

## Discrimination

### What is Discrimination?

In the literal sense the term “discrimination” means to note the difference between two objects or occurrences. Not all discrimination is unlawful. However, discrimination in some circumstances is unfair and against the law.

It is unlawful to discriminate against people because of certain personal characteristics, such as race, age, sex, marital status, disability, sexuality, pregnancy. It is also unlawful to discriminate against someone because of their wish to join a trade union or make an official complaint about their employment. All Australian jurisdictions have adopted some form of Equal Opportunity law which is intended to prevent discrimination in employment and other public contexts.

There are two forms of discrimination: direct and indirect.

### Direct Discrimination

Direct discrimination occurs when someone is treated **less favorably** because of their race, age, sex, marital status, disability, sexuality or pregnancy. Discrimination takes many different forms - it can be subtle, like a passing comment, or obvious and very detrimental, like the decision to sack a worker.

Examples of direct discrimination at work include:

- Subjecting employees to offensive comments due to race or ethnicity;
- Being told that you are ‘too young’ or ‘too old’ for a job you have applied for;
- Being told that you are not eligible for a promotion because of your sex;
- Being told that you cannot return to work because you have taken maternity leave.

## Indirect Discrimination

Indirect discrimination occurs when an employment policy or requirement appears to be fair and equal, but has an unequal and detrimental affect on certain groups of people with a particular attribute, such as their age, martial status, race, impairment etc. In order to make out indirect discrimination, the requirement must be unreasonable in all the circumstances. Indirect discrimination is not as common as direct discrimination.

Examples of indirect discrimination include:

- An employer says that all employees who have worked continuously for 10 years will get a pay rise, may be deemed indirect sex discrimination, because more women than men interrupt their working lives to have children;
- A policy that requires all staff to work on Sundays may discriminate against those with family responsibilities.

## Relevant Law

Both the Federal and State jurisdictions have anti-discrimination laws. You are eligible to apply to either, but not both, jurisdictions; however, there are some different factors to consider. Your union or the YWLS will be able to provide you with specific advice about the most suitable forum for your complaint.

There are also time limitations. Complaints made to the Federal jurisdiction, the **Human Rights and Equal Opportunity Commission** are to be made within 12 months from when the discrimination ceased. Complaints made to the State jurisdiction, **South Australian Equal Opportunity Commission** are to be made within 6 months from when the discrimination ceased.

## Federal Forum (Australian Human Rights Commission)

There are four separate Commonwealth anti-discrimination statutes. These Acts prohibit discrimination based on:

- Race including colour, descent, national or ethnic origin
- Sex including pregnancy, family responsibilities and sexual harassment
- Disability or medical condition including past, present or future disability, whether it is permanent or temporary, physical, intellectual, psychiatric, neurological, sensory, whether it is work related or not, and includes a person's association with a person with a disability such as a child, partner or parent.
- Age

## **State Forum (Equal Opportunities Commission of SA)**

The *Equal Opportunity Act 1984* (SA) provides that it is unlawful to be treated unfairly on the ground of:

- Age
- Sex
- Race
- Physical or intellectual impairment
- Sexuality
- Martial Status
- Pregnancy

### **Who can lodge a complaint?**

All types of employees and employment relationships are covered by anti-discrimination laws. For example you may be full time, part-time, casual, a contractor, probationary, trainee or an apprentice.

The law also covers all stages of employment, including job applications/advertisements, promotions, training and dismissal. In other words, you can lodge a complaint if you think you have been refused employment, dismissed, denied promotion, given less favourable terms or conditions of employment, or denied equal access to training opportunities because of your race, sex, disability, age etc.

### **Questions to be considered:**

- Was your age, sex, race etc the reason why you were treated the way you were?
- How are other employees treated?
- Were you singled out? Were others also treated in a similar way?
- What was said and by whom?
- Was any action taken by management?

### **What can I do if I feel I have been discriminated against?**

If you feel you have been discriminated against on one of the stated grounds it is very important to keep a journal that documents your experiences at work. Include dates, times and events. This will make it easier for you if you decide to make a complaint in one of the Equal Opportunities Commission.

### **How can I file a complaint?**

Lodging a complaint in the *Federal* jurisdiction is done through the **Human Rights and Equal Opportunity Commission (AHRC)**

Complaints can be made in writing or by email using the 'Complaint form' from HREOC. Forms are available [http://www.humanrights.gov.au/complaints\\_information/online\\_form/index.html](http://www.humanrights.gov.au/complaints_information/online_form/index.html)

For more information or to discuss a complaint you can call 1300 656 419 (local call) or 02 9284 9888 or email: [complaintsinfo@humanrights.gov.au](mailto:complaintsinfo@humanrights.gov.au)

Lodging a complaint in the *State* jurisdiction is done through the **South Australian Equal Opportunity Commission (SAEOC)**

Complaints can be made online at [http://www.eoc.sa.gov.au/site/eo\\_for\\_you/making\\_a\\_complaint.jsp](http://www.eoc.sa.gov.au/site/eo_for_you/making_a_complaint.jsp)

For more information or to discuss a complaint you can call 8207 1977 or 1800 188 163 or email [eoc@agd.sa.gov.au](mailto:eoc@agd.sa.gov.au)