

1.08 Discrimination

What is discrimination?

Broadly speaking, discrimination is when a person is treated less favourably than another person in the same or similar circumstances because of certain personal characteristics. Not all forms of discrimination are prohibited by law. For example, it is not against the law to discriminate against someone because they have a low income.

Tenants experience discrimination most commonly when they apply for accommodation, although discrimination may also be experienced during a tenancy and when the owner/agent is seeking to terminate your tenancy.



Discrimination is classified as being either direct or indirect (see section on next page).

The Equal Opportunity Act 1984 (WA)

Under the *Equal Opportunity Act 1984 (WA)*, it is unlawful to refuse someone accommodation (including tenancy) because of their (or their relative or friend's):

- sex
- age
- marital status (including de facto partners)
- pregnancy
- race (includes colour, ethnicity or national origin or descent)
- religious and political conviction (or lack of)
- impairment (includes physical disability, intellectual handicap, psychological disorders)
- sexual orientation
- gender history

If you believe your access to accommodation has been discriminated against according to one or more of the “grounds” as listed above, you should contact the Equal Opportunity Commission (EOC) to discuss your situation and get advice on what to do next.

Equal Opportunity Commission
Metro: (08) 9216 3900
TTY: (08)9216 3936
Country Freecall: 1800 198 149
Fax: (08) 9216 3960
Website: www.equalopportunity.wa.gov.au

Free publications about discrimination, as well as complaint forms, can be downloaded from the EOC's website: www.equalopportunity.wa.gov.au

Commonwealth Anti-Discrimination Laws

In addition to WA laws on discrimination, there are also Commonwealth laws prohibiting discrimination, such as the *Sex Discrimination Act (1984)*, the *Race Discrimination Act (1975)*, the *Disability Discrimination Act (1992)*, the *Age Discrimination Act (2004)* and the *Human Rights and Equal Opportunity Commission Act (1986)*.

If you feel you have been discriminated against, you may have a choice of which legislation to use in your support of your case. To get more information and advice about this, contact the Australian Human Rights Commission information line on **Phone: 1300 656 419**.

Direct Discrimination

Direct discrimination is when your access to public services, such as accommodation, is denied due to a direct link with a ground specified under the *Equal Opportunity Act* (such as age, sex, race, etc)

Some examples of direct discrimination are:

- Putting extra conditions in an agreement because you have a disability
- Refusing to rent a property to a person because they are Aboriginal.

Direct discrimination can still be difficult to prove as owner/agents do not have to give you a reason as to why your tenancy application was unsuccessful. Many owner/agents may also be alert to discrimination laws and know not to say that your application was rejected "because you're Aboriginal" or "because you're too young/old". Despite this, you may still have suspicions that your application was rejected due to your personal or physical characteristics as listed under the *Equal Opportunity Act*.

For example:

- You were told by the real estate agent that you could rent the house that you had applied for only for this decision to be changed at the last minute. Perhaps

this change of decision had something to do with you showing your friend (who happens to be Aboriginal) the house while the owner was there making some last minute renovations?

- You inquire at a real estate agent's office about vacant rental properties and start to notice that all the vacant properties you are being told about/shown are all run-down and old. You wonder if this has anything to do with your race/ethnicity?

If you suspect accommodation is being withheld from you due to a personal characteristic as defined in the *Equal Opportunity Act*, try having a friend who is of a different race/age/sexual orientation etc go to the same real estate agency and/or apply for the same property. If they are shown different properties or told that the place is still available, for example, then you may have evidence that direct discrimination against you did occur.

Indirect Discrimination

Indirect discrimination is when a rule, practice or policy appears to be neutral but may in fact have a worse affect on a particular group of people (grouped according to race, sex, age or other category as covered by the *Equal Opportunity Act*). This effect may contribute to the rule, practice or policy not being "reasonable in the circumstances".

Indirect discrimination is difficult to prove without providing sufficient information on the outcomes or effects of the rule/practice/policy on one group of people as compared to another group.

Discrimination Against Tenants with Children

Although there are health and safety laws about the number of bedrooms needed to house a certain number of people including children, no person can normally refuse to offer you a tenancy because of your intention to have a child live with you at the place. There are however, some exceptions to this.

Section 56 of the *Residential Tenancies Act 1987 (WA)* makes it unlawful for an owner/agent to discriminate against tenants with children, unless the rental premises are the owner's principal place of residence, or the owner or agent appointed to manage the premises lives in the adjoining premises (next door).

However, there is another section in the *Residential Tenancies Act 1987 (WA)* which allows the owner/agent to "contract out" of (or be excluded from) section 56.

This “contracting out” is usually written into the tenancy agreement as a “special condition”. For more information, see the section on contracting out in chapter 2.08 The Tenancy Agreement.

