

Religious exemptions under the SDA

INFORMATION SHEET

Overview

This information sheet gives an overview of the religious exemptions to unlawful discrimination in the *Sex Discrimination Act 1984* (Cth) (SDA).

Discrimination under the SDA

The SDA makes it unlawful to discriminate on the basis of sex, sexual orientation, gender identity, intersex status, marital or relationship status, pregnancy or potential pregnancy, breastfeeding and family responsibilities in certain areas of public life, including:

- employment
- education
- provision of goods and services
- providing accommodation, housing or land
- membership and activities of licenced clubs
- the administration of Commonwealth laws and programs.

More information about discrimination under the SDA is available in this [Fact Sheet](#).

Religious exemptions

The SDA also includes provisions that provide that in certain circumstances discrimination will not be unlawful.

For example, sections 37 and 38 of the SDA set out the circumstances in which ‘religious bodies’ and ‘educational institutions established for religious purposes’ can discriminate against people on the basis of certain attributes protected by the SDA.

Exemptions for religious bodies

Section 37 of the SDA allows for religious bodies to discriminate against people on the basis of their sex, sexual orientation, gender identity, intersex status, marital or relationship status, pregnancy or potential pregnancy or breastfeeding in relation to:

- the ordination or appointment of priests, ministers of religion or members of any religious order
- the training or education of people seeking ordination or appointment as priests, ministers or of religion
- the training or education of people to participate in religious observance or practice.

Section 37 also allows for bodies established for religious purposes to discriminate against people on the basis of the protected attributes outlined above in relation to acts or practices that:

- conform to the doctrines, tenets or beliefs of that religion; or
- are necessary to avoid injury to the religious susceptibilities of adherents of that religion.

The SDA does not define a 'body established for religious purposes'.

The exemption does not apply to acts or practices connected with the provision of Commonwealth-funded aged care; however, it can apply to the employment of people to provide Commonwealth-funded aged care.

In addition to the exemption for religious bodies in section 37, section 40(2A) of the SDA exempts anything done by a person 'in direct compliance' with the *Marriage Act 1961* (Cth) from the provisions in the SDA which make it unlawful to discriminate on the basis of sexual orientation, gender identity, intersex status and marital or relationship status.

Educational institutions established for religious purposes

Section 38 of the SDA says that it is not unlawful for educational institutions established for religious purposes to discriminate against employees and contract workers on the basis of sex, sexual orientation, gender identity, marital or relationship status or pregnancy, where:

- the educational institution is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed; and
- the person who discriminates does so in good to faith to avoid injury to the religious susceptibilities of adherents of that religion or creed.

Section 38 also says that it is not unlawful for one person to discriminate against another person on the basis of sexual orientation, gender identity, marital or relationship status or pregnancy in relation to the provision of education or training if the two conditions noted above are satisfied.

How are the exemptions relevant to me?

If you believe that you have been discriminated against by a religious body or educational institution established for religious purposes on the basis of your sex, sexual orientation, gender identity, marital or relationship status, pregnancy or potential pregnancy or breastfeeding, you can still make a complaint to the Australian Human Rights Commission. However, the respondent religious organisation or educational institution established for religious purposes, may seek to rely on the religious exemptions to argue that the alleged discrimination is not unlawful.

Where can I get more information?

The Australian Human Rights Commission's contact details are:

Telephone

Complaint Info line: 1300 656 419
TTY: 1800 620 241
Fax: (02) 9284 9611

If you need an interpreter you can call the Translating and Interpreting Service (TIS) on **131 450** and ask to be connected to the Australian Human Rights Commission.

If you are deaf or have a hearing impairment you can contact us by TTY on **1800 620 241**. If you are deaf or have a hearing or speech impairment you can also contact us through the National Relay Service (NRS) on **133 677**. If you need an Auslan interpreter, the Commission can arrange this for you.

If you are blind or have a vision impairment, the Commission can provide information in alternative formats on request.

Post

Australian Human Rights Commission
GPO Box 5218 SYDNEY NSW 2001

Online

Email: complaintsinfo@humanrights.gov.au
Website: www.humanrights.gov.au

Disclaimer: The information on this fact sheet is only intended as a guide. It is not a substitute for legal advice.