

FACT SHEET:

Discrimination in the provision of goods or services

The *Anti-Discrimination Act 1991* makes discrimination in the provision of goods and services against the law. It also prohibits sexual harassment and public acts of vilification.

The law applies across the sector, including:

- access to and use of any place, vehicle or facilities that members of the public are permitted to use;
- transport and travel services;
- professional, trade and business services (plumbing, medical, legal, mechanical etc);
- banking, finance and credit services;
- public and local government services;
- hospitality and the supply of refreshments (hotels, cafes, restaurants etc);
- health and community services;
- recreation (entertainment, sports, tourism, arts etc); and
- retail and wholesale.

It applies to all aspects of the provision of goods and services, including:

- how a person is treated in the supply of goods or services (for example, refusing to serve an Aboriginal person in a hotel);
- the way in which the goods or services are supplied (for example, charging women more than men for the same garage services); or
- the terms on which the goods or services are supplied (for example, requiring a young person to leave a bigger deposit on hire items such as sailboards than older people).

The legislation does not apply to non-profit organisations or associations established for social, literary, cultural, political, sporting, athletic, recreational, community service or other such lawful purposes. This excludes most common clubs and voluntary associations. However, clubs and associations must not discriminate in their capacity as employers.

Rights and responsibilities for users of goods and services

Everyone has the right to be free from discrimination, sexual harassment and vilification when obtaining goods and accessing services. If you believe that you have been unlawfully discriminated against, sexually harassed or subjected to vilification you have the right to make a complaint to the Commission and seek a solution through conciliation.

The Act also makes victimisation unlawful in the provision of goods and services. Victimisation happens when a person 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.

Rights and responsibilities for providers of goods and services

All workers in the goods and services sector have the right to work in an environment free from unlawful discrimination, sexual harassment and vilification.

The legislation establishes a legal responsibility to provide goods and services without discrimination, sexual harassment and vilification.

All providers of goods or services must take reasonable steps to prevent this type of conduct. The implementation of specific policies can help to minimise the scope and impact of discriminatory attitudes and practices and to reduce legal liability.

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.

Below is an overview of some of the exemptions that may apply in providing goods or services.

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, an information and referral employment service exclusively for young people.

Public health: Actions to protect public health when it is reasonably necessary are permitted. This may include, for example, temporarily excluding a child from a childcare centre while they have an infectious or communicable disease such as measles or chickenpox.

Special services or facilities: It can be lawful to discriminate on the basis of impairment where special services or facilities are required for a person or people with an impairment, and supplying the special services or facilities would impose an unjustifiable hardship on the person providing the goods or services. Factors that are relevant include the cost of making reasonable adjustments, 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.

Reasonable adjustments may include modifying premises or equipment (such as providing ramp or lift access), adjusting certain practices and procedures (such as removing a policy that all cinema clients with a wheelchair be required to sit at the very front of the cinema) and implementing appropriate policies and practices (such as providing visual information aids for people with an intellectual or learning impairment, or braille trails for people with visual impairments).

Sites of cultural and religious significance: Access to land or buildings of cultural or religious significance may be restricted on the basis of sex, age, race or religion if the restriction is in accordance with the cultural standards or doctrine of the religion concerned, and if it is necessary to avoid offending the cultural or religious sensitivities of the people of the culture or religion.

Age based benefits: Age based benefits and concessions are permitted e.g. pensioner and child discounts at cinemas and for travel.

Accompanying children: A provider of services may require children to be accompanied by an adult where there is a reasonable risk of disruption or danger to the child or anybody else – for example, for certain amusement rides.