

Getting to know the Sex Discrimination Act: A guide for young women

So, what does the Sex Discrimination Act do?

The *Sex Discrimination Act 1984* is a federal law which makes it unlawful to:

- discriminate against you because of your sex, marital status, pregnancy or your potential to become pregnant
- dismiss you from your job because of your family responsibilities, or
- sexually harass you.

Since its introduction, the **Sex Discrimination Act** has helped thousands of people, who have suffered sex discrimination, seek redress. The Act has also provided us with a tool to promote and educate people about equality between women and men.

Why you need to know about the Sex Discrimination Act

As a student or a person involved in structured workplace learning, a part-time worker, apprentice or trainee you may experience instances of sex discrimination. Being treated less favourably because of your sex is wrong and usually against the law. It is important to be aware of your rights as this will help ensure that you get a fair deal.

Many students balance their studies with part-time or casual work. You should note that statistically the majority of complaints received under the **Sex Discrimination Act** come from the workplace. It can be difficult speaking out when you are new to the workforce, but understanding your rights will give you confidence if you find yourself being sexually harassed or treated in a discriminatory way.

Sex discrimination and sexual harassment prevent women from realising their full potential. It can limit participation in the workforce, and undermine the positive experiences of work. Discrimination results in unfair and unequal treatment. The **Sex Discrimination Act** is there to ensure that your opportunities, whether at work or school, are not restricted.

Are you sure I need to know?

Yes. Work by the **Sex Discrimination Commissioner** shows that students and young people with limited workplace experience often lack information about sex discrimination laws. Even when young people have an understanding of the relevant laws, it seems many are reluctant to speak out about their rights.

So what is sex discrimination?

Sex discrimination is being treated less favourably because of your sex, marital status, pregnancy or the potential to become pregnant. To be dismissed because of your family responsibilities or to be sexually harassed is also unlawful. It is important to note that discrimination can be direct or indirect.

Example

If the manager of a company said that male employees would be considered for the supervisor's position first, this would be **'direct' discrimination on the basis of sex**.

Indirect discrimination results when a requirement, rule, policy, practice or procedure which appears to treat everyone the same is applied, and it has an unfair effect on particular individuals or groups of people.

Example

If a company had a policy that employees who had worked continuously for 20 years would receive a bonus, it is likely that many more women than men would miss out. Many women interrupt their working lives to take maternity leave and then return to their jobs. If due to these breaks these women would not be seen to have worked continuously for the company for 20 years it would be **'indirect' sex discrimination**.

Both direct and indirect discrimination are unlawful under the **Sex Discrimination Act**.

Where are you covered for sex discrimination?

You are covered by the **Sex Discrimination Act** in most areas of public life including:

- employment
- enterprise bargaining and agreements
- insurance and superannuation
- education (schools, TAFE, colleges, universities etc.)
- provision of goods, services or facilities
- accommodation and housing
- buying or selling land
- Commonwealth laws and programs.

While in many cases employers can be held legally responsible for their employees' actions that result in sex discrimination or sexual harassment, it should be noted that all people have a responsibility for their own behaviour.

If you experience sex discrimination or sexual harassment you should speak to someone you trust who can help you, or make a complaint to the Human Rights and Equal Opportunity Commission (HREOC).

What is the Human Rights and Equal Opportunity Commission?

The Human Rights and Equal Opportunity Commission (HREOC) is a federal government agency that promotes awareness of human rights through public education, and handles complaints from people under federal anti-discrimination laws that it administers. These laws are:

- *The Sex Discrimination Act 1984*
- *The Disability Discrimination Act 1992*
- *The Human Rights and Equal Opportunity Commission Act 1986*
- *The Racial Discrimination Act 1975.*

THE WORKPLACE

Your first workplace experiences can be both exciting and anxious times. As the workplace is a "public place", it is easier for everyone if people know their rights and responsibilities. Knowing how to treat others, and how others should be behaving, is important.

Sexual harassment

Sexual harassment is a type of sex discrimination, and is the most common cause of complaint under the **Sex Discrimination Act**. Young women are often vulnerable to sexual harassment at school and in the workplace.

