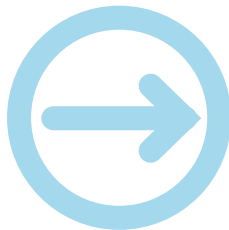




sexual orientation & lawful sexual activity discrimination



What is sexual orientation?

Discrimination on the basis of sexual orientation occurs when someone is treated less favourably than another person because of his or her heterosexuality, bisexuality, homosexuality or transsexuality.

For more information on transsexuality, see the 'transsexuality discrimination' brochure.

Example

Robyn is a new employee in a large business. Shortly after starting, Robyn goes on a date with a male co-worker. In the following months, Robyn goes on a number of dates with different male co-workers in the business. Rumours soon start spreading that Robyn is a 'slut'. Co-workers approach Robyn and tease her about how many men she is supposedly sleeping with. Robyn could complain of discrimination on the basis of lawful sexual activity.

Example

Jenny is bisexual. Jenny has happily been working in her job for 5 yrs. At the end of year dinner she decides to bring her partner, Katie, along. After the dinner, Jenny began to feel uncomfortable when staff made jokes and rude remarks about her 'swinging both ways'.

What is lawful sexual activity?

Discrimination on the basis of lawful sexual activity occurs when someone is treated less favourably on the ground of lawful sexual activity compared to a person who has not engaged in lawful sexual activity. Sexual activity includes not engaging in, or refusing to engage in sexual activity.

Examples of lawful sexual activity include:

- Consensual sex between two adult males;
- Consensual sex between two adult females;
- Consensual sex between an adult male and an adult female; and
- Refusing to engage in any of the above;

What would be unlawful sexual activity?

Lawful sexual activity would not cover situations where it is an offence to engage in the particular sexual activity - such as an adult having sexual relations with a young person or sexual assault.

Example of lawful discrimination
It would not be discriminatory for a service to be established that provides support and advocacy services for persons who are homosexual, bisexual, or transsexual, as a group of people who may be disadvantaged within the community.



Contact Us

To lodge a complaint or seek further information, contact the office or visit the website. Please note the office is unable to provide legal advice to parties of a complaint.

Office of the Anti-Discrimination Commissioner
Level 1, 54 Victoria Street, Hobart, Tasmania 7000
GPO Box 197, Hobart, Tasmania 7001

Telephone **1300 305 062 (local call)**
(03) 6233 4841
Facsimile **(03) 6233 5333**
TTY **(03) 6233 3122**
Email **antidiscrimination@justice.tas.gov.au**

www.antidiscrimination.tas.gov.au

Disclaimer: This information is intended to provide a general understanding of the Anti-Discrimination Act 1998. To maintain confidentiality case examples are not based on actual complaints lodged with this office.

Where is it unlawful to discriminate?

The *Anti-Discrimination Act 1998* (“the Act”) prohibits sexual orientation and lawful sexual activity discrimination in the following areas:

Employment – this includes paid or unpaid, casual, permanent or temporary employment.

Education and Training - at schools, colleges, universities or other educational institutions where education and training is provided.

Provision of facilities, goods and services – this includes access and use of public places, transportation and travel and private or government service providers.

Accommodation – this includes residential housing and business accommodation i.e. rental property, hotel, motel, boarding house or caravan.

Membership and activities of clubs - being a member of a club and participating in activities associated with the club.

Direct discrimination

Direct discrimination takes place if a person treats another person on the basis of their sexual orientation or lawful sexual activity less favourably than a person of a different sexual orientation, or who has not engaged in lawful sexual activity.

For direct discrimination to take place it is not necessary that:

- Sexual orientation or lawful sexual activity be the sole or dominant ground for the unfavourable treatment; or
- The person who discriminates regards the treatment as unfavourable; or
- The person who discriminates has any particular motive in discriminating.

Indirect discrimination

Indirect discrimination on the ground of sexual orientation or lawful sexual activity takes place if a person imposes a condition, requirement, or practice, which is unreasonable in the circumstances and has the effect of disadvantaging a member of a group of people who share a particular attribute (sexual orientation or lawful sexual activity) more than a person who is not a member of that group.

When is it lawful to discriminate?

In certain circumstances discrimination is permitted. There are no specific exceptions to discrimination on the basis of sexual orientation or lawful sexual activity. However, there are general exceptions to discrimination on the basis of all attributes.

Equal opportunities

A person may discriminate against another person in any program, plan or arrangement designed to promote equal opportunity for a group of people who are disadvantaged or have a special need because of a prescribed attribute.

Disadvantaged groups and special needs

A person may discriminate against another person in any area if it is for the purpose of carrying out a scheme for the benefit of a group, which is disadvantaged or has a special need because of a prescribed attribute.

Where a person/organisation argues that it should be exempted from the requirements of the Act because an exception applies, it is up to the person/organisation to prove that the exception applies to their circumstances.

Please advise the office prior to an appointment if you require special assistance or the services of an Interpreter/Auslan.