



Equal opportunity and you

A guide to equal opportunity
law in South Australia



Government of South Australia

Office of the Commissioner for
Equal Opportunity

Disclaimer: This publication is only a guide and should not be used as a substitute for legal advice.

Introduction

A message from the Commissioner for Equal Opportunity

A fair go for all is part of our way of life in South Australia. We believe everyone should be treated fairly and have the same opportunity to perform in public life and work.

This booklet is a guide to the law today and how it affects you as an employer, a worker and an ordinary citizen of South Australia.

It gives you information on:

- **what discrimination is against the law**
- **what to do if you feel you have been unfairly treated**
- **how the law works for you**
- **how we can help you.**

Legal issues can be complex and will vary from case to case. This booklet is only a guide and should not be used as a substitute for legal advice.

This is a guide to South Australian laws. If these laws do not cover your situation, there are other federal laws that may help.

For more information contact us at the South Australian Equal Opportunity Commission on **(08) 7322 7070** or visit **www.eoc.sa.gov.au**

We believe people who feel fairly treated make positive contributions to our State. Equal opportunity is a chance for everyone to see the best and be the best.

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What is discrimination?

Discrimination means making choices for unlawful reasons.

The South Australian Equal Opportunity Act 1984:

- promotes equality of opportunity between the people of this State
- prohibits certain kinds of discrimination against people
- discourages prejudice
- allows people to participate in our economic and community life.

It is unlawful to discriminate against people because of their particular personal characteristics or because they belong to a certain group.

Discrimination can be direct or indirect.

Direct discrimination

Direct discrimination occurs when people are treated unfairly because of their sex, gender identity, sexual orientation, intersex status, race, disability, age, marital or domestic partnership status, identity of spouse or domestic partner, pregnancy, association with a child, caring responsibilities, or religious appearance or dress.

*Gerry applied for a hotel management course. He was refused because at 46 he was considered “too old”. It looks like the course organisers have **directly** discriminated against Gerry because of his age.*

*Ellen, an Aboriginal office worker, was often talked about by colleagues. They kept remarking on her colour even after she asked them to stop. It looks like Ellen’s colleagues and employer have **discriminated** against her because of her race.*

Indirect discrimination

This occurs when treatment appears to be equal but is unfair on certain people because of their sex, gender identity, sexual orientation, intersex status, race, disability, age, marital or domestic partnership status, identity of spouse or domestic partner, pregnancy, association with a child, caring responsibilities, or religious appearance or dress.

The treatment is unlawful if it is unreasonable.

*Deanna, who was partially blind, wanted to pay for her groceries by cheque. To use a cheque she had to show her driver's licence. She did not have a licence due to her visual impairment and the store would not accept her other forms of identification. Unless it had a good reason, the store may have **indirectly** discriminated against Deanna because of her impairment.*

*A factory announced that people who had worked there continuously for the past ten years would get a pay rise. More women than men had interrupted their service to have children, so fewer women received the rise. If the request of continuous service was unreasonable, female workers could claim they were **indirectly** discriminated against by the factory.*

What discrimination is against the law?

It is unlawful to treat people unfairly on these grounds:

1. **Sex**
2. **Gender identity**
3. **Sexual orientation**
4. **Intersex status**
5. **Race**
6. **Disability**
7. **Age**
8. **Marital or domestic partnership status**
9. **Identity of a spouse or domestic partner**
10. **Pregnancy**
11. **Association with a child**
12. **Caring responsibilities**
13. **Religious appearance or dress**

1. Sex

Sex discrimination is treating people unfairly because they are male or female.

Melanie was studying metalwork and passing all her subjects. When she did a work placement her supervisor advised her to find something more “suited to her personality” meaning a more traditional female occupation. Melanie contacted the Equal Opportunity Commission and a Conciliation Officer discussed her issue with her boss. They realised their judgements were based on male/female stereotypes, and agreed to support Melanie through the course.



2. Gender identity

Gender identity discrimination is treating people unfairly because of the way they identify or express their individual sense of gender through appearance, mannerisms or other gender related characteristics. This may include adopting characteristics of another sex, or not identifying with any sex.

Equal opportunity law provides protection from discrimination for people who identify as male, female or neither. It does not matter what sex the person was assigned at birth or whether the person has undergone any medical intervention.

Leanne's biological sex was male, but she chose to dress and live her life as a woman. Leanne was working as a pharmacy assistant, and was told by her boss that she could not dress as a woman when at work because it made the customers uncomfortable. Leanne could make a complaint of gender identity discrimination to the Equal Opportunity Commission.

