

Impairment Discrimination

It is against the law under the Equal Opportunity Act 1984 (WA) to discriminate against a person with an impairment.



 *Equal Opportunity Commission*

Under the Act, a person with an impairment includes anyone with a physical, intellectual or mental impairment, a person who had an impairment in the past, or someone assumed to have an impairment.

Direct impairment discrimination occurs when a person is treated less favourably because of their impairment, compared to another person without an impairment in the same or similar circumstances.

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

Where does the protection apply?

Under the Act it is unlawful to discriminate against a person because of an impairment, or the impairment of a relative or associate, in certain areas of public life, including:

- Work – in some instances
- Education
- Access to places and vehicles
- Provision of goods, services and facilities
- Accommodation
- Clubs and incorporated associations
- Sport – in some instances
- Application forms
- Superannuation schemes and provident funds – in some instances
- Advertisements

Responsibilities

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

For the purposes of the Act, a person who causes, instructs, persuades, aids, or permits another person to engage in unlawful conduct is taken to have engaged in that conduct themselves.

Making a complaint

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

Complaints must be submitted in writing, but you are not required to use English. You may write your complaint in the language you feel most comfortable using.

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 impairment discrimination

A blind woman was refused service when she entered a cafe accompanied by her guide dog, and was told she would only be served if she sat outside.

A lawyer's application for income protection insurance was refused when she disclosed she had once experienced depression. This refusal was despite the fact she had not taken any time off work because of her impairment in 10 years.

A real estate agent refused the rental application of an accountant who used a wheelchair, because the agent believed she would not be able to pay the rent and maintain the property because of her impairment.

The parents of a young boy complained their son had been discriminated against because shortly after being told he was autistic, his child care provider would no longer let him attend the crèche.

An employee of a travel agency refused to accept a booking made on behalf of a person with a disability. She did this without asking the nature or extent of the disability.

Complaints can be submitted via email, post, or through the complaint form on the Equal Opportunity Commission's website.

The incident or incidents referred to in the complaint must have occurred within the 12 months prior to the date the complaint is lodged.

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

Exceptions


There are some instances where it is not unlawful to discriminate against a person because of their impairment, and these exceptions include:

- Work – where the provision of special services and/or facilities would impose an unjustifiable hardship on the employer
- Accommodation – where the provision of special services and/or facilities would impose an unjustifiable hardship on the provider
- Orders of courts and tribunals
- The provision of charitable benefits
- The ordination of priests or ministers of religion
- Domestic workers in private households
- A genuine occupational qualification
- Insurance, if based on reasonable data and statistical evidence
- Where there is a regulation that relates to an infectious disease.




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.

Call

General enquiries: 08 9216 3900
Training courses: 08 9216 3927
Country callers: 1800 198 149

 **Interpreter service: 13 14 50**

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