



IMPAIRMENT DISCRIMINATION

It is unlawful under the *Equal Opportunity Act 1984* to discriminate against a person with an impairment.

Direct impairment discrimination occurs when a person with an impairment is treated less favourably than a person without that impairment, in the same or similar circumstances.

Indirect impairment discrimination is when a requirement, condition or practice that is the same for everyone has an unfair effect on a particular person because of their impairment, and is unreasonable in the circumstances.

Where does the protection apply?

Under the *Act* it is unlawful to discriminate against a person because of their impairment, or the impairment of a relative or associate, in certain areas of public life and these areas include:

- Employment – in some instances
- Education
- Access to places and vehicles
- Provision of goods, services and facilities
- Accommodation
- Club membership
- Sport – in some instances
- Application forms
- Superannuation and provident funds – in some instances
- Advertisements.

Impairment

Under the *Act* a person with an impairment includes anyone with a physical, intellectual or emotional impairment, a person who has had an impairment in the past, or someone assumed to have an impairment.

Exceptions

There are some instances where it is not unlawful to discriminate against a person because of their impairment, and these exceptions include:

- Measures intended to achieve equality
- Employment - where the provision of special services and/or facilities would impose an unjustifiable hardship on the employer
- Accommodation - where the provision of special services and/or facilities would impose an unjustifiable hardship on the provider
- Orders of courts and tribunals
- The provision of charitable benefits
- The ordination of priests or ministers of religion
- Domestic workers in private households
- A genuine occupational qualification
- Insurance, if based on reasonable data and statistical evidence
- Where there is a regulation that relates to an infectious disease.

If an individual or organisation relies upon an exception under the *Act* when a complaint is made against them, they must justify the use of that exception to the Commissioner for Equal Opportunity.

Responsibilities

Organisations must ensure they provide a working environment and services free from impairment discrimination.

Organisations are liable for the unlawful actions of their employees unless they can show they have taken all reasonable steps to prevent discrimination occurring.

Liability

A person who causes, instructs, induces, aids or permits another person to do something that is unlawful under section 160 of the Act shall, for the purposes of the Act, be taken to have done the act.

How to lodge a complaint

A person who believes they have been discriminated against on the basis of their impairment can lodge a complaint with the Commissioner.

A complaint form can be requested from the Commission by calling 08 9216 3900 or 1800 198 149, or a copy can be down loaded from www.eoc.wa.gov.au.

The onus of proof lies with the person making the complaint. The complaint must be lodged within 12 months of the last incident of discrimination however, in some circumstances, the Commissioner may rule there is good reason to accept a complaint that falls outside the 12 month time frame.

Examples of Impairment Discrimination

- A blind woman was refused service when she entered a cafe accompanied by her guide dog, and was told she would only be served if she sat outside.
- A lawyer's application for income protection insurance was refused when she disclosed she had once experienced depression. This refusal was despite the fact she had not taken any time off work because of her impairment in 10 years.
- A real estate agent refused the rental application of an accountant who used a wheelchair, because the agent believed she would not be able to pay the rent and maintain the property because of her impairment.
- The parents of a young boy complained their son had been discriminated against because shortly after being told he was autistic, his child care provider would no longer let him attend the creche.
- An employee of a travel agency refused to accept a booking made on behalf of a person

with a disability. She did this without asking the nature or extent of the disability.

- A woman in a wheelchair went to a tavern to listen to a band perform and was asked to move to the outside beer garden as she was taking up too much room. Her friends were told they could remain inside.

The Commissioner for Equal Opportunity provides information about the Act, investigates and conciliates complaints, conducts community education and training and develops programs to promote equal opportunity.

How to contact the Commission

By telephone

General enquiries:	08 9216 3900
Training Courses:	08 9216 3927
Facsimile:	08 9216 3960
Country callers:	1800 198 149
TTY:	08 9216 3936

Interpreter can be arranged on request

By e-mail
eoc@eoc.wa.gov.au

By visiting our website
www.eoc.wa.gov.au

By visiting our office
Level 2
Westralia Square
141 St Georges Terrace
Perth WA 6000

By post
PO Box 7370
Cloisters Square
Perth WA 6850

Disclaimer:
The material in this brochure is not intended to be legal advice. The Commissioner expressly disclaims any liability in respect to anything done or not done to any person in reliance upon any of the contents of this publication.

March 2007