3. Sexual orientation

Sexual orientation discrimination is treating people unfairly because they identify as heterosexual, gay, lesbian, bisexual, transsexual, asexual, same sex attracted or other. It also includes someone's past sexual orientation and making assumptions about someone's sexual orientation.

Joseph applied for an office job. He passed the clerical tests with excellent marks but during the job interview he mentioned that he was gay. Later Joseph was told that his application was unsuccessful because he "would not fit in" with the firm's staff and clients. He lodged a complaint with the Equal Opportunity Commissioner which led to conciliation and Joseph getting the job.

4. Intersex status

Intersex discrimination is when a person is treated less favourable, or not given the same opportunities as others in the same or similar situation, because the person has physical, hormonal or genetic features that are:

- neither wholly female or wholly male; or
- a combination of female and male; or
- neither female nor male.

Alice is an intersex person who works as a journalist. She has recently discussed her intersex status with a colleague whose daughter was born with intersex variation. Another colleague overheard and since then she has had inappropriate comments and teasing from workmates that has left her feeling angry and humiliated.

5. Race

Race discrimination is treating people unfairly because of their race, which includes their colour, country of birth, ancestry or nationality.

Dave, a black African and his white friend Jenny were both refused entry to a dance club because of Dave's skin colour. Both Dave and Jenny complained of racial discrimination to the Equal Opportunity Commissioner.

6. Disability

Disability discrimination is treating people unfairly because of a disability (whether it is a past, present or future disability).

Disability can include:

- an illness or injury
- having an infection that is not symptomatic, like HIV
- carrying a gene that may lead to future illness
- intellectual disability
- mental illness
- loss or impairment of function of any part of the body.

Access to premises

People with a disability have a right to enter premises and use facilities that are open to the public, except where this access would cause the owner or occupier unjustifiable hardship.

Andrew, who had cerebral palsy, was refused entry to a dance club because the bouncer thought he was drunk. Andrew tried to explain that his slurred speech was due to his condition but he was made to leave. He complained to the Equal Opportunity Commissioner. The club expressed regret, agreed to make staff aware of cerebral palsy and gave Andrew free tickets.

Neville was refused a job because his intellectual disability meant he needed more time to learn the tasks required. Neville complained to the Equal Opportunity Commissioner. When it was explained that, given extra help at the start, Neville's history showed he would be a committed worker, the employer gave Neville the job.

7. Age

Age discrimination is treating people unfairly because of their age. It applies to any age.

Equal opportunity law does not affect legal ages, such as age of consent, voting, getting a driver's licence, signing a contract or drinking alcohol.

At 45, John lost his job as an accountant after a company merger. When he applied for a similar position in another company he was told that although his qualifications were excellent, "people over 40 were too set in their ways." John lodged a complaint with the Equal Opportunity Commissioner. The company agreed that it had to select on merit not age. As a result, John was interviewed for the position.

8. Marital or domestic partnership status

Marital or domestic partnership status discrimination is treating people unfairly because they are single, married, in a registered relationship, divorced, separated, widowed, or living together with a partner.

Eddie had excellent qualifications for an executive position but was unsuccessful because he was single. The company wanted its executives to have the "stability of being married." Eddie complained to the Equal Opportunity Commissioner. After consulting with the company Eddie received an apology and compensation and the company changed its executive recruitment policy.



9. Identity of spouse or domestic partner

Identity of spouse discrimination is treating people unfairly because of who their spouse or partner is. This also includes someone's ex-spouse or partner or their proposed spouse or partner.

Lucy applied for a job at the local pub. The pub owner refused to hire Lucy and told her this was because he used to work with Lucy's partner and had a falling out with him. This is an example of discrimination because of the identity of Lucy's partner.

10. Pregnancy

Pregnancy discrimination is treating women unfairly because they are, or may be, expecting a baby.

Women have the right to work while pregnant and to be treated the same as other workers unless there are good medical reasons for different treatment.

Kate worked full time as a receptionist. After she told her boss that she was pregnant her hours were reduced to three days a week "for her own good." Kate's doctor said she was fit to work full time and she complained to the Equal Opportunity Commissioner. In conciliation, her boss agreed that Kate was allowed to work full time as long as she was medically fit.

11. Association with a child

Association with a child discrimination means treating people unfairly in customer service and accommodation because they or their relative are accompanied by a child or feeding a child (including breast – or bottle-feeding).

