

FACT SHEET:

Religious belief or activity discrimination

The *Anti-Discrimination Act 1991* makes it unlawful to discriminate against a person because of their religious belief or religious activity.

What is religious belief or activity discrimination?

Religious belief means having or not having a religious belief.

Religious activity means engaging in, not engaging in, or refusing to engage in lawful religious activity.

Discrimination on the basis of religious belief or religious activity can be direct or indirect. Direct discrimination is treating a person less favourably because of their religious belief or religious activity (including not having a religion) than someone without that religious belief or religious activity, in similar circumstances.

For example, the owner of a house for rent refusing to consider the application of a Hindu family because he believed the house was 'too good for them'.

Indirect discrimination may be less obvious. Sometimes a rule or policy seems to treat everyone the same, but in fact, some people end up being treated less favourably. Indirect discrimination happens where there is unreasonable requirement that people with a certain attribute (or characteristic) would have difficulty complying with, compared to others without that attribute.

For example, an employer requires workers to wear a uniform that includes a cap for appearance reasons (not for hygiene or safety reasons). People who are required to wear a particular headdress under their religion are unable to comply with the requirement.

It is also unlawful to discriminate against a person because of their association with or relation to a person identified on the basis of their religious belief or religious activity - such as a friend, family member or co-worker.

For example, a man and his Muslim friend are refused entry to a restaurant because the owner doesn't want 'those towel heads or their mates in here'.

It doesn't matter if the person doesn't mean to discriminate, or whether they think they are being discriminatory or not. It also doesn't matter if their beliefs or assumptions about the person or people they are discriminating against are correct or not. Under the Act, someone's motive for discriminating is irrelevant.

If you have experienced any of these types of discrimination, you may be able to lodge a complaint with us at the Commission.

However, not all treatment that might seem unfair is unlawful under the Act (see the exemptions below).

Religious vilification

More serious poor treatment because of your religion might be vilification. Vilification is when someone incites hatred, serious contempt, or severe ridicule of someone else because of their religion. Serious vilification is when this includes a threat of harm to the person or their property, and is a criminal offence.

When and where is religious discrimination unlawful?

Discrimination on the basis of religious belief or religious activity is unlawful in all aspects of work, including recruitment, terms and conditions on which a job is offered, employment benefits, training, transfers, promotion and dismissal.

It is also unlawful when a person is:

- a customer in a shop or restaurant;
- a student at school or university (if it is by the educator);
- looking for accommodation;
- applying for credit, insurance or a loan; or
- when dealing with tradespeople, businesses or state or local government.

Examples of religious discrimination

A school suspended a Sikh student because its uniform policy required hair to be cut neatly and the school hat has to be worn. The school will not allow the Sikh student to wear a turban and leave his hair uncut, which are requirements of his religion.

A Muslim worker received an email which was offensive and derogatory to the Islamic faith which had been forwarded to the whole unit by a co-worker. During office banter the co-worker also made offensive comments about Muslims. When the Muslim worker objected, the co-worker asked why they couldn't just take a joke.

The employer of a young woman who was engaged as a sales assistant frequently made efforts to change the young woman's religious beliefs and personal habits, and persistently requested her to attend their church. The pastor of the church visited the workplace and frequently issued invitations to attend church and left pamphlets for her to read. The woman found these persistent invitations and mentions of her religion unwelcome. She resigned stating that she 'could not take it any more' and did not want to be harassed about her religion.

When and where is different treatment okay?

Not all treatment that might seem unfair is against the law. The Act lists some exemptions that allow conduct that would otherwise be discriminatory. Whether or not an exemption applies will depend on individual circumstances.

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; or
- selecting or appointing people to perform functions or participate in any religious observance or practice.

Residential domestic or childcare services: It is not unlawful to discriminate on the basis of religious belief or religious activity when recruiting someone to perform domestic work in your own home, or to care for your children in your own home,

Not for profit associations: A not-for-profit association may discriminate in the provision of goods or services - for example, only rent a hall to people of a particular faith. However, they must not discriminate on the basis of religious belief or religious activity in relation to work, including employees, volunteers, etc.

Religious-based schools and educational institutions: A school or other educational institution may be established and operate wholly or mainly for students of a particular religion, and may provide accommodation wholly or mainly for students of that religion. They may also impose a genuine occupational requirement that a teacher must be of the particular religion.

Sites of religious significance: Access to land or buildings of cultural or religious significance may be restricted on the basis of religion if the restriction is in accordance with the culture or religion concerned, and is necessary to avoid offending the religion. It is also permissible to discriminate on the basis of religion in disposing of land, 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 necessary to avoid offending the religious sensitivities of people of the religion.