

# DISCRIMINATION LAW – SHOULD YOU BE EXEMPT?

If you feel there's a valid reason for discriminating, you might be eligible for an exemption.

**Equal Opportunity Tasmania**

(the office of the Anti-Discrimination Commissioner)

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Celebrating Difference  
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# DISCRIMINATION LAW – SHOULD YOU BE EXEMPT?

It is against the law to treat someone unfairly or disadvantage them because they have a particular personal characteristic or belong to a certain group. It is possible, however, to get an exemption from the law in certain circumstances.

The law recognises that sometimes targeted approaches may be needed to overcome historic disadvantage. For example, a major mining company wishing to improve rates of employment of local Aboriginal people could apply for an exemption to allow it to have a targeted advertising, recruitment and training program to attract Aboriginal employees.

Sometimes the genuine occupational requirements of a job mean only people who have certain characteristics are suitable for that job. For example, an exemption may be sought to allow a theatre company to give the role of a person with a mobility disability in a show to a person who has that disability.

In other cases, a program or service may require the involvement of a person from a specific group to meet the needs of their clients. For example, a women's rape crisis shelter may apply for an exemption to appoint only women to roles with direct client contact.

Exemptions are usually not warranted if there is a different and non-discriminatory way of dealing with the issue. They are not available simply to excuse an unwillingness to comply with discrimination law.

If you think there is a valid reason to discriminate, you may apply to the Anti-Discrimination Commissioner for an exemption for that activity. If it is granted, the exemption operates as a

defence to any discrimination complaint about that activity. Applications are made in writing. The Commissioner may ask for more information before making the decision.

Exemptions can be granted for a period of up to three years. The Commissioner can put conditions on an exemption and failure to comply with those conditions can result in the exemption being varied or revoked.

Exemptions granted are specific in terms of what is permitted that might otherwise be unlawful under Tasmania's *Anti-Discrimination Act*. They do not exempt any other form of discrimination or prohibited conduct.

While it is not necessary to apply for an exemption if the *Anti-Discrimination Act* already makes an exception for an activity or situation, an exemption provides certainty and will most likely mean that any complaint about the exempted activity will be rejected or dismissed.

## Want more information?

Details of all current exemptions can be found on our website.

You can find out more about exemptions, including how to apply, by contacting our office.

## The law in action

The Hobart Women's Shelter has a three-year exemption to permit it to recruit and employ only women in all paid positions and in all positions on its governance board. All these positions have direct contact with the women who are clients of the service, most of whom are escaping domestic violence.

The University of Tasmania has a three-year exemption to permit the employment and engagement of an Aboriginal or Torres Strait Islander person in the role of Pro Vice-Chancellor.

The Department of Premier and Cabinet in Tasmania has a three-year exemption to permit it to maintain a graduate program for people with disability as a special measure designed to provide an employment pathway for graduates with disability.

The Hobart Cat Café has a three-year exemption to enable it to exclude dogs (including guide dogs and assistance dogs) from the cat-petting enclosure within the café.

Anglicare Tasmania has a three-year exemption to permit it to advertise and employ only women in certain positions in the care of its female clients (such as assistance with toileting, showering, grooming and dressing).