



# religious belief or affiliation & religious activity discrimination



## What is religious belief or affiliation and religious activity discrimination?

The Tasmanian *Anti-Discrimination Act 1998* (“the Act”) prohibits discrimination on the basis of a religious belief or affiliation and religious activity. Discrimination occurs when someone is treated less favourably than another person because of his or her religious belief or affiliation or religious activity.

“**Religious activity**” means engaging in, not engaging in, or refusing to engage in, religious activity. Religious activity could include:

- Attending a place of religious worship;
- Saying daily prayers;
- Participating in religious ceremonies or festivals;
- Following religious rules, for example, in relation to food or drink;
- Not engaging in, or refusing to engage in, any of the above.

“**Religious belief or affiliation**” means holding or not holding a religious belief or view. Religious belief or affiliation could include:

- Simply identifying with, or belonging to a religion;
- Believing in God/s;
- Adhering to atheism (not believing in God/s) or agnosticism (unsure about the existence of God).

Example of direct discrimination  
Nadia attends a café in her neighbourhood. Nadia is Muslim and wears a headscarf, known as the ‘Hijab’. Nadia feels uncomfortable and humiliated when the waiter asks inappropriate questions and makes offensive comments about her headscarf. Nadia decides to lodge a complaint of discrimination on the basis of religious belief or affiliation and religious activity.

## Where is it unlawful to discriminate?

The Act prohibits discrimination on the basis of religious belief, affiliation and religious activity 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.

If you are unsure whether your complaint involves religious belief, affiliation or religious activity discrimination, you can contact the Office of the Anti-Discrimination Commissioner for more information and/or arrange an appointment with an Investigation Officer.

## Indirect discrimination

Indirect discrimination 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 the attribute/s of religious belief or affiliation or religious activity, more than a person who is not a member of that group.

## 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.

Example of indirect discrimination  
A workplace has a policy that prevents employees from wearing any jewellery to work. This policy may disadvantage workers belonging to certain religions who wish to wear a religious symbol – for example people of the Christian faith wanting to wear a cross or Jewish people who wear the Star of David. Whether the policy is unreasonable or not would depend on the nature of the job. If wearing jewellery does not impact on the inherent requirements of the job, then it would be unreasonable to prevent people from wearing religious symbols in the workplace. However, a policy that prohibits wearing jewellery on a heavy industrial site using heavy machinery may be reasonable because of occupational, health and safety reasons.

## Direct discrimination

Direct discrimination takes place if a person treats another person on the basis of their religious belief or affiliation and religious activity, or imputed religious belief, affiliation and religious activity, less favourably than a person without those attribute/s or characteristic/s.

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

- Religious belief or affiliation or religious 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.

## When is it lawful to discriminate?

In certain circumstances discrimination on the basis of religious belief or affiliation or religious activity is permitted. The following exceptions apply:

### Employment based on religion

(1) A person may discriminate against another person on the ground of religious belief or affiliation or religious activity in relation to employment if the participation of the person in the observance or practice of a particular religion is a genuine occupational qualification or requirement.

(2) A person may discriminate against another person on the ground of religious belief or affiliation or religious activity in relation to employment in an educational institute that is, or is to be, conducted in accordance with the tenets, beliefs, teachings, principles or practices of a particular religion if the discrimination is in order to enable, or better enable, the educational institution to be conducted in accordance with those tenets, beliefs, teachings, principles or practices.

### Participation in religious observance

A person may discriminate against another person on the ground of religious belief or affiliation or religious activity in relation to -

- a) the ordination or appointment of a priest; or
- b) the training and education of any person seeking ordination or appointment as a priest; or
- c) the selection or appointment of a person to participate in any religious observance or practice; or
- d) any other act that –
  - i. is carried out in accordance with the doctrine of a particular religion; and
  - ii. is necessary to avoid offending the religious sensitivities of any person of that religion.

Under the Act “priest” includes a Minister of any religion, a member of a religious order and any person whose office it is to perform religious rites.

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

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