

## **Know your rights:**

### **Sex discrimination and sexual harassment**

#### ***Laws to protect you against discrimination . . .***

The *Sex Discrimination Act 1984* aims to ensure that women and men across Australia are treated equally and have the same opportunities.

It protects people from discrimination on the grounds of sex, pregnancy and marital status, as well as protecting workers with family responsibilities. The Act also makes sexual harassment against the law.

The Act gives effect to Australia's international obligations under the *Convention on the Elimination of All Forms of Discrimination Against Women*.

#### **What does the Sex Discrimination Act do?**

The Act makes it against the law for people to discriminate against you in many areas of public life, including:

- Employment
- Education – whether at school, university, TAFE or other colleges.
- Buying goods and using services – such as being served in a restaurant or using taxis, banks and legal services.
- Accommodation and housing – such as renting or buying a house or unit or buying or selling land.
- Commonwealth laws and programs
- Playing sport – including when enrolling, competing or access to mainstream competitions.

*Eileen found out she was pregnant and informed the recruitment agency and her future employer of this. She said the company then withdrew their offer of employment and the recruitment agency did not contact her about other employment opportunities. She claimed that she was discriminated against because of her pregnancy.*

*The company advised that it was a small organisation and the decision to withdraw the employment offer was based on business reasons.*

**Through conciliation, the complaint was resolved with the company and agency providing financial compensation to Eileen. The company also provided a written apology and developed an Equal Employment Opportunity policy for the workplace.**



## **What about the workplace?**

Sex discrimination commonly occurs in the workplace.

You can make a complaint to the Commission if you feel that, because of your sex, you have been:

- refused employment
- dismissed
- denied promotion, transfer or other benefits associated with employment
- given less favourable terms or conditions of employment
- denied equal access to training opportunities.

Women who are pregnant or returning from maternity leave, and workers with family responsibilities, have rights under the Act.

Women who are pregnant should be able to continue to work in the same way and under the same conditions as other employees, unless there are valid

medical or safety reasons. It is against the law to dismiss you because you are pregnant.

Unpaid parental leave is available to all full-time and part-time workers who have worked for at least 12 months with the same employer. Many regular casuals are also able to take parental leave.

The Australian Government has also committed to introducing paid parental leave for most workers in 2011.

A woman who returns to work after maternity leave has the right to return to the same job she had before going on leave.

If the position no longer exists – for instance, because of a genuine restructure – she has the right to another job that is as close as possible in pay and responsibilities to the one she held before.

It is against the law for employers to discriminate against a person because of their family responsibilities by terminating their employment.

This includes caring for a spouse or de-facto, child, grandchild, brother, sister, parent, or grandparent. Employers should make reasonable adjustments to assist employees with family responsibilities to do their job. This could include changing the hours they work or their starting or finishing times.

For more information on the Sex Discrimination Act see: <http://www.humanrights.gov.au/about/legislation/>



## ***What is sexual harassment?***

Sexual harassment is any unwanted or unwelcome sexual behaviour which makes a person feel offended or humiliated. It has nothing to do with mutual attraction or consensual behaviour.

Sexual harassment can include:

- staring, leering or unwelcome touching
- suggestive comments or jokes
- sending sexually explicit emails or text messages
- repeated unwanted requests to go out on dates
- intrusive questions about a person's private life
- requests for sex
- displaying posters, magazines or screen savers of a sexual nature.

A person who sexually harasses someone else is responsible for their behaviour.

Employers can also be held responsible for sexual harassment by their employees if they haven't taken steps to prevent it from happening.

## Preventing sexual harassment

Sexual harassment continues to be a serious issue in workplaces across Australia. Young women can be especially vulnerable to sexual harassment from their older, male managers or co-workers.

There are a number of simple steps that employers should take to prevent and respond to sexual harassment, such as:

- having a workplace policy on sexual harassment
- putting in place a process for dealing with complaints
- training employees to identify and deal with sexual harassment.

For more information on practical steps to prevent sexual harassment see:

<http://www.humanrights.gov.au/sexualharassment/>

*Mia claimed that she was sexually harassed by her manager while working as a cashier at a retail store. She said the manager touched her inappropriately, tried to kiss her and followed her home one evening and tried to assault her. Because of this, Mia resigned from her job.*

*The company said that Mia had not complained about sexual harassment during her employment and advised that it was a small employer and did not have a sexual harassment policy.*

**The complaint was resolved through conciliation with the employer providing a statement of service, financial compensation and agreeing to develop a sexual harassment policy and provide anti-discrimination training to staff.**



## **Making a complaint**

You can contact the Commission and talk with a Complaints Information Officer if you feel you have been discriminated against or sexually harassed. The phone number is 1300 656 419. Your call will be confidential.

Complaints to the Commission must be in writing. You can make your complaint by writing a letter, sending an email or by using our online form at: [http://www.humanrights.gov.au/complaints\\_information](http://www.humanrights.gov.au/complaints_information)

A complaint can be made in any language. You can also make a statement to the Commission in Braille, or verbally on video or audio tape. We can also help you write out your complaint if you need assistance.

There is no cost involved in lodging a complaint with the Commission.

If it appears that the issues you raise are covered by the Act, the Commission will contact the other person or organisation and ask for their side of the story. We will then work with both of you to try to find a solution that everyone can agree with.

This is called conciliation. A large number of complaints are resolved this way.

If conciliation does not work, you can choose to take your complaint further to the Federal Court of Australia.

It is against the law for anyone to victimise you for making a complaint.

## Resolving complaints

Depending on what the complaint is about, conciliation can result in:

- an apology
- reinstatement to a job
- flexible work arrangement
- the provision of goods or services in a non-discriminatory way
- changes in an organisation's policies or practices
- payment of financial compensation

*Kylie claimed that while she was on maternity leave there was a restructure of management positions and on her return to work she was advised that her former position had been filled on a permanent basis.*

*Kylie said she was offered a new role which was different and not comparable to her previous position and did not involve her original management responsibilities. She claimed that this was sex and pregnancy discrimination and constructive dismissal.*

**The parties resolved the complaint through conciliation with the employer agreeing to pay Kylie financial compensation and a termination payment.**

## Preventing discrimination

Everyone has a role to play to help build greater equality between women and men in Australia.

The Commission undertakes a wide range of activities to raise awareness about the rights and responsibilities of individuals and organisations under the Sex Discrimination Act, especially in the workplace.

We've produced guidelines and reports on preventing sexual harassment, supporting pregnant workers, flexible work arrangements and equal pay.

The Sex Discrimination Commissioner also works to address other barriers to full equality by reviewing laws, conducting research and providing policy advice to government and others on key issues.

The Commissioner undertook a national Listening Tour to hear directly from Australian women and men about the issues that matter most to them.

That feedback has shaped the Commissioner's Plan of Action Towards Gender Equality, which is now the focus of her work.

She is currently undertaking projects and developing resources on:

- women and leadership
- balancing paid work and family responsibilities
- sexual harassment
- the gender gap in retirement savings
- laws to address sex discrimination and promote gender equality.

You can find out more about what we're doing by visiting:

[http://www.humanrights.gov.au/sex\\_discrimination](http://www.humanrights.gov.au/sex_discrimination)

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