



# IRRELEVANT MEDICAL RECORD DISCRIMINATION

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**Equal Opportunity Tasmania**

(the office of the Anti-Discrimination Commissioner)

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# IRRELEVANT MEDICAL RECORD DISCRIMINATION

It is discrimination when a person's medical record is used as a basis for treating them unfairly or excluding them from the same opportunities as others, unless the medical record is relevant to the situation.

A medical record is any document or record containing information about a person's health or medical status. This includes:

- a person's worker's compensation history
- records relating to a person's genetic make-up (including predisposition to a particular medical condition)
- records of past medical conditions
- records relating to a person's mental health
- records relating to a person's sex, sexual characteristics or gender identity

Use of any information in a medical record that is not specifically relevant to the circumstances could result in unlawful discrimination.

This means that pre-employment medical tests should be designed to test only a candidate's capacity to complete the requirements of the job and any information used only for that purpose.

It also means if an applicant for a job is currently healthy and capable of doing the job, but has a medical history showing previous time off work for a particular medical condition, it may be unlawful to refuse them the job because of their medical history.

## In what situations is irrelevant medical record discrimination against the law?

To be against the law, the discrimination must be related to one of these places or activities:

- Work – whether the work is paid or voluntary
- Training or studying – for example at school, TAFE or university, or workplace training
- Providing or accessing facilities or services

- Buying or selling goods
- Club membership or club-related activities
- Hotels and pubs
- Housing and accommodation – including short-term accommodation such as a hotel or hostel
- Office and other business premises
- The design or implementation of state laws or programs
- Making or implementing industrial awards, enterprise agreements or industrial agreements

## Exceptions to the law

In certain circumstances discrimination on the basis of an irrelevant medical record may be allowed. For example, it is unlikely to be unlawful discrimination to set up an organisation or group to support only people who have a genetic predisposition toward a particular disease or condition. (For information about how exceptions work under the law, see separate brochure: *Discrimination – exceptions to the rules*).

## Exemptions

If you think there is a valid reason for doing something that might be discriminatory on the basis of irrelevant medical record, you may apply to the Anti-Discrimination Commissioner for an exemption for that activity (see separate brochure: *Discrimination law – should you be exempt?*).

## Do you feel you have been discriminated against on the basis of your irrelevant medical record?

If you want to find out more or make a complaint, contact our office. This service is free. We cannot give legal advice, but we can explain how the law works and what it covers. We can also help with writing down a complaint.

## The law in action

Saskia was refused travel insurance because information provided by her doctor to the insurer contained the results of tests for a genetic predisposition to breast cancer. She made a complaint to the Anti-Discrimination Commissioner alleging discrimination on the basis of irrelevant medical record in connection with services.

Ben was asked to include his medical history in the application form for a position in a large accounting firm. He indicated he had, several years earlier, experienced clinical depression following the sudden death of his wife. When Ben asked why he did not get an interview he was told that the firm was concerned the position would be too demanding for him. Ben felt he was being discriminated against and made a complaint alleging discrimination on the basis of irrelevant medical record in connection with employment.