

The Equal Opportunity Act and Tenancy Law

Background

We receive many enquiries from persons about issues that may involve anti-discrimination laws. These include:

1. People who *do not* have a tenancy matter and who should therefore be appropriately referred to the Victorian Equal Opportunity and Human Rights Commission (VEOHRC); OR
2. People who *have* a tenancy matter that in some way engages with anti-discrimination issues. In these cases, details of the enquiry should be collected in the database advice notes, and correct advice given.

Terminology

“Equal opportunity” and “anti-discrimination” are sometimes used interchangeably, but the relevant legislation in Victoria is the *Equal Opportunity Act 1995* (Vic) [EOA]. There are commonwealth anti-discrimination Acts; however this Practice Note concentrates on the EOA which will be of the most relevance to residential tenants in Victoria.

The EOA operates on the basis of addressing unlawful discrimination. Unlawful discrimination means treating someone unfairly because of a specified attribute (which a person has, used to have, or is assumed to have).

A list of the protected attributes can be found at s 6 of the EOA but some examples include: impairment (disability), sexual orientation, age, parental status, sex, breastfeeding and more.

Discrimination can be:

- a) **S 8 Direct** : Direct discrimination occurs when a person (e.g. real estate agent/ landlord) treats you or proposes to treat a person with an attribute (see below) less favourably than someone without that attribute in same or similar circumstances. For example refusing to give a tenancy application form to an Asian person because the landlord has said they do not want an Asian tenant – this is discrimination on the basis of race.
- b) **S 9 Indirect**: Indirect discrimination is when a person (e.g. real estate agent or/and landlord) imposes, or proposes to impose a requirement, condition or practice that someone with an attribute cannot comply with, and a higher proportion of people without that particular attribute (or a different one) can comply with it and it is not reasonable. An example, is a policy requiring a person to fill out a tenancy application in hard copy print, and not online or in alternative format. The effect of this policy may be that people who are vision impaired or blind will not be able to comply with the requirement, and so can allege indirect discrimination on the basis of impairment.

Discrimination is unlawful in a range of areas, but the relevant sections relating to tenancies are to be found in Division 5- Discrimination in accommodation – ss 49-52, with the exceptions from 53-57.

S 49 Discrimination in offering to provide accommodation

A person must not discriminate against another person—

- (a) by refusing, or failing to accept, the other person's application for accommodation;
- (b) in the way in which the other person's application for accommodation is processed;
- (c) in the terms on which accommodation is offered to the other person.

S 50 Discrimination in providing accommodation

A person must not discriminate against another person—

- (a) by varying the terms on which the accommodation is provided to the other person;
- (b) by denying or limiting access by the other person to any benefit associated with the accommodation;
- (c) by evicting the other person from the accommodation;
- (d) by refusing to extend or renew the provision of accommodation to the other person;
- (e) in the terms on which the provision of accommodation to the other person is extended or renewed;
- (f) by subjecting the other person to any other detriment in connection with the provision of accommodation to that person.

S 51 Discrimination by refusing to allow alterations

- (1) A person who has provided accommodation to another person with an impairment must allow the other person to make reasonable alterations to that accommodation to meet his or her special needs if—
 - (a) the alterations are at the expense of the other person; and
 - (b) the alterations do not require any alterations to the premises of another occupier; and
 - (c) the action required to restore the accommodation to the condition it was in before the alterations is reasonably practicable in the circumstances; and
 - (d) the other person agrees to restore the accommodation to its previous condition before leaving it and it is reasonably likely that he or she will do so.
- (2) This section is in addition to, and does not affect or take away from, any requirements imposed by or under the **Building Act 1993**.

S 52 Discrimination by refusing to allow guide dogs

- (1) A person must not refuse to provide accommodation to a person with a visual, hearing or mobility impairment because that person has a guide dog.
- (2) A person must not require, as a term of providing accommodation to a person with a visual, hearing or mobility impairment who has a guide dog—
 - (a) that the dog be kept elsewhere;
 - (b) that the person pay an extra charge because of the dog.
- (3) This section does not affect the liability of the person with the guide dog for any damage caused by the dog.

There are some important exceptions to the above sections, please seek advice if you are unsure as to coverage.

What is the issue?

Examples of possible equal opportunity and tenancy issues include (but are not limited to):

1. A 16 year old contacting us for advice because a real estate agent has said that they are too young to sign a lease. Note – there is a Practice Note on Minors regarding the ‘necessary for a contract/ lease’, but this is also an example of possible age discrimination;
2. Another example of age discrimination is real estate agents requiring a rental history before they will let out a property to a person. For many young people who have just left home, they will not be able to comply with this requirement and it may amount to indirect discrimination under the EOA;
3. Parents being told they will be evicted because they have children, note the requirements of s 30 of the RTA, notwithstanding the EOA will be relevant as this could be discrimination on the basis of parental status (noting an exception – s53 EOA);
4. A same sex couple that is being harassed by their landlord who shows up without notice at the premises and harasses them for being a lesbian couple, they could serve their landlord with a Breach of Duty Notice (quiet enjoyment) or contact VEOHRC as to their rights under the EOA and what remedies are available to them as it could be discrimination on the basis of sexual orientation.

Note – all the above examples are ‘real life’ and there are many more that could be relevant based on the attributes and prohibited areas of discrimination.

Other potential sections of the EOA that may be relevant for our clients are sections:

- s98 Prohibition of authorising or assisting discrimination; (landlord or real estate agent)
- s99 Liability of person who authorises or assists; (landlord or real estate agent)
- s100 Prohibition on requesting discriminatory information; (e.g. are you married, do you have children?)

What should you do?



If you are unable to assist the person with their tenancy matter, we should be aware of the details for VEOHRC and provide these to the client – **1300 292 153** or www.humanrightscommission.vic.gov.au :

The Victorian Equal Opportunity and Human Rights Commission is an independent and impartial complaints handling organisation. The Commission can assist people to resolve complaints of discrimination, sexual harassment, racial and religious vilification, and victimisation. The Commission does this by assisting people to lodge written complaints; investigating those complaints; and, where appropriate, facilitating conciliation. If conciliation is not appropriate or is unsuccessful, a complainant may request their matter to be referred to the Victorian Civil and Administrative Tribunal (the Tribunal) for a hearing. As the Commission is impartial, it cannot provide legal advice or advocacy to clients.

Note: The Commission is not a tribunal or court. It does not prosecute; make judgments for or against either side, or award compensation.

It is also not possible, to resolve a matter in both jurisdictions, the **Residential Tenancies List** and VEOHRC, separately, that is – if the issue is dealt with in the residential tenancies list, then VEOHRC might find the same matter has already been determined and therefore the applicants cannot 'have another go'.

The anti-discrimination list at the Tribunal has jurisdiction to hear EOA matters. There is the possibility of having EOA matters heard by a Member who sits in both lists.

The Tenants Union Policy Team is also very interested in any matters that appear to involve discrimination.

For further reading view: **Residential Tenancies Practice Note #08-03, The Charter of Human Rights and Responsibilities & the Residential Tenancies Act** as S8 of the Charter is the most relevant section to the EOA.

This Practice Note is a guide only and should not be used as a substitute for professional legal advice. If you have a question about this Practice Note or a specific matter you should contact the Tenants Union on (03) 9411 1444.

Tenants Union Legal Team

References:

Equal Opportunity Act 1995 Vic SS 6, 7, 8, 9, 49-52, 53-57, 98-100
Charter of Human Rights and Responsibilities Act 2006 S 8
Residential Tenancies Act 1997 SS 30, 67, 452