

Impairment Discrimination

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



Under the Act a person with an impairment includes anyone with a physical, intellectual or emotional 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 unfairly 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.

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 impairment can lodge a complaint with the 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 you lodge your complaint.

In some circumstances the Commissioner may rule 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 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.

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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.

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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.

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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.

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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.

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

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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.

How to contact the Commission

By telephone

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

Address

Albert Facey House
469 Wellington Street
PERTH WA 6000

By email

eoc@eoc.wa.gov.au

By visiting our website

www.eoc.wa.gov.au



Interpreter service: 13 14 50

How to follow the Commission



@WA.EOC



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