Suzie is asked to leave a café after she starts to breastfeed her baby. Suzie could complain of discrimination.

12. Caring responsibilities

Caring responsibilities discrimination is treating people unfairly because they care for or support their dependent child or an immediate family member with a disability.

Mary applied for a casual job with a supermarket, but was told that she would not be hired because she had three children and would not be as flexible as other workers without children. This is an example of caring responsibilities discrimination.

13. Religious appearance or dress

Religious dress discrimination is treating people unfairly at work or in study because they wear clothing or adornments that are required by or symbolic of their religion.

Padman, who is a Sikh, applied for a job with a local nursery. At the interview, he was told that he would not be offered the job unless he was prepared not to wear his turban at work. He could complain of religious dress discrimination.



When is discrimination against the law?

It is unlawful to treat people unfairly on the grounds of sex, gender identity, sexual orientation, intersex status, race, disability, age, marital or domestic partnership status, identity of spouse or domestic partner, pregnancy, or caring responsibilities in eight areas.

- 1. Employment**
- 2. Education**
- 3. Providing goods and services**
- 4. Clubs and associations**
- 5. Accommodation**
- 6. Advertising**
- 7. Selling land**
- 8. Granting qualifications**

It is unlawful to treat people unfairly on the ground of religious appearance or dress in two areas.

- 1. Employment**
- 2. Education**

It is unlawful to treat people unfairly on the ground of association with a child in two areas.

- 1. Accommodation**
- 2. Customer service**

1. Employment

The law applies to all paid or unpaid work, whether you are an employee, contractor or volunteer.

It covers all stages of employment, from job advertisements, applications and offers of employment, to promotions, training, transfers and dismissal.

Maria applied for a promotion to lead a road works team at a council depot. Although she had experience as a supervisor and was an excellent worker, the manager did not believe she would be respected by the all-male staff and refused to consider her application. Maria complained to the Equal Opportunity Commissioner. After discussions with the manager Maria was given an interview for the job.



2. Education

The law applies to schools and tertiary education institutions and covers entry to courses, access to facilities and benefits and expulsion.

Single-sex schools are exempt and allowed to select only male or female students.

Alicia, who had dyslexia, was enrolled at a private school. During the year her parents were advised that a special education school would be best for her and she could not continue at the school. Alicia lodged a complaint with the Equal Opportunity Commissioner. It was settled by compensation for expenses and the school reviewing its assessment procedure for students with special learning needs.

An Aboriginal couple were told that the local kindergarten had a place for their son Max. When they went there it was suggested that as all the other children were white, they may want to take Max to another place “where he might fit in.” The couple lodged a complaint with the Equal Opportunity Commissioner. As a result Max was accepted by the kindergarten, who apologised, and agreed to equal opportunity training for staff.



3. Providing goods and services

The law applies to withholding goods and services from people or giving them different terms or conditions. It covers:

- shops and restaurants
- access to and use of public places
- transport or travel
- any profession or trade
- councils and government departments
- banks, credit and insurance providers
- employment agencies
- scholarships, prizes and awards
- entertainment and recreation
- introduction agencies
- sport, including coaching and umpiring.

Anita was refused a loan to buy a computer. The bank said that because she was over 65 she may not be able to meet the repayments. Anita had enough assets to service the loan. She complained to the Equal Opportunity Commissioner. As a result the bank agreed to make future decisions based on people's ability to repay.

4. Clubs and associations

The law applies to memberships or benefits.

Clubs for people of a particular sex, gender identity, sexual orientation, intersex status, race, disability, age, marital or domestic partnership status, identity of spouse or domestic partner, pregnancy, association with a child, caring responsibilities, or religious appearance or dress are allowed.

Jane applied to join a golf club as a full member. She was told that women could only join as associate members. She contacted the Equal Opportunity Commissioner. After discussions, the club agreed to allow both men and women to be full or associate members.

5. Accommodation

The law applies to renting flats, rooms or houses and staying in hotels, motels or caravan parks. It covers applications for accommodation, sale terms and conditions and waiting lists.

Jack and Deb wanted to rent a house. The real estate agent told them that the owners would not let it to them because they were Aboriginal. The couple contacted the Equal Opportunity Commission and were advised that both the owner and the agent had discriminated against them. After conciliation the agent apologised and said that the next available suitable rental house would be offered to them.



6. Advertising

The law applies to publishing advertisements or causing advertisements to be published which intend to discriminate.

