

Status under Equal Opportunity Act

THE WORD status can have many meanings, but exactly what does it mean under the Equal Opportunity Act? Status refers to characteristics inherent to an individual and discrimination against individuals based on these protected characteristics is contrary to the act.

The act covers seven status grounds under which a person can be treated less favourably: sex, race, ethnicity, origin, including geographic origin, religion, marital status and disability. A complaint to the Equal Opportunity Commission can contain one or more status grounds, based on the nature of the matter.

Less favourable treatment towards an individual based on any of these specified grounds would be considered discrimination under the act and is against the law.

What exactly does each status ground cover?

Sex under the act refers to male or female and does not include sexual preference or orientation; it therefore refers to the biological and physiological characteristics that define male and female, eg reproductive organs.

Sex discrimination refers to the differential treatment between men and women. This should be differentiated from gender, which refers to characteristics that are socially constructed, eg norms, roles and behaviours associated with being male or female.

Gender, however, is not a recognised status ground under the act. The commission has made recommendations for amendments to the act to include sexual orientation as a recognised status ground.

Race and ethnicity are often used interchangeably. However, under the act

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they have very specific meanings. Race in relation to a person means a group of people of common ethnic origin, colour or of mixed race. Ethnicity refers to the origin, characteristics, classification and distinctive cultural or aesthetic traditions of a group of people.

In other words, race is considered a biological classification which can sometimes be determined by a person's physical appearance, while ethnicity is considered to be a cultural identity, which can sometimes be determined, for example, by a person's manner of dressing. A member of one race cannot join another race, but a member of one ethnicity can join another ethnicity.

Origin is not specifically defined under the act but includes geographical/national and familial origin. Geographical origin discrimination is unfavourable treatment towards someone because of their actual or perceived place of birth,

country of origin, ancestry, native language, accent etc.

Religion is not defined under the act, but speaks to the worship of a supreme being or divine entity. It may be defined as either religious or spiritual belief of preference, regardless of whether or not this belief is represented by an organised group, or affiliation with an organised group having specific religious or spiritual tenets.

Equal opportunity legislation in other jurisdictions specifically include “non-religion” as part of religion. This speaks to the absence of any religious beliefs, eg atheism. However, since religion is not specifically defined, “non-religion” as a form of religion would be a matter for adjudication.

Marital status under the act refers to being single, married, married but living separately and apart from one's spouse, divorced or widowed. The act does not include cohabitational relationships, or what we refer to as common law relationships, but recommendations have been made for amendments to the act to include same.

The seventh status ground under the act is that of disability, which under the act refers to total or partial loss of bodily function; total or partial loss of a part of the body; malfunction of a part of the body including a mental or psychological disease or disorder; or malformation or disfigurement of part of the body.

It is important to remember, however, that notwithstanding the status ground, the complaint must fall under one of the four specified categories covered under the act, that is, employment, education, provision of goods and services, and accommodation. Unless it meets the necessary criteria, the complaint would not fall within the purview of the act.