



Tracking Your Rights: Impairment

The *Convention on the Rights of Persons with Disabilities* recognises that:

- discrimination against any person on the basis of disability is a violation of the inherent dignity and worth of the human person (Preamble) and
- promotes full and effective participation and inclusion in society of persons with disabilities (Article 3)

What does impairment mean?

In this resource we use the word 'impairment' because that is the word used in the *Anti-Discrimination Act 1991* (Qld). The Convention mentioned above uses the word 'disability'. In discrimination law 'impairment' and 'disability' are often used to mean the same thing.

The definition of impairment in the Act is very broad and is not limited to obvious physical or sensory impairments (such as quadriplegia, deafness or blindness). It also covers impairments that may not be obvious unless disclosed (such as diabetes, dyslexia, mental health difficulties or HIV/AIDS).

The Act also covers an impairment which a person may have had in the past, but no longer has.

What does the *Anti-Discrimination Act 1991* say about discrimination against a person with an impairment?

The Act says that a person may not discriminate against a person who has an impairment (or whom they presume has an impairment) in their public life.

This includes when the person is:

- at work or looking for work
- at school or another place of education
- renting or seeking accommodation
- buying goods (eg at a shop) or getting services (eg a haircut)
- dealing with state or local government

What is discrimination

Direct discrimination happens when a person is treated worse than someone else because of their: race, age, family responsibilities, parental status, relationship status, pregnancy, breastfeeding, **impairment**, religious belief or activity, sex (male/female), gender identity, sexuality, lawful sexual activity (as a sex worker), trade union activity, political belief or activity, or association with, or relation to, a person identified on the basis of any of the above attributes.

Impairment discrimination in work

At an interview for an office job, Leyla disclosed that she has depression. She was told by the interviewer that she cannot be considered for the job because they can't take a risk in employing someone with 'a condition like that'.

Impairment discrimination in goods and services: Beverley had a stroke and has some facial paralysis. She will be attending a special function and wants to get her nails done. When she went to book an appointment, the receptionist said that they can't serve her because other customers wouldn't like to look at her.

What is indirect discrimination?

Sometimes a rule or practice seems to be the same for all people. However if it disadvantages a particular group of people (people with a particular impairment) more than other people without that impairment, it may be indirect discrimination.

Impairment discrimination in education

Jamie was in a serious car accident and is expected to be in a wheel chair for six months, but has returned to high school. The school art room is upstairs and he can't access the classroom. Instead, he is sent to the library to read books on art history. Jamie is indirectly discriminated against because of his (temporary) impairment. He will miss out on lessons and be at a disadvantage compared to other students. To participate in the art classes you have to be able to climb stairs, which he cannot do.

Sexual Harassment

Sexual harassment is unwelcome sexual behaviour directed at you, which makes you feel offended, humiliated or intimidated, and in the circumstances, it is reasonable to feel that way. Both men and women can sexually harass and be harassed. It has nothing to do with mutual attraction and friendship between people.



Monica, who has a mental illness, rents a room in a boarding house. The boarding house manager has taken to popping in on Monica for a 'chat'. The problem for Monica is that he talks about his sex life, touches her on her thigh, tells her that she's sexy and needs a man. Monica wants to be left alone and is upset by these visits. This is sexual harassment.

Other important/useful information

Work

Impairment issues in work are the most common reason for discrimination complaints made to the ADCQ. Discrimination may occur when looking for work, if assumptions are made by the employer about the person's ability to do a job (based on incorrect stereotypes of people with that type of impairment).

When in work, discrimination can occur if reasonable adjustments are not made to accommodate a person's impairment.

Matt is an apprentice carpenter. He has a hearing loss, due to ear infections as a child, but can hear speech if it's not too soft. He adjusts by making a point of looking at the person talking to him. He is good at his work and asks questions if he's not sure about something. One of the other tradesmen always calls him 'Deaf' or 'Dumbo' and is at the boss to replace him, because Matt sometimes doesn't hear instructions the other tradesman gives him. The boss has told Matt that he'll have to 'let him go, because of the hearing problem.'

If opportunities for training or advancement are not offered to a person with an impairment, as they are to other staff, this also is a form of discrimination. If a worker's employment is terminated because they develop an impairment (for example, they are hospitalised for an operation) this too could be grounds for a complaint of impairment discrimination.

Access issues

Goods and services provided by public authorities (such as public transport, public hospitals) and business (such as banks, supermarkets) must be accessible to people with an impairment. In some cases, special services or facilities may have to be supplied to accommodate a person's impairment. However, if providing these special services or facilities would impose unjustifiable hardship on the provider, the provider may be able to argue that they are exempt from the Act.

Elsie uses the local post office to pay her bills and do her banking. She uses a walker to assist her mobility and wants to remain independent for as long as she can. However, she can't open the heavy door to the post office on her own and feels frustrated and humiliated. An automatic opening door would make entry much easier for her.

Modifications to rental property

A person must not discriminate by refusing to allow another person with an impairment to alter accommodation to meet their special needs. But:

- the person making the alterations must pay for them
- the alterations must not mean that another occupier's premises have to be altered as a result
- the alterations required to restore the accommodation to its previous condition are reasonably practicable
- the person who made the alterations must restore the premises to its previous condition before they leave

Jesse and her partner rent a suburban house and have been good tenants for two years. Jesse recently lost her lower leg through diabetes and now uses a wheelchair. Jesse approached the landlord to see if he would agree to the construction of a ramp to replace the three stairs going up to the front door, and made it clear that she would pay for the work. The landlord's response was 'No way!'

