



FACT SHEET:

Sexuality discrimination

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

What is sexuality discrimination?

Under the Act, sexuality is defined as whether a person is heterosexual, homosexual or bisexual.

Discrimination on the basis of sexuality can be direct or indirect. Direct discrimination is treating a person less favourably because of their sexuality than someone with a different sexuality, in similar circumstances.

For example, a well-qualified and experienced gay man does not receive a promotion at work because others might feel uncomfortable having a gay man as a boss.

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) would have difficulty complying with, compared to others without that attribute.

For example, a gay student is required to attend classes where the teacher continually maintains that only heterosexual relationships are natural and that homosexuality is perverted.

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 sexuality - such as a friend, family member or co-worker.

For example, a man out for a meal with his sister and her wife is refused service at the bar, and told by the barman that the venue "doesn't like people like that coming in here," indicating the man's sister and her wife.

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).

Sexuality vilification

More serious poor treatment because of your sexuality might be vilification. Vilification is when someone incites hatred, serious contempt, or severe ridicule of someone else because of their sexuality. 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 sexuality discrimination unlawful?

Sexuality 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:

- 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 sexuality discrimination

A woman and her partner are refused a motel room for the night because the manager says he doesn't "want lesbians here".

A same sex couple living in a stable relationship with a child from a previous marriage are denied a family health insurance package.

A supervisor calls one of his workers a 'shirt lifter' and others in the workplace refer to his homosexuality in an offensive manner.

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.

Genuine occupational requirements: In some cases it may be lawful for an employer to discriminate against a homosexual person (for example, dismiss or caution them) who openly acts in a way that is inconsistent with the religious beliefs of the employer. The exemption is about a person's behaviour rather than the fact of their sexuality, and applies where the employer is a religious school, educational institution, or other religious body. It must be a genuine occupational requirement that the person act in a way that is consistent with the employer's religious beliefs, and the discrimination must not be unreasonable in the circumstances, including whether the action is disproportionate to the behaviour, and the consequences for both parties.

Provision of assisted reproductive services: People who provide assisted reproductive technology services (in-vitro fertilisation, artificial insemination, embryo transfer, or other services relating to artificial fertilisation) may discriminate on the basis of sexuality, for example, they may refuse to provide services to lesbian or gay couples.

Accommodation with religious purpose: Where accommodation is under the direction or control of a body established for religious purposes, discrimination is allowed if it is in accordance with the doctrine of the religion concerned and necessary to avoid offending the religious sensitivities of people of the religion.