

# Sex Discrimination Act: a fair go for all

"PROGRAMA UNIVERSITARIO DE  
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## Sex Discrimination Act

This booklet is designed as a guide to the Sex Discrimination Act: where, to whom and how it applies. In it, you will find information on discrimination in:

	Page
● employment	5
● education	8
● accommodation and the disposal of land	8
● provision of goods, services and facilities	9
● activities of clubs	10
● the administration of Commonwealth laws and programs	11

You will also find information about:

● advertisements	11
● acts to which the legislation does not apply	12
● the role of the Human Rights Commission and the Sex Discrimination Commissioner	13
● how complaints are made and resolved	13
● offences	14

Further information on the Act can be obtained from:

**Human Rights Commission**  
**G.P.O. Box 629**  
**CANBERRA CITY ACT 2601**  
**Phone: (062) 434122**

## "Human Rights: a fair go for all"

# Sex Discrimination Act: a fair go for all

Australia has long been reputed to be a country in which everyone is treated equally, where everyone is given "a fair go". This has never been the case, but legislation like the Sex Discrimination Act can help to bring about an equal society, where everybody's rights are respected.

The Sex Discrimination Act, passed by the Parliament in March 1984, follows other initiatives by the Commonwealth; the first was the Racial Discrimination Act 1975, the next was the Human Rights Commission Act 1981. Like these other two Acts, the Sex Discrimination Act will be administered by the Human Rights Commission. A Sex Discrimination Commissioner will handle complaints brought under the legislation and will work with the Commission.

The Sex Discrimination Act is designed to:

- promote equality between the sexes;
- eliminate discrimination in specific areas like employment;
- eliminate sexual harassment in the workplace and in educational institutions; and
- fulfil obligations under the United Nations Convention on the Elimination of All Forms of Discrimination Against Women, which Australia ratified in 1983.

In future, it will be unlawful to discriminate against a person of a particular sex or marital status in certain areas. This means treating the person less favourably *because* of that person's sex or marital status than a person of the other sex or a different marital status would be treated in the same sort of situation. (*Marital status* is defined as being single, married, divorced, separated, widowed, or living in a bona fide de facto relationship.)

It will also be unlawful to discriminate against a pregnant woman simply because she is pregnant: good reason must exist (like a specific medical condition) before treating her differently to a person who is not pregnant. There is a special provision to ensure that the observance of a pregnant woman's rights does not amount to discrimination against men.

Discrimination also includes being treated less favourably because characteristics generally considered to be or imagined to be associated with one particular sex, marital status or with pregnancy are taken into account. (For example, stereotyped images that women are emotional, weak,

illogical, or men are aggressive, impatient, brave.) Treating a woman less favourably because she might get pregnant is such an example of discrimination on the ground of sex.

## **Where the Sex Discrimination Act applies**

Discrimination may also occur where unreasonable conditions are imposed and persons of a particular sex or marital status or pregnant women are less likely to meet such conditions.

The areas of activity where it will be unlawful to discriminate are:

- employment
- education
- providing goods, services and facilities
- providing accommodation or in disposing of land
- the activities of certain clubs
- the administration of a Commonwealth law or Commonwealth program.

While the Act applies throughout Australia, it may not apply to every act of discrimination because of some limitations on Commonwealth powers.

A complaint about an act of discrimination on the ground of sex, marital status or pregnancy may be made to the Human Rights Commission where that act has been done

- in the Australian Capital Territory or in an external Territory;
- by or on behalf of the Commonwealth
- in relation to Commonwealth employees or Commonwealth employment;
- by a foreign or a trading or financial corporation;
- in the course of banking or insurance, but not a State bank or insurance company;
- in the course of interstate or overseas trade or commerce;
- against women.

This means that with all acts of discrimination which the Sex Discrimination Act makes unlawful, a complaint can be made to the Human Rights Commission where those acts occur in the Australian Capital Territory or in an external Territory (such as Norfolk Island).

If the act has occurred outside these Territories, then a complaint can be made to the Human Rights Commission if that act has been done in the course of any of the activities listed above.

## **Complaints about acts occurring in New South Wales, Victoria and South Australia**

These three States already have anti-discrimination legislation providing for similar prohibitions on discrimination and similar complaint-handling functions to those provided in the Commonwealth Sex Discrimination Act. The Commonwealth Sex Discrimination Act provides that people complaining in these States have a choice of bringing their complaints under either the State Act or the Commonwealth Act; but a complaint about a particular act of discrimination cannot be made under both Acts.

Arrangements are being made for information and advice about how to bring a complaint under either the State or the Commonwealth legislation to be available from the office of the anti-discrimination body in each of these States.