Brian read a brochure which advertised free admission for women to a dance club, while men had to pay \$10. He contacted the Equal Opportunity Commissioner and the club was made aware of its responsibilities under the law and did not publish the advertisement again.

Sue noticed an advertisement in a local paper which read "Wanted - Public Relations Officer. Must be between 25 and 35 years of age" She contacted the Equal Opportunity Commission. The newspaper and the employer were informed that it is unlawful to recruit on the basis of age.

7. Selling land

The law applies to refusing to sell land to people or offering less favourable conditions.

A gay couple enquired about a house for sale. They were told it had gone off the market although it was re-advertised the following week. They lodged a complaint with the Equal Opportunity Commissioner. After discussions with the agent and owner, the couple made an offer on the house and it was sold to them.

8. Granting qualifications

The law applies to groups or organisations that approve qualifications needed for employment.

Sue was an engineering graduate from an overseas university, working in Australia. She complained to the Equal Opportunity Commissioner that her pay rate did not recognise her qualifications. The Commissioner contacted the relevant assessment organisation and her employers and as a result Sue's pay was increased.

How does the law cover harassment

Sexual harassment

Sexual harassment is sexual behaviour which makes people feel offended, afraid or humiliated and in the circumstances, it is reasonable to feel that way.

It is unlawful to sexually harass people in:

- **work**
- **education**
- **goods and services**
- **accommodation**
- **conferring qualifications**
- **joining a club or association.**

Both men and women can sexually harass and be harassed by either sex.

Sexual harassment is determined from the point of view of the person feeling harassed. It is how the behaviour is received not how it is intended that counts.



Sexual harassment can be:

- unwelcome touching or kissing
- comments or jokes
- sexual pictures, objects, emails, text messages or literature
- direct or implied propositions, or requests for dates
- questions about sexual activity.

Mutual attraction or friendship with consent is **not** sexual harassment.

Jack, who worked in a government department, regularly touched and put his arm around Amy. He would also tell her about his sexual thoughts even though she asked him to stop. She complained to the Equal Opportunity Commissioner. Jack denied sexual harassment saying "it was all in good fun." After conciliation Jack agreed to leave Amy alone, apologised for his behaviour and offered to pay Amy compensation for hurting her feelings. The department moved him to another section.

Victimisation

It is unlawful to treat people unfairly because they have used the Equal Opportunity laws.

Victimisation is treating people unfairly for complaining or helping others to complain, either within their organisation or to the Equal Opportunity Commission. It includes retaliation against them or disadvantaging them because of the complaint.

It is against the law because it punishes people for speaking out or stops people from complaining.

Marcia supported a co-worker who complained of harassment because of her disability. Marcia was then abused by her supervisor, threatened with the sack and moved to a different section. Marcia contacted the Equal Opportunity Commissioner and lodged a complaint of victimisation.

Whistleblowing

It is also unlawful to treat people unfairly because they are whistleblowers.

Blowing the whistle is reporting to the authorities information which is in the public's interest. It may be information about a person who has:

- risked public health, safety or the environment
- acted illegally
- wasted public money or misused public resources.

The Whistleblowers Protection Act makes it against the law to victimise people for disclosing such information in good faith.

Two students discovered that some college administrators were using public funds for private purposes. The students informed the police and soon after were expelled from the course. They complained to the Equal Opportunity Commissioner under Whistleblowers Protection laws. After conciliation they were reinstated and compensated.



What to do about discrimination and harassment

The equal opportunity laws give us all rights in our public and working lives. Responsibilities come with these rights. In the workplace both employers and employees have responsibilities.

Employers should:

- take all reasonable steps to prevent discrimination and harassment
- respond quickly, seriously and effectively to any complaints
- support those who have been discriminated against or harassed.

Employees should:

- not discriminate against or harass colleagues or clients
- read and become familiar with policies and procedures.

If you are an employer you are responsible for your employees and their actions.

Taking action can help stop discrimination and improve the situation for others in the future.

- Talking to people can help because sometimes discrimination or harassment is unintentional and will stop if it is explained.
- Talking to a manager, a contact person, a union representative or an advocate can help.
- Taking advice from the Equal Opportunity Commission can help. In some cases you may wish to lodge a formal complaint.
- Education and training can prevent discrimination and harassment. The Equal Opportunity Commission offers a range of resources and courses. For more information on education, training and consulting services, see page 41.



How to make a complaint

If you believe you have been unlawfully discriminated against, sexually harassed or victimised, you may be able to lodge a complaint under the South Australian Equal Opportunity Act.

