

FACT SHEET:

Discrimination in accommodation

The *Anti-Discrimination Act 1991* makes discrimination in accommodation against the law. The law applies across the sector, including:

- tenants;
- lessors and property owners;
- real estate and property agents;
- hotel, motel and backpacker hostel operators;
- providers of mobile homes (eg. caravans and caravan sites, tent sites, houseboats);
- suppliers of university accommodation (eg. halls of residence);
- emergency accommodation and housing services (eg. domestic violence refuges, homeless shelters);
- owners or operators of boarding houses and hostels;
- business premises;
- building and construction sites; and
- company housing (eg. mining communities).

It also applies to accommodation matters such as tenancy, property sales, eligibility criteria, references, maintenance arrangements, sub-letting, the imposition of conditions, eviction and the charging of rent, bonds and purchase prices.

The Act places certain rights and responsibilities on all accommodation workers, agencies, tenants and other users of accommodation services and facilities.

It also prohibits sexual harassment and public acts of vilification.

If you have experienced discrimination, sexual harassment or vilification in accommodation, you may be able to lodge a complaint with us at the Commission.

Rights and responsibilities for accommodation users

Everyone has the right to be free from discrimination, sexual harassment and vilification in accommodation services and facilities. If a person believes that they have been discriminated against, sexually harassed or subjected to vilification in relation to accommodation they have the right to make a complaint to the Commission and seek a solution through conciliation.

The Act also makes victimisation unlawful in accommodation. Victimisation happens when someone is treated badly because they:

- refused to do something that would contravene the Act;
- complained, or intend to complain, about something that would contravene the Act;
- is or has been involved in a proceeding under the Act, including as a witness, or supplying information to the Commission or tribunal; or
- are believed to have done or intend to do any of the above things.

Tenants are entitled to rent a property provided they can pay the rent and maintain the premises.

Rights and responsibilities for accommodation providers

All staff have the right to work in an environment free from unlawful discrimination, sexual harassment and vilification. The legislation also establishes a legal responsibility to provide property and accommodation services and facilities free from these behaviours.

Real estate and property agents have the right to select the most appropriate tenant or purchaser, as long as the decision is not based on discrimination against a protected attribute under the Act. Tenants, potential tenants and property buyers should be assessed on their individual merits rather than on the basis of bias or prejudice. Unfair assumptions about people because of their age, sex, race, parental status and so on can result in unlawful discrimination. Real estate agents and property owners therefore have the right to select a tenant primarily on the basis of the tenant's ability to fulfil basic tenancy responsibilities such as paying the rent on time and maintaining the premises.

Real estate and property agents need to be aware that if they act on unlawful discriminatory instructions given by a property owner – for example, directions to refuse to rent a flat to gay men or lesbians – both the agent and the owner may be legally liable for unlawful discrimination.

Real estate agents and property agents also have a responsibility to take reasonable steps to prevent unlawful discrimination, sexual harassment and vilification in the accommodation and property sales sector.

Vicarious liability

Accommodation providers and real estate and property agents can be liable for discrimination, sexual harassment, vilification done by their agents or employees.

This means complaints can be made against individuals, employers and organisations. Previous cases show employees have been found jointly liable with the organisation, including the payment of compensation. In practice, vicarious liability means that a complaint against an individual may also be made against their employer.

Vicarious liability in the accommodation sector also applies to relationships between employees and employers of accommodation services as well as to property owners and their agents. For example, a real estate agent may be liable for the discriminatory actions of a staff member, and a property owner may be liable for the discriminatory actions of their real estate agent.

An employer or organisation cannot avoid vicarious liability simply because they were not aware of the unlawful discrimination, sexual harassment or acts of vilification done by their employees or agents. A real estate agent also cannot avoid liability if they are acting on the instructions of a property owner.

When is different treatment okay?

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

Below is an overview of some of the exemptions that may apply in relation to accommodation.

Welfare and equal opportunity measures: ‘Special measures’ provisions are designed to benefit or promote equal opportunity for a member of a disadvantaged group or a person with particular needs. This can include the provision of special accommodation for women experiencing domestic violence, or to frail, older people or vulnerable people.