In the future there may also be anti-discrimination legislation in other States. For the time being the Human Rights Commission will have its own officers located in these States.

## **Unlawful acts of discrimination**

### **Employment**

The Sex Discrimination Act provides that no person can discriminate against another person on the ground of sex, marital status or pregnancy in employment, including:

- the offer of a job;
- the terms and conditions of employment;
- the opportunities for promotion, transfer or training; and
- dismissing an employee.

These provisions do not apply to State Government employees, but may apply to other employees employed full-time, part-time, temporarily or casually, and to contract workers (for example, employees of contract cleaning firms) and commission agents (for example, sellers of used cars, cosmetics, insurance).

The Act also covers:

- partnerships;
- membership of federally-registered trade unions or similar organisations;
- employment agencies, which are obliged to provide the same services in a similar manner to every client, irrespective of sex, marital status or pregnancy; and
- qualifying bodies, like registration or licensing boards for occupational qualifications;
- questions which may be asked in application forms and at interviews.

### **Sexual Harassment**

The Sex Discrimination Act also deals with sexual harassment at work. Sexual harassment means an unwelcome sexual advance — which can be physical, verbal or written — or an unwelcome request for sexual favours, *if* refusal of such an advance could jeopardise a person's employment; or where an employment opportunity — transfer, promotion, training — could be forfeited, or dismissal is likely.

Sexual harassment can also occur where the sexual advance or conduct has been rejected or objected to, and this has resulted in a disadvantage for the employee, like dismissal.

The Sex Discrimination Act does not apply to programs an employer may wish to undertake to ensure that people of a particular sex or marital status or women who are pregnant have equal opportunities with other people. For example, an employer who finds that only male employees in his business have certain skills may wish to provide a special training program to equip his female employees with these skills. The female employees will then have an equal opportunity to compete for jobs requiring these skills in that business.

The Act also makes it unlawful to request information from a person which would not be asked of a person of the other sex, a different marital status or a woman who was not pregnant. However, it will not be unlawful to request medical information concerning a woman's pregnancy.

### **Examples of how employment provisions will operate:**

**Hiring:** *John is a trained nurse, who applies for a job in a nursing home. He is not given the job because the employers believe their elderly patients prefer to be looked after by female nurses.*

**Terms and Conditions:** *Jane and Robert are employed as clerks doing the same work. The boss asks Robert to work overtime, but does not allow Jane to do the same because he thinks she will be kept away from her "family duties". However, the boss is quite happy for Jane to take work home, but she is not paid for this.*

**Denial of opportunities:** *Maria and Mike both work in a factory on an assembly line. Mike is given the opportunity to train for a more highly-paid job in work time, but Maria, who is equally competent, wasn't considered for training, because the boss feels married women will probably get pregnant and leave.*

*A savings bank has a vacancy in one of its rural branches. Scott, who is single, and Angelo, a married man, both apply for the job. Angelo is given the job, and Scott is told that he didn't get the job because he isn't "a family man".*

**Dismissal:** *The Ace Engineering Company employs Jean and Alan as engineers. It decides to close one branch: Jean is laid off, because her husband is "the breadwinner", and Alan is offered a transfer to a neighbouring town.*

**Other Detrimental Action:** *Ingrid is five months pregnant and the boss moves her from her public relations job to "back room" clerical work as he feels pregnant women do not suit the firm's image.*

### **Exceptions:**

In some jobs it may be a genuine occupational requirement to be either male or female and there are exemptions allowed for this. Examples of such jobs include:

- acting in a particular role in theatre or film, on television or radio;
- fitting clothes;
- searching clothes or bodies;
- change-room or toilet attendants;
- live-in jobs, where it is unreasonable for an employer to provide accommodation for both sexes.

An employer can, when it is not reasonable to expect otherwise, maintain different standards in accommodation for different employees based on the number of people in the employee's household.

Where live-in care of children is required, preference can be given to a person of a particular sex or to a married couple. Preference for a person of a particular sex is permitted where domestic help is sought.

Another exemption applies to hiring and firing of staff by an educational institution conducted in accordance with religious teachings.

## **Education**

The Act provides that a person applying for admission to an educational institution (university, college of advanced education, TAFE, school) or to a particular course of study cannot be denied enrolment on the basis of sex, marital status or pregnancy. Nor can a person be expelled or dismissed from an institution or course on those grounds.

Provision is also made in the Act to make unlawful sexual harassment in educational institutions: it is unlawful for any staff member of any educational institution to harass students sexually.

