

## Guidelines for advertisers

**Under the *Equal Opportunity Act (1984)* it is unlawful to publish or display an advertisement that shows an intention to discriminate.**

An Advertisement as defined under the Act includes every form of advertisement or notice, whether to the public or not. This includes television, newspaper and radio advertisements, as well as circulars, catalogues, price lists etc. Online and electronic advertising also are covered.

It is against the law to discriminate on the following grounds:

- Age (or age of a relative or associate in some areas)
- Family responsibility or family status (only in the areas of employment and education)
- Gender history
- Impairment (current, past or imputed, or of a relative or associate)
- Marital status (single, married, separated, divorced, widowed, de facto)
- Pregnancy
- Race (colour, nationality, ethnic or national origin or descent, or the race of a relative or associate)
- Religious or political conviction
- Sex
- Sexual orientation

Sexual harassment and racial harassment are unlawful in the areas of work, education and accommodation, only.

Discrimination is only unlawful in some areas of public life. The areas are:

- Employment (work)
- Accommodation
- Education
- Provision of goods and services
- Access to places and vehicles
- Disposal of land or estate
- Clubs
- Application forms
- Superannuation and insurance
- Sport

## **POINTS TO CHECK WHEN PLACE IN OR ACCEPTING ADVERTISEMENTS**

### **EMPLOYMENT**

The job advertisement should show that the vacancy is open to every qualified person and should clearly outline the requirements of the job.

In the advertisement:

- List your main job criteria
- Avoid references to gender, age, race, marital status, religion and other grounds of unlawful discrimination.

Applicants should not be asked to submit a photograph with their application: this can have the same effect as asking a person about their age, gender and/or race.

Job titles should be worded so that they neither openly nor by implication discourage anyone from applying.

The following examples might be useful:

#### **Example:**

Barmaid	Bar attendant
Waitress	Waiter
Foreman	Supervisor
Sales woman	Sales assistant
Headmaster	Principal
Office girl	Clerk typist, administrative assistant
Chairman	Convener, chairperson
Senior, junior, recent graduate	xx years' relevant experience

An employment advertisement would be unlawful if it stated or implied that the employer was seeking a man for a job or someone under 35, unless the Act contained a specific exception relating to the position.

None of the following are acceptable reasons for publishing a discriminatory advertisement:

- The employer has a personal preference for working with either men or women or people of particular age groups
- A particular gender or age group would 'fit in' better with existing staff
- The work is just not suitable for a woman
- The company wants to project a young image
- Women are better suited in reception areas or behind counter
- There is a lot of heavy lifting involved so only a man could do the job

### **Exceptions in employment**

There are circumstances in which discrimination is allowed under the Act. These are called exceptions.

There are a number of exceptions under the Act where it is acceptable to refer to age, sex, religion, where it is a genuine occupational requirement.

### **Sex:**

However if you wish to rely on an exception under the Act, in the event of a complaint you will have to justify the exception to the Commissioner.

Jobs in which one sex is a genuine occupational qualification may include:

- Where a person has to enter a lavatory used by members of the same sex or where members of the same sex work (eg laboratory attendant, swimming pool locker room attendant)
- Where a person needs to touch someone to fit clothes (eg lingerie)
- Entering areas where people are undressed
- Where a person needs to do body searches

You cannot rely on these exceptions in a mixed workplace. An example may be a store where a number of people of each sex are already employed.

- Where a person of a particular sex is needed for authenticity (eg playing the part of a woman in a theatrical production)
- Where there is need for a particular physical attribute (eg modeling)
- Live-in jobs where the premises are not equipped with separate sleeping or toilet facilities, for men and women, and it is unreasonable to expect the employer to provide them.

### **Race:**

Jobs in which being a particular race is a genuine occupational qualification may include:

- Where a person of a particular race is needed for authenticity as a photographic or artist's model or as an actor or entertainer (eg an Aboriginal dancer)
- For ethnic or theme restaurants (eg Japanese waiter for a Japanese restaurant.)
- Providing people of a particular race with services for promoting their welfare (eg an Aboriginal welfare worker or ethnic workers)

### **Religious conviction and Political conviction**

Exceptions on the grounds of religious and political convictions apply where;

- The employment is in a hospital or health related service for a religious body and the work involves participation in some religious practice or observance
- The employer is a private educational authority or a religious education institute and the work involves religious observance

- The employment is as a ministerial adviser or officer, a political party worker or member of electoral staff (political conviction only)
- The employment is in a small business of five employees or less

**Other exceptions:**

- If the position involves residential care of children a person's sex can be specified and where the spouse will work for the same employer, marital status can be specified
- Household domestic jobs, a person may choose whom they wish to work in their household regardless of sex, family responsibilities =, age, race, religious and political conviction or impairment
- Jobs for a married couple. The employer can discriminate on the ground of marital status where each job is one of two to be held by a married couple.
- Special measures to achieve equality, and to meet the employment training needs of the following:
  - People of either sex
  - People of a particular marital status
  - Pregnant women
  - People with family responsibilities
  - People of a particular race
  - People with an impairment
  - People of a particular age
- Jobs can be advertised for Australian citizens or to give better terms than non-citizens if provided for by a state law
- Partnerships of five or less can discriminate against partners, but not against employees.
- Religious education institutes can discriminate on any ground if they do so in good faith and to avoid offence to their religious beliefs
- Affording person with particular family responsibilities or status privileges and benefits
- Accommodation to employees with a particular family responsibility or status.

