
Fact Sheet LP04

Discrimination



Legislation

Some of the legislation in discrimination includes:

- Anti-Discrimination Act 1991 (Qld)
- Racial Discrimination Act 1975 (Commonwealth)
- Disability Discrimination Act 1992 (Commonwealth)
- Racial Hatred Act 1995 (Commonwealth)

Anti-Discrimination Act 1991 (Qld)

The stated purpose of the Anti-Discrimination Act 1991 (Queensland) is to promote equality of opportunity for everyone by protecting them from unfair discrimination in certain areas of activity and from sexual harassment and certain associated objectionable conduct

Definition of discrimination

Discrimination happens when a person treats, or proposes to treat, another person less favourably because they possess some attribute.

Discrimination may occur even if there was no intention to discriminate. It is not relevant whether the person who perpetrates the discrimination knows that their actions are discriminating.

Forms of Discrimination

- **Sex Discrimination** - being discriminated against on the basis of gender. Includes discrimination against a woman because she is pregnant. Sexual harassment is also against the law.
- **Race Discrimination** - When a person is treated unfairly or harassed because of their race, colour, ethnic background, ethno-religious background, descent or nationality.
- **Age Discrimination** - When a person is treated unfairly or harassed because of their age - for example, because people think you are too old, too young or too middle aged. Forcing people to retire at the old retirement age is also against the law. This is called compulsory retirement.
- **Marital Status Discrimination** - When a person is treated unfairly or harassed because of their particular marital status, for example, because you are single, or married, or living in a de facto relationship.
- **Homosexual or Lesbian Discrimination** - When a person is treated unfairly or harassed because they are gay or lesbian, or someone thinks they are gay or lesbian.
- **Disability Discrimination** - When a person is treated unfairly or harassed because they have a disability, or someone thinks they have a disability. It is also against the law to treat them unfairly or harass them because you had a disability in the past, or because you will or may get one in the future. Disability includes physical, intellectual and psychiatric disabilities, learning and emotional disorders, and any organism capable of causing disease.
- **Transgender Discrimination** - When a person is treated unfairly or harassed because they are a transgender, or others think they are transgender. You are counted as transgender if you live or seek to live as a member of the opposite gender (sex) to your birth gender.
- **Discrimination because of who you are related to, or who you associate with** - When you are treated unfairly or harassed because of the sex, race, age, marital status, homosexuality/lesbianism, transgender (transsexuality) or disability of one of your relatives, friends or work colleagues.

Discrimination by club in prospective membership area

Associations need to be aware that clubs must not discriminate in terms of accepting or rejecting members, unless there are reasonable grounds (see below).

Section 94 of the Anti-Discrimination Act states:

A club must not discriminate-

- in determining the terms of a particular category or type of membership of the club; or
- in failing to accept a person's application for membership of the club; or
- in the way in which a person's application is processed; or
- in the arrangements made for deciding who should be offered membership; or
- in the terms on which a person is admitted as a member.

A club must not discriminate-

- in any variation of the terms of membership of the club; or
- in failing to accept a member's application for a different category or type of membership; or
- by denying or limiting access to any benefit, arising from membership, that is supplied by the club; or
- in depriving a member of membership; or
- by treating a member unfavourably in any way in connection with the membership or the affairs of the club.

Reasonable grounds for discrimination

Under the **Anti-Discrimination Act 1991** it is **not** unlawful to discriminate in the club membership and affairs area if an exemption in sections 97 to 100 applies.

Section 97: Club established for minority cultures and disadvantaged people

A club may exclude applicants for membership of the club who are not members of the group of people with an attribute for whom the club was established if the club operates wholly or mainly-

- to preserve a minority culture; or
- to prevent or reduce disadvantage suffered by people of that group.

Section 98: Reasonable sex discrimination permitted

It is not unlawful for a club to discriminate on the basis of sex by limiting access to any benefit, arising from membership, that is provided by the club if:

- It is not practicable for males and females to enjoy the benefit at the same time; and
- Either of the following subparagraphs apply:
 - access to the same or an equivalent benefit is supplied for the use of males and females separately; or
 - access arrangements offer males and females a reasonably equivalent opportunity to enjoy the benefit.

Section 99: Reasonable risk of injury

A club may exclude an applicant for membership who is a minor if there is a reasonable risk of injury to a minor or other people.

Section 100: Special services or facilities required

It is not unlawful for a club to discriminate on the basis of impairment in failing to accept a person's application for membership if:

- the person would require special services or facilities; and
- the supply of special services or facilities would impose **unjustifiable hardship** on the club.

Whether the supply of special services or facilities would impose unjustifiable hardship depends on the circumstances set out in section 5.

Unjustifiable Hardship

Section 5 of the Anti-Discrimination Act 1991

states: Whether the supply of special services or facilities would impose unjustifiable hardship on a person depends on all the relevant circumstances of the case, including, for example:

- the nature of the special services or facilities; and
- the cost of supplying the special services or facilities and the number of people who would benefit or be disadvantaged; and
- the financial circumstances of the person; and
- the disruption that supplying the special services or facilities might cause; and
- the nature of any benefit or detriment to all people concerned.