

GUIDELINES

RELIGIOUS DISCRIMINATION

The Victorian Equal Opportunity Act 1984 makes it unlawful to discriminate against a person because:
the person holds, or does not hold, a religious belief or view,
or the person engages in a lawful religious activity, or
refuses or fails to engage in such an activity.

WHAT IS RELIGIOUS DISCRIMINATION?

It is religious discrimination to treat someone less favourably because of their religious belief or activity. For example, it would be against the law for a real estate agent to refuse to let a house to someone because the agent does not like the other person's religion: it would be against the law for an employer to ridicule a Muslim employee because of the clothes she wears in accordance with her religion.

It is religious discrimination to treat someone unfavourably because of their religious belief or activity, even if the motive is well-intentioned. For example, it would be against the law for an employer to reject a job applicant because the employer thinks the person will be victimised by other employees.

It is religious discrimination to treat someone unfavourably because of a characteristic that applies to people of the person's religion, or is thought to apply. For example, it would be against the law for an employer to refuse to employ a person of the Rastafarian faith, because the employer believes that Rastafarians smoke marijuana, conduct which he disapproves of.



It is religious discrimination to impose an unreasonable condition which people of a particular religion are less able to meet than people of other religions, or people who are not religious. For example, an employer might require employees to wear or not to wear particular clothes, and the requirement is in conflict with the practice of a particular religion. The requirement might be unreasonable, and therefore against the law if it was based only on the employer's tastes. The requirement would be reasonable, and not against the law, if it was necessary for the health and safety of employees or customers, and there was no readily available alternative that was compatible with the religious practice.

Other employment conditions, such as those relating to breaks during the day, or when people are entitled to holidays also have different effects on people of different religions.

To determine whether a condition is reasonable, all the circumstances of the situation need to be examined. For example, what is the cost of alternative conditions? How inconvenient are they to the employer, to other employees and to customers?

IN WHAT AREAS OF ACTIVITY IS RELIGIOUS DISCRIMINATION UNLAWFUL?

The Equal Opportunity Act prohibits religious discrimination in a number of specific areas of activity. Some of these are outlined below.

(a) Employment

An employer or potential employer must not discriminate on the basis of religion by:

- failing to interview someone or failing to offer them employment if they were the best person for the job;
- offering employment on less favourable terms than someone of a different religion would be offered;
- denying a person access to a training program;
- failing to promote or transfer a person;
- dismissing a person;
- treating a person unfavourably in any other way (eg harassing them, or allowing other staff to do so).



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against the law for an employment agency to discriminate against a person on the ground of race by refusing to provide its services, or providing them on less favourable terms than to someone else.

There are some situations in which religious discrimination is not against the law. For example, the Equal Opportunity Act does not apply to employers who employ three or fewer employees.



(b) Education

A school or other educational body, whether it is provided by the Government or privately, is not permitted to discriminate on the basis of religion by:

- refusing to accept a person's application to become a student;
- limiting a student's access to any program, or other benefits which it offers;
- expelling a student;
- subjecting a student to any other unfavourable treatment (eg failing to protect a student from religious harassment).

(c) Goods and services

A person who provides goods and services must not discriminate on the basis of religion by refusing to provide the goods or services, or by providing them on less favourable terms than they are provided to other people.

'Services' covers a wide range of public and private services including:

- transport
- professions and trades (eg doctor, plumber)
- state and local government services
- access to places the public can enter (eg pubs and hotels)

(d) Accommodation

A property owner or real estate agent must not discriminate on the basis of religion by:

- refusing to offer accommodation;
- placing a person at the lower end of a waiting list;
- providing accommodation on less favourable terms than to other people;
- evicting a person, or treating them unfavourably in some way.

There are some situations which are exempt. For example, it is not against the law for an owner to discriminate in choosing to whom to let the house in which the owner lives.

(c) Clubs

A social, recreational, sporting or community service club is not permitted to discriminate on the basis of religion. This applies to clubs that occupy Crown land (land owned by the Government), receive financial support from the State Government or a local council. Such a club cannot refuse to accept a person as a member because of the person's religion, cannot deny a member any benefit, or otherwise treat a member less favourably than other members.

The prohibition on discrimination does not apply to clubs which own their own premises, and are completely financially independent. It is also not against the law for a club to discriminate if it was established only for people of a particular religion, in order to reduce disadvantages suffered by adherents of that religion or in order to preserve their culture.



EXEMPTIONS FOR RELIGIOUS BODIES

The Act permits religious bodies, such as churches, to discriminate on the

ground of religion in certain situations

For example:

- when ordaining or appointing ministers of religion it is not against the law for the Catholic Church to require its priests to be of the Catholic faith;
- when training people who want to be ordained or appointed as ministers of religion.

A religious body is also permitted to do other things that conform with its religious doctrine, or are necessary to avoid injuring the religious feelings of members of its faith.

RACE AND RELIGION

Sometimes there is a close relationship between a person's religion and his or her "racial", ethnic or national background; for example, Jews and Sikhs. Sometimes the precise basis of discrimination is not clear; for example Gulf Crisis people of both Arab and Muslim background experienced hostility. In these situations, it is important to note that the *Equal Opportunity Act* also prohibits discrimination on the ground of race, which is defined as including colour, nationality, and ethnic or national origin.



COMPLAINTS

If you have a complaint about being treated unfairly because of your religion or race, contact the Office of the Commissioner for Equal Opportunity. All discussions with the Commissioner and her staff are confidential and free. If you need an interpreter, the Commissioner will arrange to provide one free of charge.

For inquiries about complaints, contact the Office at the 4th floor, 356 Collins Street, Melbourne, or phone 6023222. Country callers may ring (006) 134 142. For general information ring 602 3038.

(Symbols by Angus Williams)

These Guidelines are published by the Office of the Commissioner for Equal Opportunity, 4/356 Collins Street, Melbourne VIC 3000. Ph: (03) 602 3338 administration; (03) 602 3222 discrimination enquiries; (003) 134 142 country Victoria; TTY (03) 670 1951; Fax (03) 670 2022. All information in these Guidelines may be reproduced if credit is given to the Commissioner's Office.