Sexual harassment is any unwanted or unwelcome sexual behaviour. It has nothing to do with mutual attraction or friendship and lots to do with people "crossing the line". Sexual harassment does not have to be direct or physical, it may include:

- staring or leering
- suggestive comments or jokes
- sexual insults or taunts
- unwanted requests to go out

- requests for sex
- unwelcome touching or physical familiarity or sexual assault
- intrusive questions about your private life or your body
- posters, magazines, screen savers, calendars and other items of a sexual nature, or
- inappropriate email messages or video attachments or downloading and printing pornographic material.

You should be aware that such behaviour does not have to be directed specifically at you.

Sexual harassment includes behaviour that makes the environment you are working or studying in uncomfortable or threatening in a sexually hostile way.

Example

Marissa has a casual job as a Kitchen Hand in a hotel. The Head Chef has posters of topless women pinned all over the kitchen sink area. As everyone has the right to feel comfortable at work, the posters are inappropriate for the workplace. The employer should have had them removed, as pinned up, they contribute to a **sexually hostile work environment**.

Pregnancy and Potential Pregnancy

Discrimination against women because they are, or are thought to be pregnant, or they look pregnant, is unlawful. To discriminate against someone because they have the potential to become pregnant is also against the law under the **Sex Discrimination Act**.

What does this mean?

It means it is unlawful for someone to treat you less favourably than another person because you are pregnant or may become pregnant.

Example

During a job interview, Sarah was asked whether she intended to have children. Somewhat taken aback by the question, she said that she would eventually like to have a family. Although Sarah was the most qualified and experienced candidate, she did not get the job. She later heard that the interviewer did not like to employ young women who may become pregnant. This is discrimination on the ground of **potential pregnancy**.

Example

Ann was employed in a small recreational club to carry out bar work and table service. She had been employed with the club for over 18 months when she informed her supervisor that she was pregnant. Her supervisor asked her when she intended to stop working and commented "it doesn't look very nice with you doing table service while you are pregnant". Her shifts were reduced from 36 hours per week to 9 hours without consultation. This is **pregnancy discrimination**.

When could it happen to you?

Pregnancy or potential pregnancy discrimination can occur if someone:

- refuses to employ you
- dismisses or retrenches you, forces you to resign or reduces your hours
- refuses to consider you for promotion
- excludes you from training
- demotes you, reduces your seniority or cancels your service continuity
- refuses you accommodation, or goods or services, or access to a registered club, or

- excludes you from, or disadvantages you in, an educational institution

because you are pregnant or have the potential to become pregnant.

Marital status and family responsibilities

It is unlawful to discriminate against someone because of their marital status. Whether you are single, married, divorced or in a de facto relationship, marital status is irrelevant to how well you can do the job.

Example

Sandra applied for a part-time position at a local bakery. During the interview she commented that the hours suited her perfectly as they were the same as the childcare arrangements for her son. The manager asked if she was married. On hearing that she wasn't, he ended the interview and told other staff that he couldn't possibly employ a young single mother as it would set a bad example. This is an example of discrimination on the basis of **marital status**.

Dismissal on the basis of family responsibilities is also unlawful under the **Sex Discrimination Act**.

Example

Indra lives at home with her mother who has a medical condition requiring a program of regular hospital treatment. When Indra asked her employer for half a day's leave to drive her mother to the hospital, it was refused. She was told to "make other arrangements, we need you here in the office". Indra decided to take the leave anyway as there was no one else to take care of her mother on this day. On her return to work she was told "pack up your desk, you no longer have a job here".

This is an example of dismissal on the basis of **family responsibilities**.

Apprentices and trainees

Apprentices and trainees face lots of new situations, some of which are difficult in a competitive workforce. Female apprentices and trainees can often find themselves in male dominated industries where supervisors are unfamiliar with the management of discrimination.

Often apprentices and trainees are reluctant to speak out about inappropriate behaviour, fearing they will jeopardise their jobs. This has resulted in some pregnant employees finding themselves at risk from exposure to chemicals and unsafe work practices. During a recent HREOC inquiry an apprentice told the **Sex Discrimination Commissioner** that:

"Most people are afraid to say something if there is a problem at work. If you can't be sure your co-workers will stand by you then it's risky to speak out."

Example

Diana completed her first year as an apprentice. She re-located from the country but was told by employers that they wouldn't take her on as a second year apprentice because she was female and might become pregnant. This is an example of discrimination on the ground of **potential pregnancy**.

Sometimes industries that are male dominated can be particularly challenging for young women. Non-traditional fields of work are sometimes denied to young women, despite their talent and qualifications.

