



DIRECT AND INDIRECT DISCRIMINATION

Queensland anti-discrimination laws promote fairness by prohibiting discrimination, sexual harassment, victimisation and vilification.

Unlawful discrimination can be either direct or indirect. You can lodge a complaint about either or both.

What is direct discrimination?

Direct discrimination is pretty straightforward in most cases. It happens when you're dealt with unfairly on the basis of one of the grounds (compared with someone who doesn't have that ground) and in one of the areas covered by the Act.

Examples

You are asked at a job interview whether you have children. When you tell the interviewer that you have four children, she makes a remark about you needing a lot of time off work if they're sick, and says you won't be suitable for the position.

You are an Aboriginal woman wanting to rent a house. When you arrive to inspect a house you're told it's already been taken. You arrange for a non-Aboriginal friend to enquire about the house. She rings, is told it's still available, looks at the house and is offered a lease. This is the third time you've tried to rent a house through this agency. In spite of the fact you have a good tenancy record, each time you phone, you're told a house is available, and each time you meet one of the agents, you're told it's been rented already.

You answer a job advertisement for a receptionist. You're told over the phone that because you're a man, you'd be wasting your time.

When you advise your employer that you're pregnant, you're moved to a lower-paying job out of the public view, because clients 'don't want to look at people in your condition'.

You're not selected for a promotion at work. The supervisor says that while he thinks you could do the job, 'you'll be retiring soon, so we're looking for someone who'll be here for a while'.

What is indirect discrimination?

Indirect discrimination is often less obvious. Sometimes, a policy, rule or practice seems fair because it applies to everyone equally, but a closer look shows that some people are being treated unfairly. This is because some people or groups of people, are unable or less able to comply with the rule or are disadvantaged because of it. If this policy or practice is 'not reasonable', it may be indirect discrimination.

Examples

An employer has a policy of not letting any staff work part-time. (People with children or family responsibilities could be disadvantaged.)

A public building, while fitted with lifts, has a set of six steps at the front entrance. Entry for those needing to use the lift is through the back entrance near the industrial bins. (Those using a wheelchair can't get into the building from the front entrance.)

Minimum height requirements apply for jobs in a resort, for no apparent reason. (People from an Asian background, or

women, may not be able to meet the requirement.)

Everyone entering a sporting venue has to present a driver's license as identification, because it has a photo. (Some people with a disability, or young people who can't drive, won't be able to get in.)

All information about workplace health and safety in a factory, is printed in English. (Those whose first language isn't English may be at risk.)

A requirement for a job is that all applicants have ten years experience in the field. (A young person could be well qualified but is ineligible for the job.)

How do I decide whether our policy or practice is 'reasonable'?

The Act says that whether a term is reasonable depends on all the relevant circumstances of the case including:

- consequences for people who can't comply;
- the cost of alternatives;
- the financial situation of the person imposing the policy or practice.

Using the above examples, you might want to ask some of these questions:

- Can I re-organise the workplace to cater for part-time workers? How much will it cost me to replace them if they resign? Am I being reasonable to staff? Are there some benefits I haven't thought of?
- Are there any good reasons for there only being steps at the front of the building? If I do put in a ramp, who else will find it easier? (delivery people, people with strollers etc). How much will it cost?
- Why do we have the minimum height requirement? If there's no good reason, what are the implications if we remove it? If

there is a good reason, how do I explain it? Are we indirectly discriminating?

- Can we look at another option for identification, and will it cost us anything? Who else might it be easier for? (people under driver's age, people who have never driven or who have lost their licenses)
- What might happen if we have signs only in English? Could we look at a couple of other languages, or even graphics, that might mean all staff are more safety-conscious? Would the cost of this be less than a staff injury?
- If we take out the 'ten years experience' requirement, would we get a bigger pool of applicants? Are we being unreasonable? What's the downside of this? Is there any cost involved for us? What skills are we really looking for?

The thing to always keep in mind is the 'reasonableness' of the rule or practice.

Where can I get more information?

See our brochures on 'Making a Complaint' and 'Responding to a Complaint' for more detailed information.

We have a range of brochures on other types of discrimination, vilification and sexual harassment. These are available from the website or by contacting our nearest office.

This brochure is one of a series on particular aspects of the Act. It is available only on the website. Others include victimisation, vicarious liability and exemptions. The full range of brochures can be read and copied from this website at www.adcq.qld.gov.au