

Version No. 029
Equal Opportunity Act 2010
No. 16 of 2010

Version incorporating amendments as at
19 July 2022

Part 2—What is discrimination?

6 Attributes

The following are the attributes on the basis of which discrimination is prohibited in the areas of activity set out in Part 4—

- (a) age;
- (b) breastfeeding;
- (c) employment activity;
- (d) gender identity;
- (e) disability;

- (f) industrial activity;
- (g) lawful sexual activity;
- (h) marital status;
- (i) parental status or status as a carer;
- (j) physical features;
- (k) political belief or activity;
- (l) pregnancy;
- (la) profession, trade or occupation;

- (m) race;
- (n) religious belief or activity;
- (o) sex;
- (oa) sex characteristics;

- (p) sexual orientation;
- (pa) an expunged homosexual conviction;

S. 6(e)
amended by
No. 26/2011
s. 34(Sch.
item 2.1).

S. 6(la)
inserted by
No. 7/2022
s. 34.

S. 6(oa)
inserted by
No. 3/2021
s. 60.

S. 6(pa)
inserted by
No. 81/2014
s. 7.

(pb) a spent conviction;

(q) personal association (whether as a relative or otherwise) with a person who is identified by reference to any of the above attributes.

7 Meaning of discrimination

(1) Discrimination means—

- (a) direct or indirect discrimination on the basis of an attribute; or
- (b) a contravention of section 17, 19, 20, 22, 32, 33, 40, 45, 54, 55 or 56.

(2) Discrimination on the basis of an attribute includes discrimination on the basis—

- (a) that a person has that attribute or had it at any time, whether or not he or she had it at the time of the discrimination;
- (b) of a characteristic that a person with that attribute generally has;
- (c) of a characteristic that is generally imputed to a person with that attribute;
- (d) that a person is presumed to have that attribute or to have had it at any time.

(3) For the purposes of subsection (2), if a person with a disability is accompanied by or possesses an assistance aid, being accompanied by or the possession of that assistance aid is taken to be a characteristic that a person with that attribute generally has.

(4) In subsection (3)—

assistance aid means any of the following that alleviates the effects of a person's disability—

- (a) equipment (including a palliative or therapeutic device);
- (b) a person who provides assistance or services to a person with a disability;

Examples

- 1 an interpreter;
- 2 a reader.

(c) an assistance dog.

8 Direct discrimination

(1) Direct discrimination occurs if a person treats, or proposes to treat, a person with an attribute unfavourably because of that attribute.

Examples

- 1 An employer advises an employee that she will not be trained to work on new machinery because she is too old to learn new skills. The employer has discriminated against the employee by denying her training in her employment on the basis of her age.

- 2 A real estate agent refuses an African man's application for a lease. The real estate agent tells the man that the landlord would prefer an Australian tenant. The real estate agent has discriminated against the man by denying him accommodation on the basis of his race.
- (2) In determining whether a person directly discriminates it is irrelevant—
 - (a) whether or not that person is aware of the discrimination or considers the treatment to be unfavourable;
 - (b) whether or not the attribute is the only or dominant reason for the treatment, provided that it is a substantial reason.

9 Indirect discrimination

- (1) Indirect discrimination occurs if a person imposes, or proposes to impose, a requirement, condition or practice—
 - (a) that has, or is likely to have, the effect of disadvantaging persons with an attribute; and
 - (b) that is not reasonable.
- (2) The person who imposes, or proposes to impose, the requirement, condition or practice has the burden of proving that the requirement, condition or practice is reasonable.
- (3) Whether a requirement, condition or practice is reasonable depends on all the relevant circumstances of the case, including the following—
 - (a) the nature and extent of the disadvantage resulting from the imposition, or proposed imposition, of the requirement, condition or practice;
 - (b) whether the disadvantage is proportionate to the result sought by the person who imposes, or proposes to impose, the requirement, condition or practice;
 - (c) the cost of any alternative requirement, condition or practice;
 - (d) the financial circumstances of the person imposing, or proposing to impose, the requirement, condition or practice;
 - (e) whether reasonable adjustments or reasonable accommodation could be made to the requirement, condition or practice to reduce the disadvantage caused, including the availability of an alternative requirement, condition or practice that would achieve the result sought by the person imposing, or proposing to impose, the requirement, condition or practice but would result in less disadvantage.
- (4) In determining whether a person indirectly discriminates it is irrelevant whether or not that person is aware of the discrimination.

Examples

- 1 A store requires customers to produce photographic identification in the form of a driver's licence before collecting an order. This may disadvantage a person with a visual impairment who is not eligible to hold a driver's licence. The store's requirement may not be reasonable if the person with a visual impairment can provide an alternative form of photographic identification.
- 2 An advertisement for a job as a cleaner requires an applicant to speak and read English fluently. This may disadvantage a person on the basis of his or her race. The requirement may not be reasonable if speaking and reading English fluently is not necessary to perform the job.

Division 4—Discrimination in the provision of goods and services and disposal of land

44 Discrimination in the provision of goods and services

- (1) A person must not discriminate against another person—
 - (a) by refusing to provide goods or services to the other person; or
 - (b) in the terms on which goods or services are provided to the other person; or
 - (c) by subjecting the other person to any other detriment in connection with the provision of goods or services to him or her.
- (2) Subsection (1) applies whether or not the goods or services are provided for payment.

Division 4—Vicarious liability

109 Vicarious liability of employers and principals

If a person in the course of employment or while acting as an agent—

- (a) contravenes a provision of Part 4 or 6 or this Part; or
- (b) engages in any conduct that would, if engaged in by the person's employer or principal, contravene a provision of Part 4 or 6 or this Part—

both the person and the employer or principal must be taken to have contravened the provision and a person may bring a dispute to the Commission for dispute resolution or make an application to the Tribunal against either or both of them.