Impairments other than physical impairment

Discrimination because of the following impairments is covered by the Act.

- learning disability (a condition or malfunction that results in the person learning more slowly than a person without the condition or malfunction)
- mental illness (a condition, illness or disease that impairs a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour)
- hepatitis and HIV/AIDS (the presence in the body of organisms capable of causing illness or disease)

Troy is a year 10 student. He has a mental illness and has to take medication. The medication often makes him feel sick and he is unable to attend school for days at a time. Even though his mother or aunty always calls the school if he is away, the school has threatened to expel him for failure to attend school.

Guide dogs

The Act recognises the special role of guide dogs for people with visual, hearing and mobility impairments.

Any person who causes the separation of a guide dog from a visually, hearing or mobility impaired person commits an offence which may incur a financial penalty. Guide dogs must be allowed to accompany their owners into eating areas, public buildings, buses, taxis and trains and to parks and beaches.



Accommodation providers

As an accommodation provider, a person must not:

- refuse to rent to a person with a visual, hearing or mobility impairment because the other person has a guide dog to assist them
- require a person to keep the guide dog elsewhere
- request or require a person to pay an extra charge because the guide dog lives at the accommodation.

Exemptions

There are certain circumstances where discrimination may be allowed. The Act says that if discrimination has occurred for any of these reasons, then it may be permissible.

An act is done to protect public health

Mary works at a hospital as a nurse. She contracted Reubella (German Measles) from one of her children, but is feeling well again and wants to return to work. Her manager said that she must absent herself from work until she is no longer at risk of infecting members of the public.

An act is done to protect the health and safety of people at work

Once a week Mavis attends a small day respite centre run by a church. The centre has very few staff and relies on volunteers. Mavis is a large woman and has severe mobility problems due to arthritis.

Increasingly she needs to rely on the staff to lift her into chairs and vehicles. The centre director has said that lifting Mavis is a risk to the health and safety of the staff, and to buy a special hoist and train staff how to use it is beyond their means. They refer Mavis to a larger, better equipped respite centre and say they can no longer help her.

A person may impose a 'genuine occupational requirement' for a person performing a job

Kelvin was refused a job as a taxi driver because of an eyesight problem that means he has difficulty driving at night or in overcast and dim conditions. Glasses and contact lenses cannot correct the problem. Good eyesight at all times is a genuine occupational requirement to drive a taxi safely.

Unjustifiable hardship

In work, education, accommodation, club memberships and the supply of goods and services, discrimination is permitted if:

- special services or facilities are required by a person with an impairment AND
- supplying them would impose unjustifiable hardship on the person (or body) supplying them.

Chris has a daughter Jasmin who suffered serious brain damage as a baby. Chris wants Jasmin to attend the small church school that her siblings attend. The school said that it can't accept Jasmin's enrolment because she would need a full time carer at all times, and the school is not funded for this. They have refused Jasmin's enrolment.

Insurance

If insurance is refused or provided to a person with an impairment on less favourable terms than someone without that attribute, the discrimination is permitted if the decision is:

- based on reasonable actuarial or statistical data AND
- is reasonable having regard to the data and other relevant factors

Bill has been a heavy smoker all his life and has ongoing trouble with bronchitis. Recently he has been diagnosed with lung cancer. When he applied for life insurance cover, statistics were produced to show that his life expectancy was less than a person without cancer. His application for insurance was refused. This is not unlawful discrimination.

Contact the ADCQ for more information

- phone on 1300 130 670 (or TTY 1300 130 680) from anywhere in Queensland and your call will be taken by the closest office
- ADCQ has Aboriginal and Torres Strait Islander staff and you can ask to speak with one of these officers.
- send an email to info@adcq.qld.gov.au
- visit the website www.adcq.qld.gov.au

ADCQ offices are located at:

Brisbane – level 17, 53 Albert St, Brisbane City

Rockhampton – level 1 James Larcombe Place, 209

Bolsover Street

Townsville – 155 to 157 Denham Street

Cairns – McLeod Chambers, 78 Spence Street

Other agencies

Dept Employment & Industrial Relations
<http://www.deir.qld.gov.au/workplace/index.htm>
1300 737 841

Qld Working Women's Service
www.qwws.org.au
07 3211 1440 or 1800 621 458

Legal Aid Queensland
www.legalaid.qld.gov.au
1300 651 188 (General)
1300 650 143 (Indigenous Hotline)



Welfare Rights Centre
<http://www.wrcqld.org.au/index.htm>
07 3847 5532 (General)
Disability Discrimination Legal Advocacy Service
1800 358 511

Aboriginal & Torres Strait Islander Legal Service
Qld Ltd) <http://atsils.com.au/default.asp>
1800 012 255
See *Contact us* page for contacts outside
metropolitan area

Aboriginal & Torres Strait Islander Women's Legal &
Advocacy Service (ATSIWLAS)
07 3844 2450 or 1800 442 450