Anti-discrimination and Equal Opportunity

Protected personal characteristics

While the legal definition of discrimination may vary from state to state, workers in all states, territories and the Commonwealth are protected from discrimination on the basis of a number of protected personal characteristics or attributes. The way these characteristics are described also varies from state to state.

Select your location to find out which personal characteristics are protected in your state or territory. Please note that these lists may not be exhaustive and can be affected by updates to legislation.

For more information about some of the characteristics and their protections, select ‘Personal characteristics, summarised’.

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Australian Capital Territory

New South Wales

Northern Territory

Queensland

South Australia

Tasmania

Victoria

Western Australia

Personal characteristics, summarised
Anti-discrimination and Equal Opportunity

Australian Capital Territory

It’s unlawful to discriminate against a person based on any of the following.

- Accommodation status
- Age
- Aid of an assistance animal, support person or disability aid
- Breastfeeding
- Disability (including possible future disability)
- Employment status
- Gender identity
- Genetic information
- Immigration status
- Industrial activity
- Intersex status
- Irrelevant criminal record
- Parent, family, carer or kinship responsibilities
- Physical features
- Political conviction
- Pregnancy, including potential pregnancy
- Profession, trade, occupation or calling
- Race
- Record of a person’s sex having been altered under the Births, Deaths and Marriages Registration Act 1997 (ACT) or a law of another jurisdiction that corresponds, or substantially corresponds, to the Act
- Relationship status
- Religious conviction
- Sex
- sexes
- Status as a parent or carer
- Subjection to family or domestic violence
- Association (whether a relative or otherwise) with a person who is identified by reference to another attribute listed above
The following are also unlawful.

- Sexual harassment
- Vilification because of race, sexuality, gender identity, HIV/AIDS status, disability, intersex status or religious conviction
- Unlawful advertising
- Victimisation
Anti-discrimination and Equal Opportunity

New South Wales

It’s unlawful to discriminate against a person based on any of the following.

- Age
- Carer responsibilities
- Disability (including past, future or presumed)
- Homosexuality
- Marital status or domestic status
- Race (including colour, nationality, descent and ethnic, ethno-religious or national origin)
- Sex (including pregnancy and breastfeeding)
- Transgender status
- Association with a person who has an attribute listed above

The following are also unlawful.

- Compulsory retirement for employee on ground of age
- Sexual harassment
- Victimisation
- Unlawful advertising
- Vilification because of race, transgender status, homosexuality or HIV/AIDS
It’s unlawful to discriminate against a person based on any of the following.

- Age
- Breastfeeding
- Impairment
- Irrelevant criminal record
- Irrelevant medical record
- Marital status
- Parenthood
- Political opinion, affiliation or activity
- Pregnancy
- Race
- Religious belief or activity
- Sex
- Sexuality
- Trade union or employer association activity
- The person’s details being published under section 66M of the *Fines and Penalties (Recovery) Act 2001* (NT)
- Association with a person who is believed to have one of these attributes

The following are also unlawful.

- Sexual harassment
- Victimisation
- Discriminatory advertising
- Requesting unnecessary information on which unlawful discrimination might be based
Anti-discrimination and Equal Opportunity

Queensland

It’s unlawful to discriminate against a person based on any of the following.

- Age
- Breastfeeding
- Family responsibilities
- Gender identity
- Impairment
- Lawful sexual activity
- Parental status
- Political belief or activity
- Pregnancy
- Race
- Relationship status
- Religious belief or religious activity
- Sex
- Sexuality
- Trade union activity
- Association with, or relation to, a person identified on the basis of the above attributes

The following are also unlawful.

- Sexual harassment
- Unlawful requests for information on which discrimination might be based
- Vilification on the grounds of race, religion, sexuality or gender identity
- Discriminatory advertising
- Victimisation
Anti-discrimination and Equal Opportunity

South Australia

It's unlawful to discriminate against a person based on any of the following.

- Age
- Association with a child (including breast and bottle-feeding)
- Caring responsibilities
- Disability (including past or future disability)
- Gender identity
- Intersex status
- Marital or domestic partnership status
- Pregnancy or potential pregnancy
- Race
- Religious appearance or dress
- Sex
- Sexual orientation
- Spouse or domestic partner’s identity (including former or proposed spouse or domestic partner)

The following are also unlawful.

