

FACT SHEET:

Discrimination in education

The Anti-Discrimination Act 1991 makes discrimination in education against the law. The legislation applies to all facets of education, including:

- admission and enrolment applications;
- terms of admission and enrolment;
- variation of the terms of a student's enrolment;
- denial or limitation of benefits normally resulting from enrolment;
- exclusion or suspension of students;
- assessment and examination;
- access to resources and facilities; and
- treatment of a student in regard to training or instruction.

People involved in running a school, college, university or other training institution must not discriminate in education.

The Act also prohibits sexual harassment and public acts of vilification. This means that sexual harassment and vilification in the classroom, lecture theatre, tutorial, training course, education workshop, information session, field trip, excursion or other similar educational setting or venue is against the law.

If you have experienced discrimination, sexual harassment or vilification at school or other educational institution, you may be able to lodge a complaint with us at the Commission.

Discrimination can cost businesses time and money, damage morale, reduce productivity and undermine business reputation, but there are also legal obligations on employers to provide workplaces free from discrimination, sexual harassment, victimisation and vilification.

Student rights and responsibilities

Everyone has the right to be free from discrimination, sexual harassment and vilification in an educational institution. If students believe that this type of behaviour is occurring in an educational setting, they may have the right to make a complaint to the Commission and seek a solution through conciliation.

The Act also makes victimisation unlawful in educational settings. 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.

Education provider rights and responsibilities

All workers in the education sector 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 fair and safe teaching and learning environments where all staff and students have equal opportunities.

Vicarious liability

The Act imposes a responsibility on educational institutions to protect their staff and students from unlawful discrimination, sexual harassment and vilification.

This means that if you are being discriminated against, sexually harassed or vilified while working in an educational setting, you may be able to lodge a complaint against your employer, the educational institution, and the individual worker subjecting you to this behaviour.

An educational institution may be liable if a person seems to be representing the institution or acting on behalf of the institution. Regardless of whether they are on contract or an employee, a person might be considered to be an agent of the institution.

An educational institution cannot avoid vicarious liability simply because it was not aware of the unlawful discrimination, sexual harassment or acts of vilification done by its employees or agents. An educational institution will not usually be responsible for discrimination, sexual harassment or vilification by another student.

When is different treatment okay?

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

An overview of some of the exemptions that may apply in educational settings are below.

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 – for example, special tertiary education entry programs for Indigenous Australians recognise the severe disadvantage they experience compared to others in terms of access to education.

Educational institutions: Educational institutions for students of a particular sex or religion, or for students who have general or specific impairment, can lawfully exclude students who are not of the particular sex or religion or who do not have a general or the specific impairment.

Qualifying age: Students may be selected for educational programs on the basis of a minimum qualifying age.

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 these would impose an unjustifiable hardship on the educational institution. Factors that are relevant include the nature of the special service or facility, cost of supplying it, the number of people to benefit, the financial circumstances of the organisation, the disruption that the supplying of those services or facilities might cause and the nature of any benefit or detriment to all people concerned.

Sporting activities: Participation in competitive sporting activities can be restricted on the basis of sex once a person turns 12 years old. Restricted participation must be reasonable and take into account the strength, stamina or physical requirements of the sporting activity. The legislation also allows restriction of participation in sport on the basis of age and impairment. This exemption does not apply to coaching, umpiring or sports administration.