

FACT SHEET:

Exemptions under the Queensland *Anti-Discrimination Act 1991*

Exemptions are exceptions to discrimination under the Act. This means that discriminating in some circumstances is not unlawful. The Queensland *Anti-Discrimination Act 1991* outlines a range of exemptions. Some are specific to areas under the Act and others are general exemptions that apply across all areas.

Exemptions don't automatically apply in certain situations, although some are more straightforward than others. In most cases, if someone complains of discrimination, the respondent (the person or business the complaint is being made about) must raise and argue the exemption. Exemptions allow certain types of conduct or activity to help balance the complex needs of society.

Examples

Parking spaces are set aside for people with a disability.

A 15-year-old is paid less than a 17-year-old doing the same job.

Fare concessions are given to age pensioners and students on public transport.

Some jobs are open only to Indigenous people, or to women or men.

General exemptions

Some of the general exemptions are summarised below. A full list is included in chapter 2, part 5 of the Act.

Welfare measures: Something done to benefit a particular group of people if the purpose is not inconsistent with the Act.

For example, travel concessions for pensioners, or special accommodation reserved for victims of domestic violence.

Equal opportunity measures: Something done to promote equal opportunity for a group of people if the purpose is not inconsistent with the Act.

For example, special employment programs for people aged over 50s, or initiatives to support women in male-dominated professions.

Public health: Something that is reasonably necessary to protect public health.

For example, prohibiting people with some types of infectious disease from working in a meat works.

Workplace health and safety: Something done to protect the health and safety of people at work.

For example, ensuring a worker is fit to return to work after a long absence due to injury or illness.

Competitive sport: Participation in a competitive sporting activity may be to either males or females if the restriction is reasonable given the strength, stamina or physique requirements of the activity, or to people of a particular age, or to people with a specific or general impairment. Participation may also be restricted on the basis of gender identity if the restriction is reasonable having regard to the strength, stamina or physique requirements of the activity.

For example, a tennis competition restricted to people who rely on a wheelchair.

Compulsory retirement age under legislation: Compulsory retirement age can be imposed for certain positions such as judges and magistrates, police, and fire officers.

Citizenship or visa requirements under State government policies: Setting a particular citizenship or visa status as criteria for accessing government financial assistance, services, or other support.

Religious bodies: A body established for religious purposes may discriminate on any grounds, except in the areas of work and education, provided the discrimination is in accordance with the doctrine of the religion and is necessary to avoid offending the religious sensitivities of people of the religion. There are also specific exemptions in the work and education areas for religious bodies.

The Act does not apply to:

- the ordination or appointment of priests, ministers of religion or members of a religious order
- the training or education of people seeking to be ordained or appointed as priests, ministers of religion or members of a religious order
- selecting or appointing people to perform functions or participate in any religious observance or practice.

Specific exemptions

The areas of activity where discrimination is unlawful are:

- Work and work-related;
- Education;
- supplying goods or services;
- Superannuation;
- Insurance;
- Disposing of land;
- Accommodation;
- Club membership and affairs;
- Administration of State laws or programs
- Between local government members.

There are specific exemptions for most of these areas of activity in chapter 2, part 4 of the Act. Some of the more common exemptions are summarised below.

Work and work-related

This area includes recruitment, terms and conditions on which a job is offered, employment benefits, training, transfers, promotion and dismissal.

Genuine occupational requirement: A person may impose genuine requirements for a position.

For example, selecting an actor for a dramatic performance in a play, movie or television show on the basis of their age, sex or race, for reasons of authenticity.

Religious school or other education institution, or religious body: A limited exemption applies to these religious bodies as employers, if the work genuinely and necessarily involves following and communicating the body's religious beliefs. The exemption is about behaviour rather than a person's characteristic such as gender, race or sexuality. If it is a genuine occupational requirement that a person act in a way consistent with the employer's religious belief during the course of or in connection with the work, the employer may discriminate if the person openly acts in a way that is contrary to the employer's religious beliefs. The discrimination must not be unreasonable in the circumstances, including whether the action is disproportionate to the behaviour, and the consequences for both parties. This exemption does not allow discrimination on the basis of age, race, or impairment, and does not allow an employer to ask a person's age, sexuality, or whether they have children.

Residential domestic or childcare services: It is not unlawful to discriminate on any ground except race when recruiting someone to perform domestic work inside your own home, or to care for your children in your own home.

Youth wages: An employer can pay a worker who is under 21 years of age according to the worker's age.

Special services or facilities required: Employers are required to make reasonable adjustments for workers with impairments. However, it can be lawful to discriminate on the basis of impairment where special services or facilities are needed for a worker with an impairment, and supplying the special services or facilities would impose unjustifiable hardship on the employer. Whether supplying special services or facilities creates an unjustifiable hardship depends on:

- the type of service or facility being requested;
- the cost of providing this;
- the number of people who'd benefit or be disadvantaged by it;
- the disruption that might be caused by providing the service or facility; and
- the type of benefit or detriment to everyone concerned.

For example, a person in a wheelchair wanting to work 10 hours per week for a small business that operates from premises that are not wheelchair accessible. It might be an unjustifiable hardship for the business to carry out structural changes to make the premises accessible.