You can do this by contacting the Equal Opportunity Commission on:

Phone (08) 7322 7070

Country callers 1800 188 163

Fax (08) 8207 2090

Email eoc@agd.sa.gov.au

Write to:

The South Australian Equal Opportunity Commission
GPO Box 464
Adelaide SA 5001

Or visit us at:

GPO Exchange
Level 15
10 Franklin Street
Adelaide SA 5000

One of our advisers will discuss your situation with you.

We can arrange interpreters if required.

If your situation is covered by the law and you wish to complain, your complaint must be sent to us in writing within twelve months of when it happened. We can sometimes accept late complaints. Contact us to discuss this.

You can use our complaint form or write a letter. We can post out a form or it is on our website at **www.eoc.sa.gov.au**

Our service is free and impartial.

If you write a complaint letter you should include these 10 points.

10 point checklist

1. Your name, address, telephone number and any other contact details.
2. The name, address and contact details of the person or organisation you are complaining about.
3. Their position, if they are at work.
4. If the complaint relates to a work situation, your position and length of service.
5. What type of discrimination or harassment you experienced.
6. What, where and when it happened and what you did about it at the time.
7. Why you think it happened.
8. The name and contact details of any witnesses.
9. Any evidence or documents to support the complaint e.g. emails, text messages, photographs, posters, medical certificates.
10. Sign and date your complaint.

You must lodge your complaint within twelve months of when the alleged discrimination, harassment or victimisation happened.

What happens to a complaint?

Assessment

When we receive a written complaint the information is assessed to determine if it is covered by the law. If it is not covered by the law the complaint **will not be accepted** and you will be informed in writing.

If it appears that your situation is covered by the Act, the complaint **will be accepted** and we will appoint a staff member (Conciliation Officer) to process the complaint.



Complaint process

The Conciliation Officer will gather information and relevant documents from both sides.

The Conciliation Officer will:

- notify the person you are complaining about of the complaint
- ask for their side of the story
- seek more information if needed
- keep both sides informed of progress.

The process is impartial.

It may lead to three possible outcomes:

- 1. You may decide the issue is settled and withdraw the complaint. If this happens nothing more needs to be done.**
- 2. The Equal Opportunity Commissioner may decide not to continue with the complaint because it lacks substance, is misconceived, frivolous or vexatious.**
- 3. The Equal Opportunity Commissioner may decide to schedule a conciliation conference where the parties try to resolve the complaint.**

During the process the Equal Opportunity Commissioner:

- can not make a judgement on whether discrimination, harassment or victimisation occurred
- may stop the process at any time
- may refer the complaint to the South Australian Civil and Administrative Tribunal (SACAT).

How to respond to a complaint

If a complaint is made against you or your organisation, it means a person believes they have been subjected to **discrimination, harassment or victimisation**.

They have contacted us and lodged a written complaint.

From the information provided, the alleged behaviour **may** be unlawful.

The Equal Opportunity Commissioner has appointed a Conciliation Officer to process the complaint and wants to hear your version of events. You will be contacted, given a summary of the complaint and an opportunity to respond.

Fair treatment for all is paramount and everyone's rights are respected.



Your written response should:

- give your side of the story
- be succinct. You will be given the opportunity to provide more detailed information if the complaint is not withdrawn or settled by conciliation
- give your phone number and address for service where you can be easily reached
- tell us if you would prefer contact by email or fax and give your details
- tell us if you want to try to have a conference earlier than the date already set
- sign and date your response.

If you think the complaint is justified, you may also want to suggest how you want to resolve the complaint.

If you would like to discuss your situation or response with one of our advisers please contact us on:

Phone (08) 7322 7070

Country callers 1800 188 163

Fax (08) 8207 2090

Email eoc@agd.sa.gov.au

Write to:

The South Australian Equal Opportunity Commission

GPO Box 464

Adelaide SA 5001

OR visit us at:

GPO Exchange

Level 15

10 Franklin Street

Adelaide SA 5000

Our service is free and impartial.

How to conciliate

What is a conciliation conference?

This is a meeting to:

- talk about the complaint and look for ways to resolve it
- listen to the other side's version of events
- discuss issues openly, as nothing said can be used in court
- reach an agreement without admission of liability.

The meeting can be face to face, by teleconference, by separate phone calls to each person or a combination. You are required to attend.



What does the conciliator do?

The conciliator will:

- keep the meeting on track
- encourage open discussion
- explain the law
- point out strengths and weaknesses on both sides
- suggest possible solutions
- help write an agreement.

