



THE UNIVERSITY
of ADELAIDE

Legal Compliance Education and Awareness

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Sex Discrimination Act 1984

(Commonwealth)

adelaide.edu.au

seek LIGHT

What does the Sex Discrimination Act do?

- Promotes gender equality in Australia by prohibiting unlawful or unfavourable treatment of a person on the grounds of;
 - *gender*
 - *marital status*
 - *sexuality*
 - *pregnancy or potential pregnancy*
- Makes sexual harassment against the law
- Protects against job dismissal because of family responsibilities
- Administered by [The Australian Human Rights Commission](#)

How does the Act apply to the University?

The Act prohibits sexual harassment & discrimination by the University & its employees

- The University must not discriminate **as an Employer**,
 - When advertising or offering employment, for example;
 - *specifying that only a particular gender need apply; or*
 - *failing to recruit women into all-male workgroups because of fears that they "won't fit in"*
 - In the terms of employment offered
 - When offering benefits such as promotions, transfers or training, for example;
 - *requiring a specific period of continuous service for promotion, which could discriminate against women, who are more likely to have interruptions in their working life to have children*
 - When dismissing employees

How does the Act apply to the University? (cont.)

- The University must not discriminate **as an Educational Authority**;
 - In student admission or conditions of admission, for example;
 - *specifying different admission requirements for males & females*
 - In the access to, or the award of benefits, for example;
 - *offering a particular incentive to one gender only*
 - In precluding students from further study, for example;
 - *refusing to allow male students to undertake studies in early childhood education*
- The University must not discriminate **in the provision of accommodation & other goods & services**

How does the Act apply to the University? (cont.)

- Employers are not only responsible for their own behaviour but are jointly responsible for the behaviour of their staff;
 - *In all work situations & during functions, seminars, conferences, office parties, business or field trips*
- The University is liable for acts of discrimination & sexual harassment by its employees & agents
 - *full time, part time, casual, contract & voluntary workers*
 - **UNLESS** it has taken all reasonable steps through its policies, procedures & practices to prevent harassment occurring

Discrimination and the University

The Act prohibits ***direct discrimination***:

- *Obvious* discrimination that;
 - causes persons of a particular gender to feel humiliated, embarrassed, ridiculed, denigrated or segregated
 - denies persons of a particular gender access to or refused service

OR

- causes persons of a particular gender to lose an opportunity or income

The Act prohibits ***indirect discrimination***:

- *Less obvious* discrimination that appears to be equal treatment but is unfair to a particular gender who are;
 - unable or less able to comply with the rule

OR

- are disadvantaged because of it

Unlawful Discrimination: Sexual Harassment

- The Act prohibits sexual harassment by customers, colleagues, patients, diners & students, for example;
 - *graphic or sexually offensive emails*
 - *smutty jokes, comments or name-calling*
 - *leering or staring*
 - *unwelcome conduct of a sexual nature*
 - *sexual pictures, objects, text messages or literature*
 - *direct or implied propositions, or requests for dates*
 - *questions about sexual activity*
- If a staff member notifies their supervisor or Manager of sexual harassment by a regular visitor to the business, the University is legally obliged to act

Unlawful Discrimination: Pregnancy and Breastfeeding

- The Act prohibits discrimination against women because of pregnancy, future pregnancy or breastfeeding, for example;
 - *Precluding a woman from employment because she specifies that she intends to have a family one day (**direct discrimination**)*
 - *Reducing a woman's work hours, against her wishes, after she advises that she is pregnant (**direct discrimination**)*
 - *Imposing a condition that requires cashiers at the University stand at all times except while on breaks, as this is more difficult for pregnant women to comply with than for others, especially in the later stages of pregnancy (**indirect discrimination**)*

Unlawful Discrimination: Sexuality

- The Act prohibits discrimination on the grounds of sexuality, for example;
 - *mimicking or making fun of a person's behaviour because you think they are bisexual*
 - *refusing to appoint or promote someone who is transsexual to a position involving contact with clients because you think the clients won't approve*
 - *refusing to allow a heterosexual to attend a Gay Pride event*
 - *refusing to provide services to students you suspect of being homosexual because you think they are likely to have AIDS*

General exemptions under the Act

- A person does **not** discriminate against another person by imposing a condition, requirement or practice that is reasonable in the circumstance, for example;
 - *providing maternity leave to women*
- The Commission may grant an exemption which it believes is justified, for example;
 - *genuine occupational qualification, such as female advisors for sexual matters*
 - *positive discrimination in favour of women to redress past occupational bias*

What can happen if I don't comply?

Individual Consequences:

- Individuals could be liable for a claim of discrimination or sexual harassment if they knew about it (or should have known about it) & did nothing to stop it or prevent it from happening again
- Compensatory payments of up to \$5,000 for injury to feelings
- Ancillary orders, such as a public apology
- A breach of the Act may be misconduct actionable under the University's Enterprise Agreement

What can happen if I don't comply?

University Consequences:

- Compensatory payments of up to \$5,000 for injury to feelings
- Payment of damages for economic loss or loss of wages
- Ancillary orders, such as;
 - *Adjustment of employment hours, pay or conditions*
 - *Allowing access to previously refused services, courses or accommodation*
 - *Changes to policies & procedures to prevent discrimination*
- Negative publicity
 - *Damage to the Universities reputation*
 - *Attraction & retention of staff & students is compromised*

University obligations under the Act

- Be aware of your responsibilities under the Act & do not discriminate
- Behave in a manner consistent with University policies & procedures, including;
 - [Fair Treatment Policy](#)
 - [Fair Treatment Guidelines for Staff](#)
 - [Code of Conduct](#)

KEEP IN MIND:

- Indirect sex discrimination carries equally harsh penalties as direct discrimination
- Sexual harassment does not have to be repeated or continuous to be against the law - it can be a one-off incident
- Appropriate behaviour is expected during all work-related activities, including during;
 - *training courses & conferences*
 - *field trips*
 - *work functions*

Obligations of Managers

- Promote a discrimination-free environment
 - *Provide staff with the opportunity to attend Equal Opportunity sessions*
 - *Inform all staff of how you expect them to behave*
 - *Value diversity & promote mutual respect among staff & students*
- Ensure there is an adequate representation of genders on high-level decision-making committees & consultative groups
- Ensure policies & procedures are non-discriminatory in their effects

Obligations of Managers (cont.)

- Encourage staff to come forward with problems or complaints;
 - *Know how to handle inappropriate behaviours before they escalate*
 - *Resolve misunderstandings in a non-adversarial manner*
 - *Treat complaints seriously, quickly & confidentially*
- Direct all serious complaints to
- Assist the [Australian Human Rights Commission](#) if it becomes involved & be open & transparent in your dealings with the commission

Additional Resources

- [Gerald Buttfeld](#), Director, Health Safety & Wellbeing
 - 8313 4353
- [Jane Welch](#), Director, HR Advisory
 - 8313 0257
- [University of Adelaide Fair Treatment Website](#)
- [University of Adelaide Fair Treatment Policy](#)
- [Australian Human Rights Commission](#)
- [Sex Discrimination Act 1984 \(Cth\)](#)



Disclaimer

The content of this material is intended only to provide a summary & general overview of the *Sex Discrimination Act* as it applies to the University of Adelaide.

It is not intended to be comprehensive nor does it constitute legal advice.

Please contact [Gerald Buttfeld](#), Director, Health Safety & Wellbeing or Legal & Risk if you are unsure of your compliance obligations under the Act.