



DISCRIMINATION – EXCEPTIONS TO THE RULES

Some discriminatory
behaviour can be defended
– fair enough?

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Celebrating Difference
Embracing Equality

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It is discrimination to treat someone unfairly or to disadvantage them because they have a particular personal characteristic or belong to a certain group. Discrimination is generally against the law, but there are exceptions.

It is important to understand that exceptions do not automatically place an action beyond the reach of the law. A person can still make a complaint about those actions to the Anti-Discrimination Commissioner. Those wishing to take advantage of the exception will generally be required to prove the exception applies in their circumstances.

Exceptions are made under Tasmanian discrimination law for actions designed to promote equal opportunity or to benefit a group that is disadvantaged or has needs based on its members' personal characteristics. For example, programs and services provided only to a particular group of people, such as a program to help newly arrived immigrants settle in Tasmania, or a program to help older Tasmanians to return to the workforce, are likely to be covered by an exception in the law.

There is also an exception for action that is reasonably necessary to comply with a law or the decision of a court or tribunal. For example, it is lawful for a pub to refuse to sell alcohol to a person under the age of 18, as the Tasmanian liquor licensing law states no-one under 18 may be served or sold alcohol.

Specific exceptions apply to discrimination on the basis of particular personal characteristics. For example, it is not against the law to reject the

application of a boy who wishes to enrol at an all girls' school, or to exclude a man who wants to join a competitive women's sporting team.

Sometimes an exception applies to discrimination in employment because there is a genuine occupational need to do so. For example, it is a genuine requirement for a bus driver to hold the appropriate vehicle driver's licence. It would not be against the law to exclude people without that licence.

An exception also applies to potentially discriminatory statements made for the purposes of accurately and fairly reporting a public act, or where the statement is made in good faith in the public interest. For example, a newspaper may accurately report statements made in a public speech at a white supremacist rally. While the statements made at the rally may fall foul of discrimination law, the reporting of them does not.

If you are planning to do something that may be seen as discriminatory but you think is valid or falls within an exception, then it is wise to apply to the Anti-Discrimination Commissioner for an *exemption* for that activity (see separate brochure: *Discrimination law - should you be exempt?*).

Want more information?

If you would like to know more about exceptions or to apply for an exemption for a particular activity, please contact us.

The law in action

Mary moves into a new neighbourhood and notices an advertisement for events conducted by the '60s and over club'. Her request to become a member is rejected because she is only 50 years of age. She believes the action is discriminatory, but is told by our office it is not unlawful to discriminate on the basis of age in respect of membership of this particular club, as it is an age-specific club.

Luka applies for a job as a security guard that requires good physical health and the need to occasionally undertake tasks involving high levels of physical exertion in dangerous situations where lives and safety may be at risk. Luka has a history of heart problems that are made worse by strenuous activity. He is told he is not suitable for the job. If Luka made a complaint about this, the employer may be able to defend its actions on the basis of Luka's inability to meet the inherent requirements of the job.

Svetlana is a registered nurse who has developed difficulty hearing. Her employer dismisses her on the basis she is no longer able to perform the functions of her job, citing as an example her inability to use a stethoscope to hear patients' heartbeats. Svetlana makes a discrimination complaint. The employer claims an exception applies because it believes Svetlana cannot fulfil the inherent requirements of the job. Our office helps the employer find a way to enable Svetlana to continue working. This includes the use of an electronic stethoscope that boosts volume. Svetlana returns to work and the complaint is resolved.