### **Examples:**

*Mary wants to be a geologist, but is not admitted into the course because it would be "inconvenient" to take a woman away on field trips.*

*Jane and Robert both fail a maths exam: Robert is given the option of special maths classes held at the same time as domestic science, but Jane is told she must attend domestic science.*

### **Exceptions:**

There is an exemption for discrimination on the ground of marital status or pregnancy in regard to education or training provided by an educational institution conducted in accordance with religious teachings. The Act does not prohibit single-sex institutions.

## **Accommodation and the Disposal of Land**

No person can be put at a disadvantage because of sex, marital status or pregnancy when seeking accommodation. No person's application for accommodation can be refused on those grounds. The terms and conditions for accommodation cannot be altered for reasons of sex, marital status or pregnancy. No person is to be afforded a lower priority in access to accommodation, nor can anyone be evicted for those reasons.

A person cannot refuse to dispose of land or an interest in land, or impose discriminatory terms and conditions on the sale or disposal of land on the ground of sex, marital status or pregnancy.

**Examples:**

*Sigrid wants to rent a house, but she is told that the owners only want a married couple as tenants.*

*Helen and Carl, who have had a de facto relationship for several years, apply for subsidised rental accommodation, but are told that only married couples are eligible.*

**Exceptions:**

Where accommodation is offered in a private house and where the accommodation available is limited to three persons, or where accommodation is offered by a religious or charitable body, it is not unlawful to discriminate on the ground of sex, marital status or pregnancy.

## **Provision of Goods, Services and Facilities**

Under the legislation, no person providing goods, services or facilities is permitted to withhold any of these items from another person because of that other person's sex, marital status or pregnancy. Nor can anyone alter the terms or conditions on which items are provided, or provide them in a discriminatory way.

The sections of the Act dealing with goods, services and facilities cover:

- consumer goods;
- banking, insurance, loans, finance, credit;
- entertainment, recreation, refreshment;
- transport or travel services;
- professional or trade services; and
- government or local government services.

In providing goods, services or facilities, it is irrelevant whether or not payment is required.

**Examples:**

*Anastasia, a working woman, is denied a credit account with a department store unless her husband acts as guarantor. The store would not place the same restrictions on a man.*

*A finance company offers special borrowing rates for married couples and denies them to single people.*

*A female amateur dramatic society is not permitted to hire the hall of a local sporting club, which insists that the premises is only available to groups of men.*



## **Exceptions:**

The Act does not cover services which can only be provided to people of one sex; for example, medical procedures such as abortion, tubal ligation, vasectomy or ante-natal care.

At present, discrimination in superannuation schemes is excluded from the Sex Discrimination Act, but such schemes may be required to comply with the Act in the future. Insurance companies will be able to discriminate on the ground of sex *if* this is supported by reliable actuarial data.

## **Activities of Clubs**

Under the Sex Discrimination Act, it will be unlawful for a club, its management committee or any of its committee members to discriminate by:

- refusing to accept an application for membership;
- altering the terms and conditions of membership;
- denying or limiting members' access to club facilities;
- refusing to accept an application to vary membership (for example, changing from associate membership to full membership); or
- depriving members of membership.

The Act defines a club as a group of at least 30 people with a common interest (social, literary, cultural, political, sporting or athletic) which maintains facilities out of its funds for the members and which supplies liquor for consumption on the premises. The club need not be an incorporated body to come within this definition.

## **Examples:**

*A club, which has both male and female members, permits only men to use its billiard room, sauna, gymnasium and swimming pool.*

(If the club gives a reasonable share of its facilities to women and it is not possible to do this except at different times to men, it is not a discriminatory practice.)

*Sue wishes to be granted full membership at her golf club which only allows women to be associate members.*

*A club in a small country town is the focus for entertainment in the town. It will not permit Elizabeth, a divorcee, to join the club because it has a policy of not allowing divorced people or de facto couples to be members.*

**Exceptions:**

If a club exists for one sex only, members of the opposite sex can be refused membership.

Voluntary bodies (such as the YWCA, YMCA) and charitable organisations are not included in the definition of *club*, and it is not unlawful for them to discriminate on the ground of sex, marital status or pregnancy when admitting members or when providing benefits, facilities or services to members.

## **Administration of Commonwealth Laws and Programs**

No person acting under a Commonwealth law or administering a Commonwealth program may discriminate against another on the ground of sex, marital status or pregnancy. This applies to a Commonwealth employee or to anyone else given Commonwealth responsibilities.

**Exceptions:**

Where a Commonwealth or State law expressly requires discrimination, action under such a law will be exempt from the Sex Discrimination Act for at least 2 years.

There may be a number of other exemptions relevant; for example, religious marriage celebrants would not be required to marry a couple, one or both of whom had been previously divorced.

