

Interpretive Approaches of the Tribunals and Courts in Discrimination Law

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I Introduction

This chapter is the product of a study of the differing interpretations given to discrimination law by the specialist tribunals and by the courts when reviewing the decisions of the tribunals. Longitudinally, the study analysed the differences between the two levels from their inception in the late 1970s until 2002.¹

Discrimination law is a wholly statute-based creation. Starting in the late 1970s, it has progressively established, in all jurisdictions, dedicated administrative machinery and specialist tribunals. It makes discriminatory actions unlawful on defined grounds if the actions fall within certain *prescribed areas of activity* and discriminate against *designated population groups*.² In terms of grounds (attributes) the main designated population groups relate to sex and its sub-sets and to race and disability. The main activity areas are work, education, accommodation and the provision of goods and services.

What is distinctive about discrimination law, and what makes it interesting in a study of statutory interpretation, is that it targets groups

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- 1 The analysis covers close to 25 years of discrimination law in Australia, beginning in the 1970s and ending with the termination, in April 2000, of the inquiry process conducted by HREOC. Our primary source has been the reports contained in *Australian and New Zealand Equal Opportunity Law and Practice* (the 'EOC Reports', published by CCH Australia). The survey continued until the end of 2003 because of the continuing review by the courts of HREOC tribunal decisions that had not been determined by HREOC before the assumption by the Federal Magistrates Court of HREOC's functions.
 - 2 In legal terms, discrimination law operates by defining the 'grounds' or 'attributes' (sex, race, disability etc) which require protection, and then provides that discriminatory action against individuals on those grounds (or having those attributes) is unlawful in the prescribed areas.

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