

EXEMPTIONS

Queensland anti-discrimination laws promote fairness by prohibiting discrimination, sexual harassment, victimisation and vilification.

Not all discrimination however, is unlawful.

What are exemptions?

Exemptions are exceptions to the rules. This means that discriminating in some circumstances is not unlawful. The Queensland *Anti-Discrimination Act 1991* outlines a range of general and specific exemptions.

Exemptions aren't automatic, although some are more straightforward than others. In most cases, if someone complains of discrimination, the respondent must raise and argue the exemption. If the argument is successful, the behaviour will be lawful, although it may still be discriminatory. Some exemptions are common sense and simply provide a 'level playing field.'

Examples

Parking spaces are set aside for people with a disability.

A 15 year old is paid less than a 17 year old doing the same job.

Fare concessions are given to age pensioners and students on public transport.

Some jobs are open only to Indigenous people, or to women or men.

How do I know if an exemption exists?

The Act contains a number of general and specific exemptions which, if argued successfully, mean that discrimination can occur without being unlawful. Specific exemptions are outlined after each of the areas, while general exemptions are listed in Part 5 of the Act.

Example of specific exemption - genuine occupational requirement

A vet runs interviews for an animal cage cleaner but rejects an applicant who is pregnant, because of the risk of her exposure to cat diseases such as toxoplasmosis which might adversely affect her pregnancy. (The genuine occupational requirement is that the person not be at

added health risk if they come into contact with cat faeces.)

Example of specific exemption - shared accommodation

A house owner advertises for a woman to rent a bedroom in her house.

Other specific exemptions include –

- residential domestic services
- single sex accommodation
- youth wages.

Example of general exemption – equal opportunity measures

A job assistance scheme is developed to help people over 45 re-train for employment. (The measure is designed to help a group of people with traditionally high unemployment rates.)

Example of general exemption – public health

People who have certain infectious diseases are prohibited from doing some work in the meat industry.

Example of general exemption – sport

A sporting tournament is held where only people with disabilities can compete. (The restriction is reasonable to ensure fair competition.)

Other general exemptions include –

- welfare measures
- workplace health and safety
- acts done in compliance with other legislation.

What about the exemption on special services and facilities?

This exemption says that, while employers and providers of goods and services (including education providers and accommodation providers) are expected to make all reasonable efforts to ensure they meet the needs of their staff and clients with disabilities, they would not be in breach of the Act if meeting these needs meant they suffered unjustifiable hardship.

Examples: *A small business owner with three employees agrees to install a large computer monitor for a new book-keeper with vision impairment, but says converting all written documents she needs to read to perform her work, to 18 point print, would cost too much.*

A school has a reputation for welcoming students with disabilities. Over the years, they've provided extra staff and resources to meet the needs of children with vision, hearing, intellectual and physical impairments. They now claim they've reached their limit, and can't accept any more enrolments for children who need a full-time carer.

A worker acquires a significant permanent injury. To be able to continue working, the employer would need to make a 100% adjustment to his work duties and environment. The employer does not have a suitable work environment or the type of work available that the worker is now capable of performing.

If a complaint is accepted on the basis of impairment, and you argue unjustifiable hardship, you'd need to consider:

- the type of service or facility being requested
- the cost of providing this
- the number of people who'd benefit or be disadvantaged by it
- the disruption that could be caused by providing the service or facility, and
- the type of benefit or detriment to everyone concerned.

How do I argue an exemption?

An exemption can be raised when you respond to a complaint of discrimination. The onus is on you to prove on the balance of probabilities that the exemption applies in the particular circumstances of the complaint.

The Commission won't decide whether an exemption applies except in the clearest of cases. This decision generally lies with the Anti-Discrimination Tribunal.

Example

A courier driver's position is vacant. A 16 year old without a driver's license applies for the job, doesn't get it, and lodges a complaint.

The Commission would reject a complaint from a person who claimed discrimination on the basis of age, because they were too young to hold a driver's license.

Is there any case law I can check?

Yes. You might want to check our website which has a link to decisions made by the Anti-Discrimination Tribunal in Queensland.

Some cases where exemptions have applied include:

Education

L v Minister for Education (1996) EOC92-787 where a school argued successfully on the basis of two exemptions (unjustifiable hardship and compliance with other legislation) that a student with an impairment should not continue to be enrolled.

Goods and Services

Harris & Pyne v Transit Australia Pty Ltd (2000) QADT6, where a bus service operator successfully established exemptions of unjustifiable hardship in the provision of accessible buses in Cairns city.

Work

Cambey v Adam, Hadwen and Queensland Rail [2000] QADT7, where an employer successfully argued a potential employee's pre-existing knee injury would prevent him from safely performing a genuine occupational requirement of the job.

Can I apply for an exemption?

Yes, in certain circumstances the Anti-Discrimination Tribunal can grant exemptions. An exemption may be granted for a specified period of not more than five years. Call the Tribunal Registry on (07) 32396408 or go to the Tribunal pages of the website for more information. Access Tribunal decisions in applications for exemptions through the AustLII website under 'E'.

(<http://www.austlii.edu.au/au/cases/qld/QADT/>)

Note: You cannot apply to the Tribunal for an exemption if there is a current complaint against you being dealt with by the Commission.

What else do I need to know?

Call your nearest Commission office for more information about exemptions. We can also provide training on this issue and the law generally.

This brochure is one of a series on particular aspects of the Act. It is available only from this website. Others include vicarious liability, direct/indirect discrimination and victimisation. The full range of brochures can be read and copied from this website, at www.adcq.qld.gov.au