The conciliator will not:

- take sides
- decide who is telling the truth
- decide whether the law has been broken
- force you to agree.

Who will attend?

The conciliator decides. Generally, both the person complaining (the complainant) and the person the complaint is about (the respondent) are required to attend. A company or organisation should send a representative with authority to agree on a resolution.

You can bring a support person, as long as this person was not involved in the complaint (e.g. not a witness or investigator).

You do not have to involve an advocate (or lawyer) in the conference. If you do want an advocate to attend, you can request this. If they charge, you will need to pay for their time. Alternatively, you could arrange to phone them during breaks.

If you need an interpreter, or any special equipment, please tell the conciliator well in advance.

How can a complaint resolve at conciliation?

Discussion may lead to an agreement. Agreements can include:

- a private or public apology
- changes to policies or practices
- tunity training
- job re-instatement
- compensation for financial loss or injury to feelings.

What happens if conciliation fails?

If a complaint cannot be resolved by conciliation:

- the complaint might be withdrawn
- the complainant may choose not to go on with the complaint. If so, that is the end of it
- the complaint may be referred to the South Australian Civil and Administrative Tribunal (SACAT)
- the complainant may take the case to SACAT. For more information see the Going to the Tribunal fact sheet.

How can I prepare for the conference?

- **READ** some case studies on our website to see what happened in similar cases
- **PLAN** what you want to talk about at the conference and make some notes to bring with you
- **CONSIDER** what the other party might say and be ready with answers
- **SEEK** legal, financial or other advice, if required
- **TALK** to the conciliator if you have any special needs or want an interpreter
- **ASK** the conciliator if you want a support person or advocate to attend
- **DISCUSS** with the conciliator any questions and your ideas about resolution
- **GIVE** the conciliator any documents you want to talk about at the conference.

Exceptions to the rules

To achieve equality of opportunity some people may need special help to overcome past disadvantages and compete on an equal basis. Some may even need to be exempt from the law.

Equal opportunity law allows some programs or services to meet the different needs of people because of their:

- sex
- gender identity
- sexual orientation
- intersex status
- race
- disability
- marital or domestic partnership status
- identity of spouse or domestic partner
- pregnancy
- association with a child
- caring responsibilities
- religious appearance or dress.

A local community group found that Sudanese immigrants needed support to adjust to life in Australia. The group was allowed to provide special assistance for Sudanese people who had recently arrived.

An employment agency identified that people aged between 40 and 50 found it more difficult to re-enter the workforce. The agency set up a program restricted to people between 40 and 50 to assist them in securing employment.

If a program or service intends to create equal opportunity it may not be against the law. If a discrimination complaint is made about such a program or service, the usual complaint process is followed.

Sometimes the genuine occupational requirements of a job mean that only people who have a certain characteristic can do that job. For example, it would be lawful to hire females only, to model women's clothing.

The laws do not apply to employment that is not connected with a business. For example, a person can decide to hire only female babysitters to look after their children at home.

There are also laws that allow for insurers to impose higher premiums for people of a certain group, but only where there are statistics to support it.

There are certain exemptions that apply to religious bodies.

In sport, it is not unlawful to hold single sex competitions, but only where the difference in strength, stamina and physique between men and women is relevant to that particular sport.

It is legal to have a club for a particular group, such as a club for men only or women only or a social club for people of a particular nationality.

Finally, there are certain allowances for different treatment based on pregnancy, disability and age where the issue of health and safety is relevant.

South Australian Civil and Administrative Tribunal (SACAT) exemptions

The South Australian Civil and Administrative Tribunal (SACAT) is a public court. SACAT hears and determines unresolved discrimination, sexual harassment and victimisation matters, including discrimination complaints that are made both within and outside of the employment context. If there are good reasons for treating people differently, the Tribunal may grant an exemption.

The Tribunal can grant specific, temporary exemptions.

A ballroom dance studio had a shortage of male instructors to teach and partner female students. The Tribunal granted an exemption to advertise for male instructors.

A local council was exempted to recruit an Aboriginal or Torres Strait Islander as an Indigenous Community Development Officer. The Council provided research about the need for the service to employ Indigenous staff in its application for exemption.

Applications for exemptions of up to three years may be made to the Tribunal. The Tribunal conducts public hearings and has the power to grant, renew or revoke exemptions.

Exemptions can be granted with or without conditions.

The Governor can also grant exemptions in some cases. Contact us to discuss this.