A survey of trade employers in the construction industry showed that 45% said they would be less likely to employ a female tradesperson or female apprentice of child bearing age. (QLD survey, 1999 reported by HREOC).

If you are seeking an apprenticeship or traineeship, your sex is irrelevant. If you are working as an apprentice or trainee, and become pregnant, you have a right to remain at work and continue your studies. You are also entitled to return to work and your studies after you have given birth.

Equal pay

Women were granted equal pay for equal work in 1969. Over 30 years later women, on average, still earn less than men.

Pay inequity can be a complex issue, and is one of the more subtle forms of sex discrimination. Pay inequities are often "hidden" in special conditions, and bonus and overtime payments.

What can you do about sex discrimination at work?

Sex discrimination is against the law and you have a right to take action if it happens to you. You may be able to resolve the situation yourself by pointing out that the discrimination is illegal. Otherwise, ask for assistance from someone you trust or from someone in a responsible position such as your manager, union delegate, or professional association. At any time you can lodge a written complaint with HREOC. You need to write about what happened, providing details about when, where, who was involved and anything else you think may be relevant.

You can talk confidentially to the enquiry staff at HREOC about your complaint. They can also alert you to what other avenues are open to you. It is free to lodge a complaint with HREOC. You would however incur some costs if you decided to seek your own legal advice.

For further information about lodging complaints call 1300 369 711 and ask for a copy of *The Complaint Guide* and HREOC's other sex discrimination brochures.

All states and territories also have their own independent laws prohibiting sex discrimination.

Note: Most complaints to HREOC are confidentially conciliated. This means the parties to the complaint, with the help of a HREOC conciliator, discuss the issues and come to an agreement that is acceptable. It could involve an apology, a written reference, reinstatement or a compensation payment.

EDUCATION

As a student you are entitled to an education free of sex discrimination and sexual harassment.

The term "educational institution" covers all schools, colleges, universities or any other organisation which provides education and training.

It is unlawful for an educational institution to:

- refuse or fail to accept your application for admission as a student (unless it is on the basis of sex at a single sex school)
- treat you less favourably in the terms and conditions of your enrolment
- refuse or limit your access to any benefit other students are provided, or
- expel you

because of your sex, marital status, pregnancy or potential pregnancy.

Sexual harassment

By a member of staff

Regardless of age or where you are studying (public or private institution), you can lodge a complaint if you are sexually harassed by a teacher or other member of staff. Legal protection against discrimination is extended to the process of applying or enrolling.

By another student

Regardless of age, you have the right to lodge a complaint if you are sexually harassed by another student. Certain types of bullying, about sex or sex-based characteristics, may also be sexual harassment.

If both students are over 16

If you are a student aged 16 or over and you are subjected to sexual harassment by another student who is at least 16, (whether male or female) you can make a complaint against the individual concerned, or in some circumstances, the educational institution.

Once you turn 16 you are classed as an 'adult student' and need to be aware that legal action can be taken against you if you sexually harass another student or a teacher. If the complaint is substantiated you could be held personally liable.

If the harasser is under 16

A complaint of sexual harassment cannot be made directly against the individual harasser if the person is under 16 years of age. However, a complaint of sex discrimination could be made against the educational institution in these circumstances. As sexual harassment is a legally recognised form of sex discrimination, the educational institution itself has a duty to ensure that sexual harassment of students does not occur in the provision of its educational services.

Pregnancy and potential pregnancy discrimination

It is unlawful for schools, colleges and universities to discriminate against a person on the grounds of pregnancy or potential pregnancy. The denial of continued, equally favourable education to a pregnant student is likely to constitute discrimination on the grounds of pregnancy.

Example

Katina is visibly pregnant on the day of enrolment at college. The administrator having confirmed that she is pregnant, refuses to enrol Katina and says "you won't finish the semester, try again next year." This is discrimination on the ground of **pregnancy**.

Example

Lou is a Year 12 student who is pregnant. After confiding in one of her teachers, she is summoned to the Principal's office where it is strongly suggested she leave school. The Principal noted if she didn't leave certain restrictions would have to be put in place, for example she could no longer wear the school uniform, and she would not be permitted to attend school functions such as Speech Day. This is also discrimination on the grounds of **pregnancy**.

