



Fact sheet

Complaints under the Sex Discrimination Act: Sexual Orientation

What is the Sex Discrimination Act?

The *Sex Discrimination Act 1984* (Cth) (the SDA) makes it against the law to treat you unfairly because of your: sex; marital status; family responsibilities; because you are pregnant or might become pregnant or because you are breastfeeding.

The SDA also makes sexual harassment against the law.

As of 1 August 2013 the SDA also makes it against the law to treat you unfairly because of your **sexual orientation**; marital or relationship status (including same-sex de facto relationships); gender identity and intersex status.

The Australian Human Rights Commission will be able to accept complaints of discrimination on the ground of **sexual orientation** about things that have happened on or after the commencement date.

What is sexual orientation?

Sexual orientation means a person's sexual orientation towards:

- persons of the same sex; or
- persons of a different sex; or
- persons of the same sex and persons of a different sex.

Terms commonly used to describe a person's sexual orientation include gay, lesbian, homosexual, bisexual, straight and heterosexual. The SDA does not use these labels, as they may be inaccurate. However, the SDA is intended to protect people with these sexual orientations from discrimination.

What is sexual orientation discrimination?

Direct sexual orientation discrimination happens when a person is treated less favourably than a person with a different sexual orientation would be treated in the same or similar circumstances. For example, it may be direct sexual orientation discrimination for an employer not to promote an employee because it has become aware that he is bisexual.

Indirect sexual orientation discrimination occurs when there is a requirement or practice that is the same for everyone but has an unfair effect on people of a particular sexual orientation. For example, a company policy that offers benefits to an employee's husband or wife, such as discounted travel or gym membership, may disadvantage employees with a same-sex partner because of their sexual orientation and/or relationship status.

When can this law be used?

You can use the SDA to get fair treatment in:

- **Employment** – getting a job, terms and conditions of a job, training, promotion, being dismissed.
- **Education** – enrolling or studying in a course at a private or public school, college or university.
- **Accommodation** – renting or buying a house or unit.
- **Getting or using services** – such as services provided by restaurants, shops or entertainment venues, banking and insurance services, services provided by government departments, transport services, professional services like those provided by lawyers, doctors or tradespeople.

What can I do if I experience discrimination?

You may want to deal with the situation yourself by raising it directly with the person or people involved.

If this does not resolve the situation, or you do not feel comfortable doing this, you can make a complaint to the Australian Human Rights Commission. You can also have someone such as a solicitor, advocate or trade union make a complaint on your behalf.

It does not cost anything to make a complaint to the Commission.

Your complaint needs to be put in writing. The Commission has a complaint form that you can fill in and post or fax to us or you can lodge a complaint online at our website. If you are not able to put your complaint in writing, we can help you with this.

For your complaint to be valid it must be reasonably arguable that the events you want to complain about are unlawful discrimination and you must provide sufficient details about your allegation including what happened, when and where it happened and who was involved.

A complaint can be made in any language. If you need a translator or interpreter, the Commission can arrange this for you.

What will happen with my complaint?

When the Commission receives a complaint about something that is covered by the SDA, the President of the Commission can investigate the complaint and try to resolve it by conciliation. The Commission is not a court and cannot determine that discrimination has happened. The Commission's role is to get both sides of the story and help those involved resolve the complaint.

Commission staff may contact you to get further information about your complaint.

Generally, the Commission will tell the person or organisation the complaint is against (the respondent) about your complaint and give them a copy of the complaint. The Commission may ask the respondent for specific information or a detailed response to your complaint.

When appropriate, the Commission will invite you to participate in conciliation. Conciliation is an informal process that allows you and the respondent to talk about the issues and try to find a way to resolve the complaint.

If your complaint is not resolved or it is discontinued for another reason, you can take your complaint to the Federal Court of Australia or the Federal Circuit Court. In certain circumstances, you can only take a matter to court if the court has granted you leave to do so.

Where can I get more information?

Call us

Complaints Info Line: 1300 656 419 or (02) 9284 9888
TTY: 1800 620 241

If you need an interpreter you can call the Translating and Interpreting Service (TIS) on **131 450** and ask to be connected to the Australian Human Rights Commission.

If you are deaf or have a hearing or speech impairment you can contact the National Relay Service (NRS) on **133 677** (TTY/Voice) or **1300 555 727** (Speak & Listen) and ask to be connected to the Australian Human Rights Commission.

Write to us

Postal Address: GPO Box 5218, Sydney NSW 2001
Email: complaintsinfo@humanrights.gov.au
Fax: (02) 9284 9611

Go online

Website: www.humanrights.gov.au
Make a complaint: www.humanrights.gov.au/complaints/lodging-your-complaint

The Australian Human Rights Commission can make reasonable adjustments for people with disability to aid participation in the complaint process.

You do not need a lawyer or advocate to make a complaint about discrimination. If you are seeking advice or advocacy you can contact your trade union, an advocacy organisation or a community legal centre. Contact details for your closest community legal centre can be found at www.naclc.org.au/directory.

Disclaimer: The information on this fact sheet is only intended as a guide. It is not a substitute for legal advice.