



FACT SHEET:

Sex discrimination

The *Anti-Discrimination Act 1991* makes it unlawful to discriminate against a person because of their sex.

What is sex discrimination?

Sex discrimination can be direct or indirect. Direct discrimination is treating a person less favourably because of their sex than someone of a different sex, in similar circumstances.

For example, a woman who was an efficient senior manager in a male dominated industry was continually ridiculed by another manager and her position undermined. She was called 'mother hen' and her unit referred to as 'the nursery'.

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 when there is an unreasonable requirement that people with a certain attribute (or characteristic) have difficulty complying with, compared to others without that attribute.

For example, applicants for a job as a security officer are required to pass a fitness test set at levels more suited to men. Women are less likely to be able to pass the test, and the requirement might be unreasonable as the tasks of the job involve very little physical activity at such a high level.

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.

These types of attitudes may lead to unlawful discrimination under the Act:

- an employer having a personal preference for working with either men or women.
- believing a person of a particular gender would 'fit in' better with existing staff.
- saying the work is not 'suitable' for a particular sex.
- thinking women are 'better suited' to particular kinds of work, such as in reception areas or behind a counter.
- arguing that there is a lot of heavy lifting, so only a man could do the job.

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).

When and where is sex discrimination unlawful?

Sex discrimination 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:

- customer in a shop or restaurant;
- s 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;
- unless an exemption applies.

Examples of sex discrimination

A man was refused entry to a beauty therapist course because he wasn't considered 'suitable' as a male.

A woman arranging for a quote for major building work at her home was told it would be necessary for her husband to be present for the quote.

A hospital refused to appoint a qualified male midwife because existing staff didn't want to work with a male midwife.

A female diesel fitter apprentice was only given menial tasks rather than the full range given to the male apprentices, and was subjected to comments from her supervisor about women not being suitable for that kind of work.

When and where is different treatment okay?

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 following are some of the exemptions that apply to sex discrimination.

Competitive sport: Participation in a competitive sporting activity may be restricted to males or females, if the restriction is reasonable having regard to the strength, stamina or physique requirements of the activity. However, this exemption does not apply to sporting activities for children under the age of 12 years.

For example, a soccer club has one competition with mixed teams of both boys and girls up to the age of 12 years, and after that players are placed in boys' or girls' teams.

Single sex schools: It is not unlawful for an educational authority to operate a school or educational institution for students of a particular sex.

Welfare measures: It is not unlawful to do an act to benefit the members of a group of people of a particular sex if the purpose is not inconsistent with the Act.

For example, a local council may provide funding for a Men's Shed to be run by men and for men only.

Equal opportunity measures: It is not unlawful to do an act to promote equality of opportunity for people of a particular sex, but only until equality has been achieved.

For example, an employer pays an additional 1% superannuation contributions for its female workers.

Work in a person's own home: It is not unlawful for a person to discriminate on the basis of sex, when employing someone in their own home to perform domestic services or to look after their children in the person's home.

For example, someone engaging a personal carer to work in his home, may advertise for a person of a particular sex.

Genuine occupational requirement: A genuine occupational requirement exists when the essential nature of the job, or particular duties attached to the job, call for a member of one sex. It may be lawful to discriminate in recruitment, training, promotion and transfer in a job for which the sex of a worker is a genuine occupational requirement.

For example, considering only women applicants for a position involving body searches of women.

Religious bodies: A body established for religious purposes may discriminate on the basis of sex, except in the areas of work or 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.

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.

Sites of cultural or religious significance: Access to land or buildings of cultural or religious significance may be restricted on the basis sex 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 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.

Shared accommodation: People who rent part of their home where they live may discriminate on the basis of sex when deciding who the accommodation will be rented to, so long as there are no more than three people renting.

For example, a woman may advertise for a female tenant to share her unit.

Single sex accommodation: It can be lawful for an employer to discriminate on the basis of sex where the position includes accommodation provided by the employer that is only suitable for people of one sex, and supplying separate accommodation would impose unjustifiable hardship on an employer.

For example, a farm that provides accommodation for seasonal shearers may not be obliged to provide separate accommodation for male and female shearers.