Education

Single sex or religious educational institutions: Educational institutions that operate wholly or mainly for students of a particular sex or religion, or for students who have a general or specific impairment, may exclude applicants who are not of the particular sex or religion, or who do not have a general or specific impairment.

Special services or facilities: Educational institutions are required to make reasonable adjustments for students with impairments. However, it can be lawful to discriminate on the basis of impairment where special services or facilities are needed for a student with an impairment, and supplying the special services or facilities would impose unjustifiable hardship on the educational institution. Whether supplying special services or facilities creates an unjustifiable hardship depends on:

- the type of service or facility being requested;
- the cost of providing this;
- the number of people who'd benefit or be disadvantaged by it;
- the disruption that might be caused by providing the service or facility; and
- the type of benefit or detriment to everyone concerned.

Goods or services

Not-for-profit associations: The Act does not apply to not-for-profit associations in providing goods or services. This means they may discriminate on any of the sixteen grounds under the Act, but only when providing goods or services. They are not permitted to discriminate in relation to work, including employees, volunteers, etc.

Sites of religious or cultural significance: Access to land or buildings of cultural or religious significance may be restricted on the basis sex, age, race or religion if the restriction is in accordance with the culture or religion concerned, and if it is necessary to avoid offending the cultural or religious sensitivities of the people of the culture or religion.

A person disposing of an interest in land may discriminate on the basis of sex, age, race, or religion if the interest in the land or a building is of religious significance, and the discrimination is in accordance with the doctrine of the religion and is necessary to avoid offending the religious sensitivities of people of the religion.

Age-based benefits: Benefits or concessions may be supplied on the basis of age.

For example, travel concessions for children and seniors.

Special services or facilities: It can be lawful to discriminate on the basis of impairment where special services or facilities are needed for a person or people with an impairment, and supplying the special services or facilities would impose unjustifiable hardship on the person providing the goods or services. Whether supplying special services or facilities creates an unjustifiable hardship depends on:

- the type of service or facility being requested;
- the cost of providing this;
- the number of people who'd benefit or be disadvantaged by it;
- the disruption that might be caused by providing the service or facility; and
- the type of benefit or detriment to everyone concerned.

Accommodation

Accommodation includes pre-accommodation (for example, bookings or rental applications) and eviction, as well as the period of actual accommodation provided.

Shared accommodation: People who rent part of their home where they live may discriminate when deciding who the accommodation will be rented to, so long as there are no more than three people renting. This means that a person can decide who will live with them in their home, based on the other person's sex, age, religion, parental status etc.

Accommodation for students: Educational institutions that operate wholly or mainly for students of a particular sex or religion, or for students who have a general or specific impairment, may provide accommodation wholly or mainly for students who are of the particular sex or religion, or who have a general or specific impairment.

Special services or facilities: It can be lawful to discriminate on the basis of impairment where special services or facilities are needed for a person or people with an impairment, and supplying the special services or facilities would impose unjustifiable hardship on the accommodation provider.

Whether supplying special services or facilities creates an unjustifiable hardship depends on:

- the type of service or facility being requested;
- the cost of providing this;
- the number of people who'd benefit or be disadvantaged by it;
- the disruption that might be caused by providing the service or facility; and
- the type of benefit or detriment to everyone concerned.

However, it is unlawful for accommodation providers to refuse to allow someone with an impairment to make alterations to accommodation to meet their own needs, if the alteration is at their own expense, doesn't alter the premises of another occupier, and the person undertakes to restore the accommodation to its previous condition before leaving it.

How can I claim an exemption?

In recruitment, it is best practice to state in your advertisement that you believe an exemption applies.

For example, an advertisement for a position that must be held by a person who is Aboriginal or Torres Strait Islander could state 'It is a genuine occupation requirement that the position is held by an Aboriginal or Torres Strait Islander person, and the exemption in section 25 of the Anti-Discrimination Act 1991 applies'.

In other situations it can be helpful to explain the reasons for your actions and decisions and refer to the relevant exemption.

If a complaint is made to the Commission, you will have the opportunity to explain that you believe an exemption applies by providing a written response or in discussing the complaint in conciliation.

The Commission does not decide whether an exemption applies except in the clearest of cases. If a complaint is not resolved it can be referred to a tribunal, where the onus is on you to prove on the balance of probabilities that the exemption applies in the particular circumstances of the complaint. For work-related complaints the tribunal will be the Queensland Industrial Relations Commission and for all other complaints the tribunal will be the Queensland Civil and Administrative Tribunal.

Decisions of the Queensland Civil and Administrative Tribunal are available through the Supreme Court Library website. Decisions of the Queensland Industrial Relations Commission are available through the Supreme Court Library website.

Can I apply for an exemption?

Yes, as long as there is not a current complaint against you being dealt with by the Commission, a tribunal, or on appeal to a Court.

In certain circumstances, a tribunal can grant an exemption from the operation of specified provisions of the *Anti-Discrimination Act 1991*. For work-related matters the tribunal is the Queensland Industrial Relations Commission, and for all other matters the tribunal is the Queensland Civil and Administrative Tribunal.

For example, a support service for female survivors of domestic or sexual violence might apply for an exemption to allow it to recruit and hire only female staff.

An exemption may be granted for a specified period of not more than five years.