Apply to:

South Australian Civil and Administrative Tribunal (SACAT)

sacat@sacat.sa.gov.au

PO Box 3636 Rundle Mall SA 5000

Phone: (08) 8207 0999

Applications must be made via the approved form - Form A70: Application for Exemption or Revocation (Equal Opportunity Act) which can be accessed via the Tribunal's website www.sacat.sa.gov.au



How can the Equal Opportunity Commission help?

We can help you to:

- understand equal opportunity law
- prevent discrimination and harassment
- act if a problem arises.

Preventing discrimination and harassment can reduce the risk of liability for employers and can increase staff morale.



Enquiry service

For information and options about discrimination, contact our enquiry service between 10.00am and 3.00pm Monday to Friday on **(08) 7322 7070**.

The enquiry service is free and impartial.

Website

Our website **www.eoc.sa.gov.au** provides useful information, including:

- information about dealing with discrimination
- examples of complaints
- training materials, including online videos.

Publications and other resources

We supply a range of accurate and up-to-date material including fact sheets, handbooks and DVDs.

Training courses

We deliver regular half and full day courses at the Equal Opportunity Commission and at work sites.

Popular courses cover discrimination, harassment, bullying and contact person training.

Our trainers are friendly and qualified. Credentials include:

- Certificate IV in Assessment and Workplace Training
- graduate qualifications in, for example, education, law and social work
- experience in assessing and conciliating complaints of discrimination and harassment.

We have partnerships with private trainers who deliver courses that complement and extends our core courses.

For further information, dates and costs visit our website at **www.eoc.sa.gov.au**

Packaged solutions for employers (cost on application)

We can:

- assist you to meet your legal obligations
- help you to develop your own equal opportunity action plan
- customise our courses to meet your needs and conduct them in your workplace
- tailor an education program to target managers, staff and contact people and link the law with your policies and procedures
- review your equal opportunity policies and procedures
- develop an equal opportunity training program that you can deliver in-house.
We will also train and support you to do this.

We have the experience, knowledge and expertise to help you get it right.

Words and meanings

Accommodation

It is unlawful to discriminate on the grounds covered by the Act when renting flats, rooms or houses and staying in hotels, motels or caravan parks.

Advertising

It is unlawful to publish or cause to be published an advertisement that indicates an intention to discriminate on the grounds covered by the Act.

Age

Equal opportunity law covers all ages. Note: the Equal Opportunity Act does not affect the legal age of consent, voting, getting a driver's licence, signing a contract or drinking alcohol.

Caring responsibilities

Responsibilities to care for or support dependent children or other immediate family members in need of care.

Clubs and associations

It is unlawful to discriminate in memberships, conditions and playing rights on the grounds covered by the Act. Clubs for people of a particular sex, gender identity, sexual orientation, intersex status, race, disability, age, marital or domestic partnership status, identity of spouse or domestic partner, pregnancy, association with a child, caring responsibilities, or religious appearance or dress are allowed.

Complainant:

A person who lodges a formal complaint of discrimination.

Conciliation

When a Conciliation Officer tries to settle a conflict between people by a voluntary agreement which is satisfactory to all.

Conciliation Officer

A person appointed by the Equal Opportunity Commissioner to process and conciliate a complaint of discrimination, harassment or victimisation.

Disability

SA law covers all types of disability.

Direct discrimination

When someone is treated unfairly because of their sex, gender identity, sexual orientation, intersex status, race, disability, age, marital or domestic partnership status, identity of spouse or domestic partner, pregnancy, association with a child, caring responsibilities, or religious appearance or dress.

Discrimination

Unfavourable treatment based on irrelevant personal characteristics.

(see Equal opportunity).

Domestic partner

A domestic partner refers to a person who is in a registered relationship (as registered under the Relationships Register Act 2016), or a person who lives in a close personal relationship.

Education

It is unlawful for a school or educational institution to discriminate in entry to courses, access to facilities or benefits, or expulsion on the grounds covered by the Act. Single sex schools are permitted to accept students of one sex only.

Employment

It is unlawful to discriminate in job advertisements, applications, selection, offers, promotion, training, transfers and dismissal for full time, part time, casual, unpaid or contract work on the grounds covered by the Act.

Equal opportunity

The right to participate in the public life of the community without being unfairly discriminated against due to your sex, gender identity, sexual orientation, intersex status, race, disability, age, marital or domestic partnership status, identity of spouse or domestic partner, pregnancy, association with a child, caring responsibilities, or religious appearance or dress. The law protects you against discrimination, sexual and some workplace harassment and victimisation.