Shared accommodation: People who rent part of their home where they live can discriminate when deciding who the accommodation will be rented to, as 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.

Charities: Charitable organisations may discriminate on the basis of sex, relationship status or age where the accommodation was established for one or more of those purposes – for example, for single homeless men.

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

Supplying 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 an unjustifiable hardship on the accommodation provider. Factors that are relevant include the cost of supplying the special service or facility, the number of people to benefit, the financial circumstances of the person required to provide them, and any human and other costs that may disadvantage others.

Religious organisations: A religious body that provides accommodation may discriminate if it is necessary to comply with the doctrine of the religion concerned and to avoid offending the religious sensitivities of the people of that religion.

Accommodation for workers: An employer who supplies accommodation for its workers may provide different standards of accommodation based on the number of people in the worker’s household, the class of work, or the nature of the position held, if it is not reasonable for the employer to supply the same standard of accommodation for all workers.

Common questions about discrimination and tenancy in Queensland

Can tenants be evicted?

Yes. Real estate and property agents and lessors have the right to give notice of alleged breaches of a tenancy agreement and terminate a tenancy agreement if necessary. Tenants cannot be evicted or otherwise penalised for discriminatory reasons – for example, because a couple become parents during the term of the tenancy.

What about accommodation advertisements?

The legislation imposes a legal responsibility on real estate and property agents and lessors to ensure that accommodation advertisements are not discriminatory. The easiest way to do this is to encourage all tenants to apply by describing the property rather than the tenant wanted – for example, “one bedroom flat” instead of “suit couple or bachelor” or “four bedroom house” instead of “suit family”. However, advertisements can specify that references are required and that pets are not allowed (guide dogs are not pets). These restrictions do not apply to advertisements for shared private accommodation.

Can references be asked for?

Yes. References can be requested provided all prospective tenants are asked for them and the request does not result in unfair indirect discrimination – for example, newly arrived migrants, young people and first-time tenants might have difficulty supplying accommodation references but might be able to provide a personal reference instead.

What personal details can be asked for?

Asking for proof of a tenant's identity and ability to pay the rent and maintain the property is permitted by the legislation. However, real estate agents, property agents and other providers of accommodation services also have a legal responsibility to avoid asking for unnecessary discriminatory information in tenancy application forms and tenant interviews. Generally it will be against the law to ask questions on application forms and in interviews about a person's marital status, sex, age, number of children (if any), plans to have children, race or nationality, sexual preference, health condition or medical history, religious or political beliefs. To avoid complaints of discrimination it is desirable to inform tenants why they have not been successful in their application for accommodation.

How much can be charged for bonds and rent?

Charging higher bonds or rent because of someone has a protected attribute is against the law. For example, tenants cannot be charged higher rent just because they have children, or be required to pay a larger bond because they are young. Unless there are adequate reasons for differentiation, such as higher rent for short-term holiday accommodation, it would be unlawful discrimination.

Can special tenancy terms and conditions be imposed?

Yes. Entering the premises as allowed by the tenancy agreement or tenancy laws is permissible, as is the application of special terms and conditions for all tenants – for example, banning pets (guide dogs are not pets). In general, unless good reasons can be argued, the same rules and conditions should be applied to all tenants in order to avoid unlawful discrimination. For example, carrying out more frequent inspections just because the tenants are young, or are Aboriginal, would be unlawful discrimination.

What about tenants with impairments?

A person who has an impairment has the right to enter into a tenancy agreement without being discriminated against because of their impairment. Specifically, a tenant with an impairment has the right to make reasonable alterations to the property in order to meet their needs. This can only be done if the alterations do not affect the structure of the premises or other premises, the tenant agrees to remove any alterations when they move out, and the tenant pays for the installation and removal of the alterations. Property agents and owners have the right to demand that any alterations made to the premises be removed at the expense of the tenant when they leave.

Tenants who have a guide, hearing or assistance dog because of an impairment cannot be asked to keep the dog elsewhere or to pay extra if the dog lives at the accommodation. However, the tenant may be liable for any damage caused by the dog.