

# Sexual Orientation Discrimination

It is unlawful under the *Equal Opportunity Act 1984* (the Act) to discriminate against a person because of their sexual orientation.



Under the Act sexual orientation relates to a person's sexuality and includes actual or imputed heterosexuality, homosexuality, lesbianism or bisexuality.

It is unlawful to discriminate against a person because of their sexual orientation, or the sexual orientation of a relative or associate.

**Direct sexual orientation discrimination** occurs when a person is treated less favourably because of their sexual orientation or the sexual orientation, compared to another person in the same or similar circumstances.

**Indirect sexual orientation discrimination** is when a requirement, condition or practice that is the same for everyone has an unfair effect on someone of a particular sexual orientation, and is unreasonable in the circumstances.

## Where does the protection apply?

Under the Act it is unlawful to discriminate against a person because of their sexual orientation in certain areas of public life, including:

- Work
- Education
- Access to places and vehicles
- Provision of goods, services and facilities
- Accommodation
- Disposal of land
- Clubs
- Application forms.

## Responsibilities

Organisations must ensure they provide a working environment and services that are free from sexual orientation discrimination and they must take all reasonable steps to prevent it from happening or they may be held responsible for their employees' actions.

A person causing, instructing, inducing, helping or permitting another person to do something unlawful is the same as doing it, for the purpose of the Act.

## Making a complaint

A person who believes they have been discriminated against because of their sexual orientation can lodge a complaint with the WA Equal Opportunity Commissioner. The onus of proof lies with the person making the complaint.

The incident or incidents in the complaint must have occurred within the 12 months previous to the date of lodging the complaint.

In some circumstances the Commissioner may decide there is good reason, or good cause, to include incidents that occurred more than 12 months before the complaint is lodged.

The Commissioner for Equal Opportunity provides information about the Act, investigates and conciliates complaints, conducts community education and training and develops programs to promote equal opportunity.

### Examples of sexual orientation discrimination

A homosexual couple were both members of the same health fund for several years, but their application for insurance cover on a concessional family basis was denied when a child from a previous relationship came to live with them.

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An electrician successfully claimed his co-workers were harassing and discriminating against him on the ground of perceived homosexuality after he had a 'trendy' haircut and started wearing an ear-ring in his left ear. The harassment and discrimination included derogatory comments, name-calling, prank telephone calls to his home as well as physical intimidation and abuse.

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A woman was sacked after her employer found out she was divorcing her husband and had entered into a lesbian relationship.

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#### Disclaimer

The material in this brochure is not intended to be legal advice. The Commissioner expressly disclaims any liability in respect to anything done or not done to any person in reliance upon any of the contents of this publication.

The Government of Western Australia

[www.wa.gov.au](http://www.wa.gov.au)

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## Exceptions

There are some instances where it is not unlawful to discriminate against someone because of their sexual orientation and these exceptions include:

- Accommodation provided in private households
- Accommodation provided by a religious body
- Disposal of an estate or interest in land by will or by way of a gift
- Measures intended to achieve equality or meet special needs
- Employment, education or training at a religious educational institution
- Admission as a member, and benefits provided to members, of a voluntary organisation
- Compliance with an order of a Court or Tribunal
- The provision of charitable benefits.

If an individual or organisation relies upon an exception under the Act when a complaint is made against them, they must justify the use of that exception to the Commissioner for Equal Opportunity.

## How to contact the Commission

### Telephone

General enquiries: 9216 3900  
Training courses: 9216 3927  
Country callers: 1800 198 149

### Email

[eoc@eoc.wa.gov.au](mailto:eoc@eoc.wa.gov.au)

### Website

[www.eoc.wa.gov.au](http://www.eoc.wa.gov.au)



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Interpreter service: 13 14 50