

Discrimination

Every State and Territory in Australia has laws to protect people from being discriminated against at work regardless of whether they work full-time, part-time, casually or are contractors. There are 2 types of discrimination, direct and indirect.

Direct Discrimination

Direct discrimination is when a person is treated less favourably than another person in the same or similar circumstances based on one or more of the grounds mentioned below.

Indirect Discrimination

Indirect Discrimination is when a rule (policy, procedure or practice) that appears neutral has a negative effect on a particular group of people with attributes that would fit into one or more of the below mentioned categories, compared to people that are not in that group and the rule is unreasonable and the discriminated person is not able to or does not comply with the rule.

It doesn't matter whether the discrimination was intentional or not, what matters is whether the person was discriminated against.

There are a whole range of categories that are protected from discrimination. Across different states these categories vary a little bit but below is a list of all the possible categories you could find in Australia-

- sex/gender
- race
- impairment/disability
- age
- pregnancy/potential pregnancy
- breastfeeding
- Marital status
- Family status
- Family/carer responsibility
- Political belief/conviction
- Religious belief/conviction
- Gender History/transgender/transsexual/Intersex status
- Sexual Orientation/preference
- Lawful sexual activity (applies only in Qld, Tas.,Vic.)
- Spent Conviction or irrelevant criminal record

- Industrial or Trade Union Activity (in some States)
- Irrelevant medical record (applies only in NT and Tasmania)
- Physical features (only in Vic.)
- Accommodation status (ACT only)
- Immigration Status (ACT only)
- Expunged homosexual conviction (Vic. Only)
- Identity of spouse or domestic partner (SA only)
- Employment status/activity (ACT and Vic. Only)
- Genetic Information (ACT only)
- Profession, trade, occupation or calling (ACT only)
- Record of a person's sex having been altered (ACT only)
- Subject to domestic or family violence (ACT only)
- Association (NT, ACT, Vic., Tas., Qld)

What to do if someone thinks they have been discriminated against at work

If a person thinks they are a victim of discrimination then the first thing they can do is find out if their organisation has a [policy](#) about discrimination and see if it contains a definition similar to the one mentioned above. If it does then they can use this policy to have a conversation with their manager/HR or any other person in authority. Tell him/her what has happened to them and why they think this is discrimination. It is useful to work out what he/she want the manager/HR to do about it the issue and to ask for it to be done.

Possible things someone could ask their manager to do is have a chat to the person doing the behaviour and find out what their view is and then see if there is room for a combined discussion. Sometimes people might not even know they are doing anything unlawful so giving them a chance to understand/explain their point of view is important. Someone could also ask their organisation to provide education to staff in this area, put posters up or send out emails reminding people of what is appropriate/inappropriate behaviour.

If the behaviour is very serious (either because it has been going on for a long time, or is being done by someone in authority or the actual incident is serious) then someone might want to ask their organisation to formally investigate it. They should check and see if their organisation has a [grievance management document](#). If it does it should explain when a matter will be formal and what will be done. Normally a formal investigation has to be in writing and should explain what has happened by who, when and where. It is important to stick to the facts and avoid emotional language when making a formal complaint.

Once the complaint is formal then the organisation should investigate it. This means they will interview the complainant (person making the complaint) and any relevant people to support their

story and they will also interview the respondent (person responding to the complaint) and any relevant people he/she has. Once they have collected all of the facts the information is then used to make a decision, usually by the CEO or equivalent.

If someone does not want to make a complaint internally or they have and it has not been handled to their satisfaction then they can contact the Equal Opportunity Commission in their State/Territory. Each Commission offers a free conciliation service for victims of discrimination. Most matters are sorted out at this stage.

EEO Specialists do not represent individual people making complaints but we hope this information has been useful in helping work out what to do.

We do provide a comprehensive training service for organisations, to educate their staff about sexual harassment, bullying and discrimination and manager training on how to identify and manage complaints.

If you would like to know more, please call Franca Sala Tenna on 0405 134 187.