- Victimisation
- Sexual harassment
- Imposing a condition or requirement that would result in a person with a disability being separated from his or her assistance animal
Anti-discrimination and Equal Opportunity

Tasmania

It’s unlawful to discriminate against a person based on any of the following.

- Age
- Breastfeeding
- Disability
- Family responsibilities
- Gender
- Gender identity (including transgender status)
- Industrial activity
- Intersex status
- Irrelevant criminal record
- Irrelevant medical record
- Lawful sexual activity
- Marital status
- Parental status
- Political activity
- Political belief or affiliation
- Pregnancy or child-bearing capacity
- Race (including colour, nationality, descent, ethnic origin or immigrant status)
- Relationship status
- Religious activity
- Religious belief or affiliation (including not holding a religious belief or view)
- Sexual orientation
- Association with a person who has, or is believed to have, any of these attributes
The following are also unlawful.

- Conduct which offends, humiliates, intimidates, insults or ridicules another person on the basis of one of the above attributes
- Sexual harassment
- Victimisation
- Inciting hatred
- Promoting discrimination and prohibited conduct
Anti-discrimination and Equal Opportunity

Victoria

It’s unlawful to discriminate against a person based on any of the following.

- Age
- Breastfeeding
- Disability
- Employment activity
- Expunged homosexual conviction
- Gender identity
- Industrial activity
- Lawful sexual activity
- Marital status
- Parental status or status as a carer
- Physical features
- Political belief or activity
- Pregnancy
- Race
- Religious belief/activity
- Sex
- Sexual orientation
- Personal association (whether a relative or otherwise) with someone who has, or is assumed to have, any of these personal characteristics

The following are also unlawful.

- Sexual harassment
- Victimisation
- Discriminatory requests for information
Anti-discrimination and Equal Opportunity

Western Australia

It’s unlawful to discriminate against a person based on any of the following.

- Age (including by association)
- Breastfeeding
- Family responsibility
- Family status
- Gender history
- Impairment (including by association)
- Marital status
- Political conviction
- Pregnancy
- Race (including by association)
- Religious conviction
- Sex
- Sexual orientation (including by association)
- Spent convictions
- Publication of relevant details on the Fines Enforcement Registrar’s website

The following are also unlawful.

- Sexual harassment
- Racial harassment
- Unlawful advertising
- Requesting certain information on application forms
- Victimisation
Protected personal characteristics

Anti-discrimination and Equal Opportunity

**Personal characteristics, summarised**

**Age**

Under the *Age Discrimination Act 2004 (Cth)* and state and territory legislation, it’s unlawful to treat someone less favourably because of their actual or assumed age.

For example, if a car dealership turned down a job applicant because it considered her too old, this would be a case of direct discrimination. There seems to be no legitimate business or operational reason for the dealership to only employ young people.

However, there may also be instances where treating someone differently due to their age is not unlawful. Examples include:

- compliance with youth wage rates
- compliance with other federal, state or territory laws, e.g. not employing someone under 18 years of age to work in a bar
- where a person’s age makes them unable to meet the inherent requirements of a role, e.g. appearing in an advertisement for a product catering to a specific age group.

**Sex**

Sex discrimination – direct or indirect – is unlawful under the *Sex Discrimination Act 1984 (Cth)* and state and territory legislation.

However, an employer may generally offer employment only to one sex if:

- a person of that sex can most effectively provide welfare or support services for other people of the same sex
- it’s a genuine occupational requirement. This may be for reasons of decency and privacy, such as around changerooms and bathrooms or when conducting body searches
- that person is required to live in communal accommodation not suitable for more than one sex, and supplying separate accommodation would impose unjustifiable hardship on the employer
- it’s necessary to maintain authenticity or credibility in dramatic, artistic, entertainment, photographic or modelling performances or work.
Sexual orientation, relationship status and sexual activity

Under the Sex Discrimination Act, it’s unlawful to treat someone less favourably based on their actual or assumed sexual orientation.

‘Sexual orientation’ refers to a person’s attraction to others and includes heterosexuality, homosexuality, bisexuality, asexuality and people perceived to fall into these groups, among others.

The Sex Discrimination Act also makes it unlawful to treat someone less favourably because of their marital or relationship status, i.e. whether they’re:

- single
- married
- divorced
- widowed
- de facto (current or former)
- separated.

It’s unlawful in some jurisdictions to discriminate against someone based on their actual or assumed lawful sexual activity. This includes legal sex work in some states.

