: Limited exceptions to discrimination against age, physical features or disability in situations concerning **public safety or health.**

Direct Disability Discrimination:

Section 5(1):

For the purposes of this Act, a person (the discriminator) discriminates against another person (the aggrieved person) on the ground of a disability of the aggrieved person if, **because of the disability, the discriminator treats, or proposes to treat, the aggrieved person less favourably than the discriminator would treat a person without the disability** in circumstances that are not materially different.

Indirect Disability Discrimination:

Section 6 (1):

For the purposes of this Act, a person (the discriminator) discriminates against another person (the aggrieved person) on the ground of a disability of the aggrieved person if:

- a) the discriminator requires, or proposes to require, the aggrieved person to comply with a requirement or condition; and
- b) because of the disability, the aggrieved person does not or would not comply, or is not able or would not be able to comply, with the requirement or condition; and
- c) the requirement or condition has, or is likely to have, the effect of disadvantaging persons with the disability.

Disclosure Obligations:

Workplace Injury Rehabilitation and Compensation Act 2013

Section 41 – Pre-existing injury or disease

- (1) If it is proved that, before commencing employment with the employer—
 - (a) a worker had a pre-existing injury or disease of which the worker was aware; and
 - (b) the employer in writing –
 - (i) advised the worker as to the **nature of the proposed employment**; and
 - (ii) requested the worker to disclose all pre-existing injuries and diseases suffered by the worker of which the worker was aware and **could reasonably be expected to foresee could be affected by the nature of the proposed employment**; and
 - (iii) advised the worker that subsection (2) will apply to a failure to make such a disclosure or the making of a false or misleading disclosure; and
 - (iv) advised the worker as to the effect of subsection (2) on the worker's entitlement to compensation; and (c) the worker failed to make such a disclosure or made a false or misleading disclosure
- (2) If this subsection applies, **any recurrence, aggravation, acceleration, exacerbation or deterioration of the pre-existing injury or disease** arising out of or in the course of or due to the nature of employment with the employer **does not entitle the worker to compensation** under this Act
- What if there's any doubt?



Thank you!

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