## **Advertisements**

The publishing of any advertisement stating an intention to commit an unlawful act contrary to the legislation will be an offence carrying a fine of up to \$1,000 for an individual or \$5,000 for a corporate body. The Act defines *advertisements* as including:

every form of advertisement or notice, whether to the public or not, and whether in a newspaper or other publication, by television or radio, by display of notices, signs, labels, showcards or goods, by distribution of samples, circulars, catalogues, price lists or other material, by exhibition of pictures, models or films, or in any other way. (s.86)

Other offences are mentioned later.

# **Actions to which the Act does not apply**

Many of the exemptions allowed under the Act have already been discussed. The legislation provides for a number of other exemptions. These are:

## **Religious Bodies**

It will not be unlawful to discriminate on the basis of sex, marital status or pregnancy in the ordination, appointment, or training or education of priests, ministers of religion or members of a religious order.

Practices of religious bodies following their religious beliefs will not be considered discriminatory.

## **Combat Duties**

Another specific exemption from the Sex Discrimination Act is the employment of women in combat and combat-related duties in the armed forces.

## **Sport**

The exemption permits discrimination on the ground of sex in any competitive sporting activity in which the strength, stamina or physique of competitors is relevant. This does not cover coaching, administration, umpiring or sport for children under the age of 12.

## **Acts done under Statutory Authority**

An exemption is provided for acts of discrimination required:

- to comply with a law;
- a determination or direction under a law;
- an order of a court;
- a determination or decision of the Human Rights Commission;
- an order or award of a wage-fixing court or tribunal.

However, the exemption for acts done in compliance with laws will, unless extended or except in the case of certain social welfare legislation, last for two years only.

## Special Exemptions

Where it is thought that a specific activity deserves to be exempted from the provisions of the Act, application can be made to the Human Rights Commission for an exemption. The Commission can grant exemptions, with or without conditions, for a maximum of five years, and must publish notice of its decision to grant or deny the exemption together with its reasons. People disagreeing with the Commission's decision can appeal to the Administrative Appeals Tribunal. An exemption is renewable.

## The Sex Discrimination Commissioner and The Human Rights Commission

A Sex Discrimination Commissioner is appointed by the Governor-General and works in conjunction with the Human Rights Commission. The Commissioner is responsible for examining complaints of discrimination and endeavouring, by conciliation, to reach a settlement of the matter.

If a complaint cannot be settled by conciliation, the matter can be referred to the Human Rights Commission and the Commission will inquire into that complaint and will also attempt to conciliate it.

The Human Rights Commission is also given powers to

- promote an understanding of the legislation;
- undertake research and formulate educational programs; and
- examine Commonwealth legislation for possible inconsistency with the sex discrimination legislation,

either on its own initiative or when requested by the Attorney-General.

## Complaints and inquiries

Written complaints alleging an act of discrimination on the ground of sex, marital status or pregnancy or discrimination involving sexual harassment, should be sent to the Human Rights Commission by the person affected or by someone else acting on his or her behalf. Where a number of people have the same complaint, one concerned person can act as the representative of the others. For example, trade unions can lodge a complaint on behalf of a member or members.

The Commissioner will examine the complaint and, in doing so, can call for information and interview people and can call a private compulsory conference, to which others can be directed to attend, to settle the matter.

The Commissioner can ask the Human Rights Commission to provide an interim determination, can decide not to inquire into a complaint or can refer the matter to the Commission for further inquiry. If the Commission decides not to inquire into a complaint, the Commissioner must inform the complainant, who then has 21 days to have the matter referred to the Commission.

An inquiry into a complaint by the Human Rights Commission can be held in private or in public. The Commission can permit the complainant and the respondent to have legal representation. Where the Commission itself has legal counsel, the other parties are automatically entitled to legal representation.

The Commission can call for information and witnesses as it sees fit and it is not bound by the rules of evidence.

The Commission can issue declarations or determinations at the conclusion of the inquiry, which are not binding but which the Commission or complainant can seek to have enforced by the Federal Court. The Commission can make determinations that:

- the respondent behaved unlawfully;
- the respondent should redress any loss or damage suffered by the complainant;
- the respondent should re-employ the complainant;
- the respondent should promote the complainant;
- the respondent should pay damages to the complainant (this does not apply to representative actions); or
- further action is inappropriate.

## Offences

There are some offences provided under the legislation which include:

- providing false or misleading information to the Commission or the Commissioner, or
- failing to attend a compulsory conference, supply information or documents.

It will also be an offence to victimise a person, because he or she has made a complaint, brought proceedings, provided information, appeared as a witness, asserted his/her rights or those of another, or alleged that another has done an unlawful act.