Gender identity and intersex status

Under the Sex Discrimination Act, it’s unlawful to treat someone less favourably based on their actual or assumed gender identity or intersex status.

‘Gender identity’ refers to a person’s individual sense of gender. It includes appearance, mannerisms and other gender-related characteristics (through medical intervention or not), and the expression or presentation of their gender.

People may identify with and express their gender by their style of dress, medical intervention or other means, including living or seeking to live as a member of another sex. A person’s individual sense of gender may or may not relate to their designated sex at birth.

‘Intersex status’ relates to people whose genetic, hormonal or physical characteristics are neither exclusively male nor female. They might identify as male, female, intersex or of indeterminate sex.

Gender identity and intersex status protections apply when someone:

- wishes to live as a member of their self-identified gender (different from the gender shown on identifying documentation)
- is in the process of affirming their self-identified gender
- has lived, or is currently living, as a member of their self-identified gender
- is intersex
- adopts the characteristics of the relevant gender in part of their life, e.g. by dressing in a manner usually associated with another sex.
It doesn’t matter what someone’s gender was on their original (now inconsistent) identifying documentation. It also doesn’t matter why someone affirms a gender identity, how they describe themselves or whether they’ve had or planned any medical intervention – in all cases, they are still protected.

**Pregnancy and breastfeeding**

The Sex Discrimination Act makes it unlawful to treat someone less favourably based on their pregnancy or potential pregnancy, or because they’re breastfeeding.

For example, it would be discriminatory to refuse to accommodate a parent’s need to breastfeed their child during work hours. It would also be discriminatory to not allow a new parent to return to work on reduced hours, to accommodate them caring for their child, unless there were reasonable business grounds to refuse.

**Parental and carer status**

Under the *Fair Work Act 2009* (Cth) and other federal, state and territory legislation, it’s unlawful to treat someone less favourably because of their actual or assumed status as a carer or parent.

‘Parents’ include:

- biological parents
- step parents
- adoptive parents, foster parents or guardians (under legislation in Queensland, Victoria, Tasmania and the Northern Territory)
- surrogate parents (under legislation in Tasmania).

‘Carer’ refers to someone on whom another person is substantially dependent for ongoing care and attention. This dependent person might be a child, partner, parent or relative; however, carers don’t necessarily have a family relationship with the person they’re looking after. The law includes caring for friends or neighbours – for example, in New South Wales, a carer can be a guardian or authorised carer.

**Race and religion**

Racial discrimination, based on someone’s actual or assumed race, is unlawful under the *Racial Discrimination Act 1975* (Cth). It typically concerns skin colour, descent, nationality, ancestry, ethnic background or any characteristics associated with a race.

Religious discrimination, based on someone’s actual or assumed religion, can be unlawful under relevant state or territory legislation.
Political beliefs and industrial activities

The Fair Work Act makes it unlawful to discriminate against a person based on political beliefs or activities. However, a potential employer can lawfully discriminate where particular political beliefs are an inherent requirement of the position (for example, if the job is as a ministerial adviser, political party member or electorate staff member).

Under state and territory law, it can also be unlawful to discriminate against someone based on industrial activities. This includes joining (or not joining) an industrial organisation or taking part (or not taking part) in lawful industrial activity organised by an industrial organisation.

Disability

It’s unlawful under the Disability Discrimination Act 1992 (Cth) to treat someone less favourably because of their actual or assumed present, past or future disability or impairment.

Examples of disabilities include:

- total or partial loss of bodily function
- the presence in the body of organisms that may cause disease
- total or partial loss of a part of the body
- malformation or disfigurement of a part of the body
- mental or psychological disease or disorder.

Examples of ‘assumed’ disabilities include:

- that someone has an intellectual disability because they speak slowly
- that someone might have a disability or impairment in the future, due to genetic predisposition.

HIV, AIDS and hepatitis C status

It’s unlawful to treat someone less favourably because they are, or are assumed to be, living with HIV, AIDS or hepatitis C, or may have one of them in the future. This can extend to discrimination against a person because they’re associated with someone living with HIV, AIDS or hepatitis C.

It can be lawful to discriminate based on HIV, AIDS or hepatitis C status in some states if it’s reasonably necessary to protect the health or safety of any person.

Personal association

Under some state legislation, it’s unlawful to treat someone unfairly or harass them because of their actual or assumed association with someone who has a protected personal characteristic.