It is your legal right to continue your education if you are pregnant. Your school, college or university has a duty of care and a responsibility to accommodate your pregnancy, for example, release from sport or in the later stages of pregnancy you may need some flexibility with the curriculum or exam program. Ongoing support should be available to students whose schooling is interrupted by pregnancy.

What can you do about sex discrimination in education?

Often cases of sex discrimination in education are resolved by the school, college or university. Your educational institution should have an established process for making a complaint and having it resolved. There should be a designated contact officer for you to discuss the issue with confidentially. If you feel unhappy about how things are progressing you can lodge a complaint with HREOC.

GOODS AND SERVICES

The **Sex Discrimination Act** makes discrimination on the grounds of sex, marital status, potential pregnancy or pregnancy unlawful in the following situations:

- refusal to provide goods and services or make facilities available to another person
- providing goods and services or making facilities available under less favourable terms and conditions than those which apply to other people, or
- discrimination in the manner in which goods and services are provided or facilities made available.

Example

Claire and two male friends plan a night out at a local night club. At the entrance Claire is charged \$10 entry, the two males are charged \$5 each. The owner explained the night club was trying to attract more males and had decided to charge them half the entrance fee. This is **discriminatory conduct** in the provision of goods and services.

Nor should you suffer any form of sexual harassment when accessing goods or services.

Example

Tracey is returning home in a taxi after an evening out. She is halfway home when the taxi driver turns around to face her and says "if you have sex with me, you can forget about the fare." This is an example of **sexual harassment** in the provision of goods and services.

SPORT

Sport is an area where women often suffer discrimination in opportunity and status. Access to sporting teams and the provision of sporting facilities are covered under several sections of the **Sex Discrimination Act**. However there is an exception to this coverage.

It is not unlawful to exclude persons of one sex from participating in any competitive sporting activity in which the strength, stamina or physique of competitors is relevant.

This exception does not allow discrimination in the coaching, umpiring or administration of the sport, any prescribed sporting activity, or sporting activities involving children under 12.

Example

Ruth was keen to play squash in the same local competition as Peter, with whom she trained. When she approached club management they said she couldn't play in the team, although her grading was equivalent, because the competition had "traditionally been run for the boys". This caused quite a stir and much discussion amongst club members, many of whom felt Ruth was equal to, if not better than some of the male players.

Ruth could lodge a complaint, however the onus would be on her to prove she had the required strength, stamina and physique relevant to the sport and the grade she wished to play in.

If you are affected by **sex discrimination in sport**, think of the steps that you can take to remedy the situation. This may involve speaking with your coach or other official. You can also contact HREOC for advice.

Whether or not your sporting organisation is a 'voluntary body' or a 'club' is relevant with regards to whether the organisation can discriminate in the admission of members or the provision of facilities and services. Again, check with HREOC.

ACCOMMODATION

The **Sex Discrimination Act** makes discrimination in the provision of accommodation (residential and business) unlawful if:

- your application for accommodation is refused
- the terms and conditions under which you are offered the accommodation are less favourable
- your application for accommodation is deferred or placed at a lower order of precedence
- you are denied or limited access to any facility or benefit associated with the accommodation, or
- you are evicted from your accommodation

because of your sex, marital status, pregnancy or potential pregnancy.

Example

Emma is a young mother with an 18-month-old child looking for a house or flat to rent. She has a good reference from her last rental agreement and so is surprised when she is unsuccessful with 3 rental applications. When questioning the receptionist at the real estate agency about it, the receptionist reveals that because Emma is a single mother her application is automatically ranked below other applicants who are married or have no dependents. This is discrimination on the ground of **marital status**.

Sexual harassment in the provision of accommodation is also prohibited.

Example

Catherine is moving to the city to start university. In the course of her flat hunting she arranges to meet a real estate agent in the evening to inspect a property. As she is looking through the premises, the real estate agent suggests they go out for a drink. When Catherine refuses he tells her that he finds her very attractive, and blocks her against a wall and tries to kiss her.

This is an example of **sexual harassment** in the provision of accommodation.

So what about men?

The **Sex Discrimination Act** covers women and men. In certain circumstances it is unlawful to discriminate against men on the grounds of sex and marital status. It is also unlawful to sexually harass men or dismiss them on the basis of family responsibilities in particular situations.

Like women, men can lodge a complaint with HREOC if they believe they have been unlawfully discriminated against.