Equal Opportunity Commissioner

In South Australia, and other States and Territories, the Equal Opportunity Commissioner is appointed to inform the community on equal opportunity and the law and to handle discrimination complaints. The Commissioner is assisted by conciliation officers, educators, policy and project officers.

Exemptions

Exceptions that are granted by the South Australian Civil and Administrative Tribunal (SACAT) when there are good reasons for treating people differently.

Gender identity

Gender identity means the gender-related identity, appearance or mannerisms or other gender-related characteristics of a person (whether by way of medical intervention or not), with or without regard to the person's designated sex at birth

Goods and services

It is unlawful to withhold goods and services from people or give them different terms or conditions on the grounds covered by the Act. This covers shops and restaurants, hotels and clubs, access and use of public places, transport or travel, any profession or trade, councils and government departments, banks, credit and insurance providers, employment agencies, awarding scholarships and prizes, entertainment and recreation, introduction agencies, sport including coaching and umpiring. Services include doctors, dentists, accountants, lawyers, plumbers, mechanics and electricians. Goods include most merchandise.

Granting of qualifications

It is unlawful for a group or organisation which approves qualifications needed for employment to discriminate on the grounds covered by the Act.

Grounds

The basis which makes discrimination unlawful. It is against the law to treat people unfairly on the grounds of sex, gender identity, sexual orientation, intersex status, race, disability, age, marital or domestic partnership status, identity of spouse or domestic partner, pregnancy, association with a child, caring responsibilities, or religious appearance or dress.

Human rights

Rights that all people have e.g. “The right to life, liberty and security.” (United Nations Universal Declaration of Human Rights) The right to equal treatment is also universally recognised as a human right.

Indirect discrimination

When there is a requirement or situation which may seem equal but which is not reasonable because of its unequal effects on people.

Intersex status

Intersex people are born with physical or biological sex characteristics that do not fit the typical definitions for male or female bodies. For some intersex people, these traits are obvious at birth, while for others they can appear later in life, often at adolescence. There are many different intersex variations, including differences in the number of sex chromosomes, different tissue responses to sex hormones, or a different hormone balance.

Marital status

Single, married, widowed, divorced, separated, or living together with a partner in a domestic relationship.

Pregnancy

A woman who is pregnant, or may be pregnant, or is expected to become pregnant in the future.

Race

Colour, country of birth, ancestry or nationality.

Respondent

A person or organisation who receives a formal complaint of discrimination.

Sale of land

It is unlawful to refuse to sell land or offer less favourable conditions on the grounds covered by the Act.

Sex

Male or female.

Sexual harassment

Unwelcome behaviour of a sexual nature which makes people feel offended, afraid or humiliated, with reason.

Sexual orientation

Sexual orientation means a person's sexual orientation towards:

- (a) persons of the same sex; or
- (b) persons of a different sex; or
- (c) persons of the same sex and persons of a different sex.

Some terms used to describe a person's sexual orientation include gay, lesbian, homosexual, bisexual, straight and heterosexual. The definition does not use labels, as these may be offensive or inaccurate; however, it is intended to cover these orientations.

South Australian Civil and Administrative Tribunal (SACAT)

This is separate from the Equal Opportunity Commission. The Tribunal hears and judges complaints which have not been settled by conciliation through the Commission. Tribunal hearings are open to the public and decide in favour of either the person who made the complaint or the person they complained about.

Unlawful discrimination

Treating people unfairly on the grounds and in the areas covered by the Act.

Vicarious liability

An employer's responsibility for their employees' behaviour while they are working for them. Employers may receive a discrimination or sexual harassment complaint if they have not made a reasonable attempt to prevent unfair behaviour. A person is also vicariously liable for the acts of their agent.

Victimisation

Treating people unfairly because they have acted on their rights under equal opportunity law or supported others who have complained using the law.

Whistleblowing

Revealing to an appropriate authority information which is in the public interest. It is unlawful to victimise people because they are whistleblowers.

Contact us

Equal Opportunity Commission

Phone (08) 7322 7070

Fax (08) 8207 2090

Country callers 1800 188 163

Email eoc@agd.sa.gov.au

Write to

The South Australian Equal Opportunity Commission
GPO Box 464 Adelaide SA 5000

Or visit us at

GPO Exchange, Level 15, 10 Franklin Street Adelaide 5000

www.eoc.sa.gov.au



Government of South Australia

Office of the Commissioner for
Equal Opportunity

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