

## STATE LEGISLATION

## Anti-Discrimination Legislation

The *New South Wales Anti-Discrimination Act 1977*, the Victorian *Equal Opportunity Act 1984*, and the Western Australian *Equal Opportunity Act 1984* make it unlawful to discriminate, directly or indirectly<sup>1</sup>, on the ground of physical or intellectual impairment.<sup>2</sup> South Australia's *Equal Opportunity Act 1984* proscribes discrimination on the ground of physical and intellectual impairment. The provisions of these Acts cover job applicants and employees, as well as commission agents, contract agents, partnerships and membership of trade unions.<sup>3</sup>

Each of these Acts contains a series of exceptions relating to their anti-discrimination provisions, and these exceptions are based on the notion of 'reasonable adjustment' or 'reasonable accommodation'. The exceptions mean that discrimination is not unlawful, or rather may be deemed to be 'reasonable', when an employer considers that the modifications to the workplace which would be required to accommodate a person with disabilities are 'unreasonable', or that the nature of the job is such that it could not be done by a certain person because of their particular disabilities.<sup>4</sup> The South Australian legislation has another general exemption which states that 'it is not unlawful to pay different rates of salary, wages, or other remuneration to people with physical impairments'.<sup>5</sup>

These State Acts enable complainants to lodge their complaints with State Equal Opportunity Commissioners, who may investigate and attempt to conciliate the grievance issues. In certain circumstances complaints are referred to State Equal Opportunity Tribunals for a public hearing, and the result of this may be that employers are forced to reverse decisions, and pay damages to complainants. States with anti-discrimination legislation are in a position to enforce their determinations, and this is an important consideration for complainants to bear in mind when they have a choice of whether to bring their grievances to HREOC or to their State Commissioners – HREOC is not in a position to enforce its determinations.

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1. See Chapter 3, paragraph 3.43.
  2. Chapter 3, Paragraphs 3.4, 3.20-3.21.
  3. *Ronalds Report*, p. 87.
  4. *ibid.*
  5. *ibid.*, p. 224.

## Equal opportunity legislation

Part IXA of the *NSW Anti-Discrimination Act 1977* 'requires government departments and some statutory authorities to prepare and implement an EEO management plan for several groups, including the physically disabled'.<sup>6</sup> Annual reports must be lodged with the Director of Equal Opportunity in Public Employment. If the Director is dissatisfied with the plan, this may be referred to the Anti-Discrimination Board for investigation.<sup>7</sup> Essentially these same provisions are contained in Western Australia's *Equal Opportunity Act 1984*.

Section 15A of Victoria's *Public Service Act 1974* sets out some general 'equitable treatment' principles which have to be followed in the administration of that Act, but there is no formal monitoring of this, nor any requirement for the development of EEO programs.<sup>8</sup> Section 82 of South Australia's *Equal Opportunity Act 1984* has a provision which permits EEO measures to be taken for people with physical impairments.<sup>9</sup>

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6. *ibid.*, p. 94.

7. *ibid.*, p. 94.

8. *ibid.*, pp. 94-5.

9. *ibid.*, p. 226.