



# 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; 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.

## 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 the opposite sex would be treated in the same or similar circumstances. For example, it would be 'direct sex discrimination' if male and female employees are doing exactly the same work but male employees are being paid more.

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 as they are more likely to work part-time because of caring responsibilities.

## 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 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 family responsibilities discrimination?

Family responsibilities discrimination occurs when a person is treated less favourably than another person because they have 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 they need to care for a member of their family.

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## 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 can I do if I experience discrimination or sexual harassment?

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.

The complaint should say 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 Magistrates Court.

## Where can I get more information?

The Australian Human Rights Commission's contact details are:

### Telephone

Complaint Info line: 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: [complaintsinfo@humanrights.gov.au](mailto:complaintsinfo@humanrights.gov.au)

Website: [www.humanrights.gov.au](http://www.humanrights.gov.au)

You can make a complaint online by going to

[www.humanrights.gov.au/complaints\\_information/online\\_form/index.html](http://www.humanrights.gov.au/complaints_information/online_form/index.html).

If you are deaf or hearing impaired you can contact us by TTY on 1800 620 241. 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 your trade union. 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.nacalc.org.au/directory](http://www.nacalc.org.au/directory).

### ● Disclaimer

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