



Fact sheet

Complaints under the Sex Discrimination Act

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; gender identity; intersex status; sexual orientation; marital or relationship status (including same-sex de facto couples); family responsibilities; because you are pregnant or might become pregnant; because you are breastfeeding.

The SDA also makes sexual harassment and sex-based harassment against the law.

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 banking and insurance services, services provided by government departments, transport services, professional services like those provided by lawyers, doctors or tradespeople, services provided by restaurants, shops or entertainment venues.

What is sex discrimination?

Sex discrimination happens when a person is treated less favourably than a person of a different sex would be treated in the same or similar circumstances. For example, it may be **direct** sex discrimination if male employees are paid more than employees of a different sex who are doing the same work.

Discrimination also happens when there is a rule or policy that is the same for everyone but has an unfair effect on people of a particular sex. This is called **indirect** discrimination. For example, it may be indirect discrimination if a policy says that managers must work full-time, as this might disadvantage women, who are more likely to need to work part-time due to responsibilities for caring for children.

What is gender identity discrimination?

Gender identity discrimination happens when a person is treated less favourably because of that person's gender-related identity, appearance or mannerisms or other gender-related characteristics of the person. It does not matter what sex a person was assigned at birth or whether the person has undergone any medical intervention.

Direct gender identity discrimination happens when a person is treated less favourably than a person with a different gender identity would be treated in the same or similar circumstances. For example, it may be direct gender identity discrimination if a shop-assistant refused to serve a person who identifies and presents as a woman but has a deep masculine sounding voice because she felt uncomfortable about that person's gender identity.

Indirect gender identity 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 gender identity. For example, it may be indirect discrimination if an organisation's human resources policies do not permit changes to an employee's records. Such a policy may require a transgender woman to continually disclose information about her gender identity in order to explain discrepancies in personal details.

What is intersex status discrimination?

Intersex status discrimination happens when a person is treated less favourably because that person has physical, hormonal or genetic features that are:

- neither wholly female nor wholly male; or
- a combination of female and male; or
- neither female nor male.

Direct intersex status discrimination happens when a person is treated less favourably than a person who is not intersex would be treated in the same or similar circumstances. For example, it may be direct discrimination for a physiotherapist to refuse to treat an intersex person because the person's biological characteristics make the physiotherapist uncomfortable.

Indirect intersex status discrimination occurs when there is a requirement or practice that is the same for everyone but has an unfair effect on people who are intersex. For example, a policy that says that certain medical treatments, such as treatment for ovarian cancer, is only appropriate for women may disadvantage an intersex man who has male and female sex characteristics.

What is sexual orientation discrimination?

Sexual orientation discrimination happens when a person is treated less favourably because that person has a 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.

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.

What is discrimination on the ground of marital or relationship status?

Discrimination on the ground of marital or relationship status happens when a person is treated less favourably because the person is:

- single
- married
- married, but living separately and apart from his or her spouse
- divorced
- the de facto partner of another person
- the de facto partner of another person, but living separately and apart from that other person
- the former de facto partner of another person
- the surviving spouse or de facto partner of a person who has died.

Direct marital or relationship status discrimination happens when a person is treated less favourably than a person with a different marital or relationship status would be treated in the same or similar circumstances. For example, it may be direct discrimination for a company not to employ a married woman because it assumes she will want to start a family.

Indirect marital or relationship status 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 marital or relationship status. For example, a company that offers only married employees working in remote locations allowances and leave to visit their families may be disadvantaging employees who are single or in de facto relationships.

What is pregnancy discrimination?

Direct pregnancy discrimination happens when a woman is treated less favourably than another person because she is pregnant or because she may become pregnant. For example, it would be direct pregnancy discrimination if an employer refused to employ a woman because she was pregnant or because she may become pregnant.

Indirect pregnancy discrimination occurs when there is a requirement or practice that is the same for everyone but has an unfair effect on pregnant women. For example, it may be indirect discrimination if a policy says that all employees must wear a particular uniform if it is difficult for a pregnant employee to wear that uniform.

What is discrimination on the ground of breastfeeding?

Direct breastfeeding discrimination happens when a woman is treated less favourably because she is breastfeeding or needs to breastfeed over a period of time. For example, it would be direct discrimination if a cafe refused to serve a woman because she is breastfeeding.

Indirect breastfeeding discrimination occurs when there is a requirement or practice that is the same for everyone but disadvantages women who are breastfeeding. For example, it may be indirect discrimination if an employer does not allow staff to take short breaks at particular times during the day. This may disadvantage women who are breastfeeding as they may need to take breaks to express milk.

What is family responsibilities discrimination?

Family responsibilities discrimination occurs when a person is treated less favourably than another person because the person has family responsibilities. Under the SDA, family responsibilities include responsibilities to care for or support a dependent child or a member of your immediate family.

For example, it may be discrimination for an employer to refuse to employ a person, demote a person or reduce a person's hours of work because the person needs to care for a family member.

What is sexual harassment?

Sexual harassment is any unwelcome sexual behaviour which is likely to **offend, humiliate or intimidate**. It has nothing to do with mutual attraction or friendship. Examples include:

- unwelcome physical touching
- staring or leering
- suggestive comments or jokes
- unwanted requests to go out on dates
- requests for sex
- emailing pornography or rude jokes
- sending sexually explicit texts
- intrusive questions about your private life or body
- displaying posters, magazines or screen savers of a sexual nature.

Everyone has the right to be safe and free from harassment while at work. The SDA also covers you if you are sexually harassed when you are purchasing or providing a good or a service or when you are studying at a school, college or university.

What is sex-based harassment?

Sex-based harassment is any unwelcome conduct of a seriously demeaning nature by reason of the person's sex in circumstances in which a reasonable person would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated.

The SDA covers you if you are harassed on the basis of your sex when you are at work, purchasing or providing a good or a service or when you are studying at a school, college or university.

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 allegations 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.

Where 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 of Australia. 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?

The Australian Human Rights Commission's contact details are:

Telephone

National Information Service: 1300 656 419 (local call)
TTY: 1800 620 241 (toll free)
Fax: (02) 9284 9611

Post

Australian Human Rights Commission
GPO Box 5218
Sydney NSW 2001

Online

Email: infoservice@humanrights.gov.au
Website: www.humanrights.gov.au

You can make a complaint online by going to
www.humanrights.gov.au/complaints/lodge-complaint.

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. If you need an Auslan interpreter, the Commission can arrange this for you.

If you are blind or have a vision impairment, the Commission can provide information in alternative formats on request.

If you are thinking about making a complaint, you might also want to consider obtaining legal advice or contacting a community organisation. There are community legal services that can provide free advice about discrimination and harassment. Contact details for your closest community legal centre can be found at www.nacclc.org.au/directory.

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