Even though it is lawful for the owner/agent to contract out of section 56 of the Act, you can still choose to lodge a complaint to the Department of Commerce (‘DoC’) about the unfair practice of this section of the Act and how it has affected your access to accommodation. You can get free advice about this matter from the Department’s advice line for consumers, **Ph: 1300 304 054**. Formal complaint forms can be downloaded from DoC’s website: www.commerce.wa.gov.au

Making a Complaint About Discrimination

Although real estate agents and owners do not have to give you a reason as to why your application for tenancy was rejected, they DO have to answer to the Equal Opportunity Commission (EOC) or to the Australian Human Rights Commission if you or someone on your behalf lodges a complaint.

It is a good idea to seek advice as to what anti-discriminatory legislation (Commonwealth or State) you will use to support your complaint. This will affect which agency you lodge your complaint with (the Commonwealth’s Australian Human Rights Commission or the State’s EOC), as well as the wording of the complaint, the processes involved, and possible outcomes.

If you want to make a formal complaint to the Equal Opportunity Commission, it must be in writing (in any language) and it must be lodged within **12 months** of the discriminatory act occurring. There is no fee involved in making a complaint.

Written complaints to the EOC must:

- Refer to one or more “grounds” (such as race, disability, sex, etc) of discrimination;
- Refer to an area of discrimination (such as accommodation or the provision of goods and services);
- Identify the person (state the name of the owner/agent, for example) and/or the organisation/agency;
- Have relevant documents attached (for example, copies of letters sent to the owner/agent); and
- Be signed by you and dated

The written complaint should also set out the full details of what happened/is happening, including:

- When it happened;
- Where it happened;
- Any concern you may have about the situation getting worse
- Contact details of any witnesses

- How the discrimination affected you and made you feel
- Whether any other people (family members, for example) were affected by the discrimination you experienced;
- What you did to try to resolve the problem;

AND most importantly,

- What you want to happen as a result of your complaint being lodged (for example, would you like the owner/agent to apologise to you?)

See chapter 1.12 Community Contacts for a list of agencies that may be able to help you prepare and/or lodge a complaint. Agencies acting on your behalf can prepare the written complaint but must attach a letter signed by you (the tenant) confirming the complaint. Complaint forms are also available from the Equal Opportunity Commission.

Lodging a Complaint

Once the complaint is lodged, the Commissioner for Equal Opportunity will decide whether or not to investigate further. It is the Commissioner's role to conciliate between complainants and respondents and attempt to resolve the matter to the satisfaction of both parties. This takes place within a conciliation conference/meeting, where all relevant parties meet face-to-face. Tenants are allowed to take someone with them to conciliation, such as a friend or support worker. However, no-one acting as a lawyer is allowed to attend.

You can ask for the conciliation to be adjourned (delayed) in order for you to seek more advice. Also, at any time during the conciliation, you can ask for a break or to speak privately with the EOC (Equal Opportunity Commission) officer in attendance.

Before conciliation, you should be clear about what you would accept as a reasonable solution/outcome. Possible outcomes of conciliation may be:

- An apology (personal or public);
- A change in the real estate agency's policy or practice;
- A promise of the owner/agent to stop discriminating;
- An agreement by the real estate agency to provide anti-discriminatory training to its staff;
- Compensation paid for any loss you may have suffered as a result of being discriminated against; and/or
- Damages paid for any injury you may have sustained as a result of being discriminated against (can include feelings of hurt and humiliation).

If the complaint is resolved satisfactorily, all parties involved will be requested to sign the agreement reached through the conciliation process. If you are not happy with the terms of the agreement, you should contact the Commissioner again to discuss your concerns. You should not sign the agreement unless you are happy with everything it states.

Any complaints not settled the Commissioner can refer it to the State Administrative Tribunal (SAT). If this happens, the EOC may provide legal assistance to the tenant. The SAT is independent of the Commission. The SAT holds formal hearings and can make final orders on matters that are enforceable

It is recommended that you get legal advice before pursuing your own course of action through the SAT. See chapter 1.12 Community Contacts for a list of agencies that may be able to assist you.

The Department of Commerce (DoC)

DoC is the state government authority responsible for regulating the activities of real estate and business agents and their sales representatives in WA. Do not confuse DoC with REIWA, which is an industry association for real estate agents in WA.

If you are dissatisfied with the conduct of a licensed real estate agent or property manager, or believe that they may have discriminated against you, you can choose to lodge a complaint also with DoC. The complaint should be in writing and include full details of the matter. Complaint forms can be downloaded from DoC's website (www.commerce.wa.gov.au).

Prior to lodging a complaint with DoC you should first try to raise your concerns and resolve the matter directly with the agent/manager. You can also call DoC's phone advice line for further information and assistance, **Ph: 1300 30 40 64**.

List of Tenants' Rights Manual chapters referred to in this info sheet:

- 1.12 Community Contacts
- 2.06 The Application for Tenancy
- 2.08 The Tenancy Agreement