

SEXUAL ORIENTATION

It is unlawful under the *Equal Opportunity Act 1984* to harass a person because of their sexual orientation.

Under the Act sexual orientation relates to a person's heterosexuality, homosexuality, lesbianism or bisexuality, and includes heterosexuality, homosexuality, lesbianism or bisexuality imputed to that person.

It is unlawful to discriminate against a person because of their sexual orientation, or the sexual orientation of a relative or friend.

Direct sexual orientation discrimination occurs when a person, because of their sexual orientation or the sexual orientation of a relative or associate, is treated less favourably than another person in the same or similar circumstances.

Indirect sexual orientation discrimination is when a requirement, condition or practice that is the same for everyone has a greater effect on someone of a particular sexual orientation when compared to a person without that sexual orientation, and is unreasonable in the circumstances.

Where does the Act apply?

Under the Act it is unlawful to discriminate against a person because of their sexual orientation in certain areas of public life and these areas include:

- Employment
- Education
- Access to places and vehicles
- Provision of goods, services or facilities
- Accommodation
- Disposal of land
- Clubs
- Application forms

Exceptions

There are some instances under the Act where it is not unlawful to discriminate

against someone because of their sexual orientation and these exceptions include:

- Accommodation provided in private households
- Accommodation provided by a religious body
- Disposal of an estate or interest in land by will or by way of a gift
- Measures intended to achieve equality or meet special needs
- Employment, education or training at a religious educational institution
- Admission as a member, and benefits provided to members, of a voluntary organisation
- Compliance with an order of a Court or Tribunal
- The provision of charitable benefits.

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.

Employers' Responsibilities

Employers must ensure their current and prospective employees have a working environment free from discrimination. Employers are liable for the unlawful action/s of their employees unless they can show they have taken all reasonable steps to prevent discrimination occurring.

Section 160 of the Act

A person who causes, instructs, induces, aids or permits another person to do something that is unlawful under 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 because of their sexual orientation can lodge a complaint with the Commissioner.

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 Sexual Orientation Discrimination

A homosexual couple were both members of the same health fund for several years, but their application for insurance cover on a concessional family basis was denied when a child from a previous relationship came to live with them.

An electrician successfully claimed harassment and discrimination on the ground of perceived homosexuality after he had a 'trendy' haircut and started wearing an earring in his left ear. The harassment and discrimination included derogatory comments, name-calling, prank telephone calls to his home as well as physical intimidation and abuse.

A woman was sacked after her employer found out she was divorcing her husband and had entered into a lesbian relationship.

*The employer of a heterosexual man working for an advertising agency asked him to 'act gay' around a client from the fashion industry stating "... you know what they're all like".

The Commissioner for Equal Opportunity provides information about the Act, investigates complaints and conducts community education and training services.

For more information see [Your Rights](#) on our website.

HOW TO CONTACT THE COMMISSION

BY TELEPHONE

General enquiries 08 9216 3900
Training courses 08 9216 3927

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