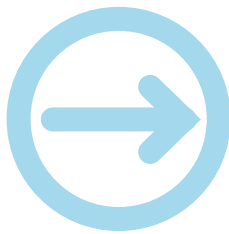




disability discrimination



What is disability discrimination?

Under the Tasmanian *Anti-Discrimination Act* 1998 (“the Act”) disability discrimination is unlawful.

“Disability” means any of the following that presently exists, previously existed but no longer exists, may exist in the future, whether or not arising from an illness, disease or injury or from a condition subsisting at birth:

- a total or partial loss of the person’s bodily or mental function eg. intellectual disability or quadriplegia;
- total or partial loss of a part of the body eg. amputation;
- the presence in the body of organisms causing or capable of causing disease or illness eg. HIV/AIDS;
- the malfunction, malformation or disfigurement of a part of a person’s body eg. hearing or visual impairment;
- disorder, malformation, malfunction or disfigurement that results in the person learning differently from a person without the disorder, malformation, malfunction or disfigurement eg. dyslexia;
- a disorder, illness or disease that affects a person’s thought processes, perceptions of reality, emotions or judgement or that results in disturbed behaviour eg. mental illness such as schizophrenia; or
- reliance on a guide-dog, wheelchair or other remedial or therapeutic device eg. guide dog, cane or assistance dog.

Disability discrimination can also happen when a person is assumed or imputed to have a disability. These assumptions may be groundless. Even if a person is found not to have a disability, they are still protected under the Act and can lodge a complaint.

Example of direct discrimination
A woman with controlled bipolar disorder was not given a job answering phones because of her disability. Because her condition is managed, it would not affect her ability to fulfil the requirements of her job.

Direct disability discrimination

Direct disability discrimination takes place if a person treats another person on the basis of their disability, or imputed disability, less favourably than a person without that attribute or characteristic.

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

- disability 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 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 or a group of people who share a particular attribute (disability) more than a person who is not a member of that group.

Example of indirect discrimination
A supermarket requires checkout assistants to stand for the entire shift, which disadvantages employees with arthritis who are unable to do so. The requirement to stand at all times is unreasonable in the circumstances, as an adjustment could be made by providing chairs at little cost.

Example of association discrimination
A child using a wheelchair for mobility was refused access on a class tour. One of the teachers had to stay behind with them while the rest of the class went on the tour. This discriminated against the child and also the teacher by association. The teacher would therefore also be entitled to lodge a complaint.

Association discrimination

The Act provides that you cannot discriminate against a person associated with a person with a disability.

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 Act prohibits disability 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 ie. 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.

When is it lawful to discriminate?

In certain circumstances, disability discrimination is permitted. The following exceptions apply:

- competitive sporting activity if the person is not reasonably capable of performing the activity;
- in the provision of any annuity, insurance or superannuation if it is based on statistical data and it is reasonable;
- in employment if the person with a disability is unable to carry out the inherent requirements of a position or

Example of lawful discrimination
A bricklayer was unsuccessful in an application for a position with a small business. He had a permanent injury to his back making him unable to perform the inherent requirements of the position. The business couldn't afford to employ someone full-time to assist him, which is the only way his disability could have been accommodated.

requires accommodation to carry out the requirements of a position that would cause an unjustifiable hardship;

- special educational facilities provided for the use of persons with disabilities;
- if the disability is an infectious disease and it is reasonably necessary to discriminate in order to protect public health;
- in the provision of access or the provision of goods and services if it would cause an unjustifiable hardship.

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.

If you are unsure whether your complaint involves disability discrimination, you can contact the Office of the Anti-Discrimination Commissioner and/or arrange an appointment with an Investigation Officer.

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