**ACCOMMODATION**

Accommodation includes residential and business accommodation. Avoid works referring to marital status such as 'no singles' or 'married couple preferred'.

Avoid specifying different terms or conditions, for example length of lease or amount of bond, for people from different races or single people.

References to age, sex, race, parental status, marital status, etc should be avoided. For example advertisements should not say suit couple, suit family, no children, or suit retired person.

However landlords can state that references are required, that no pets are allowed, or that non-smokers are wanted.

### **Exceptions**

The Act does not apply where:

- The accommodation is in a private home where the person or a near relative of the home owner lives, and accommodation is for no more than three people
- The accommodation is provided by a religious body (on every ground except race)
- The accommodation is provided by a charitable body or voluntary organisations for one sex, race, age or a particular marital status, or impairment
- The standard of accommodation provided to employees varies according to the size of the employee's family (eg providing a house for a family of four, and a flat for one person)
- There is single sex accommodation for students
- The accommodation is provided for aged person (on every ground except marital status and impairment)

## **EDUCATION**

Under the Equal Opportunity Act 1984 'educational authority' means a body or person administering an educational institution. Educational institution means a school, college, university or other institution at which education or training is provided.

When writing advertisements about courses it is unlawful to stipulate different entry requirements for any teaching institution or training course on any ground covered by the Act.

Advertisements or brochures that convey the impression that admission to courses or training excluded a person because of the sex, age, race, marital status, religious or political conviction, pregnancy or impairment are unlawful.

### **Exceptions**

The Act does not apply in the following cases:

- Single sex schools or colleges
- If it is a measure or provision to achieve equality, or to meet special needs. However, this does not apply to religious or political conviction.
- Religious schools can discriminate on any ground except race, age and impairment but must do so in good faith and uniformly against all other religions
- Mature age admission

## **CLUBS**

Under the Act a club is an association whether or not incorporated, of not less than 30 people associated together for social, literary, cultural, political, sporting, athletic or other lawful purpose – that provides and maintains facilities from funds of the association and sells or supplies liquor for consumption on its premises.

### **Exceptions**

There are exceptions in the Act relating to clubs in the following situations:

- Clubs advertising for new members can seek members of one sex if they are a single sex organisation
- Clubs for particular groups can advertise for new members by age, eg Seniors Clubs
- Ethnic clubs can advertise for new members of that ethnic group, otherwise than by reference to colour
- Clubs can offer the separate use of benefits for each sex provided the benefits are provided for the use of men and women equally
- Clubs for people with disabilities do not have to admit people who do not have disabilities

A hotel in Melbourne that aimed to cater for male homosexuals applied for an exemption from coverage by the *Equal Opportunity Act 1995* in Victoria. It wanted to prevent or restrict entry by people who were not homosexual males in cases where it believed granting entry would affect the safety and comfort of male homosexuals in the hotel, and wanted to advertise that policy. The tribunal considered this policy to be a measure designed to achieve equality of opportunity for male homosexuals, and to redress disadvantage suffered by them, and granted the exemption for three years. Peel Hotel Pty Ltd (Anti-discrimination exemption) (2007) EOC ¶93-460

## **SPORTING COMPETITIONS**

Exclusions in sport apply to some competitors, in some situations:

- Sex  
Single sex competitions can be advertised, if the sport is such that one sex would have an advantage because of strength, stamina or physique,  
This does not apply to competitions for under 12s nor for administration, coaching or umpiring
- Age  
Age specific sporting activity can be advertised if it competitive and only between persons of a specific age.  
This does not apply to administration, coaching or umpiring.
- Impairment  
If the sporting activity is conducted only for persons with a particular impairment, or

if a person has a particular impairment, and as a result cannot perform the sporting activity.

### **General points**

- Illustrations;  
Stereotyped illustrations should be avoided. These include 'situation scenes' in which a particular activity is shown as predominantly male or female so as to imply that a person's sex is a prerequisite for the job.
- Application forms or coupons in advertisements  
Application forms or coupons published as part of an advertisement must not discriminate by asking different questions of different groups of people protected by the Act (eg the form could ask 'state marital status' but no 'if a married woman state number of children')

### **WHO MAY BE LIABLE?**

If a discriminatory advertisement is published, both the publishers and advertisers could be liable.

Publishers need to be mindful that employers' motives in discriminating are irrelevant as far as the law is concerned.

Agents who place advertisement on behalf of another party are also covered by the Act.

### **EXEMPTIONS**

The State Administrative Tribunal can grant exemptions under the Act. If you have an exemption then your advertisement should state this if relevant. If are the publisher, and the client claims they have an exemption you should either ask to see a copy of the Tribunal's document or check with the Registrar of the tribunal.

The Tribunal holds a public hearing in relation to an exemption application and interested parties can be heard, ie people who object to or support the application.

The Tribunal can only grant a exemption for a period of up to five years and can impose conditions for more information contact the Registrar of the State Administrative Tribunal.

### **COMPENSATION**

We suggest that companies and agencies that do a lot of advertising contact a legal adviser on the application of the Act to their business.

Unlawful discriminatory advertisements can result in compensation being awarded of up to \$40,000 by the State Administrative Tribunal.

## **GET GOOD ADVICE**

The material in this publication is intended as a general guide only and is not intended to be legal advice.

You should always consider taking appropriate professional advice on your particular circumstances. The Commissioner expressly disclaims any liability to any person in respect to anything done or not done in reliance on any of the contents of this publication

## **FURTHER INFORMATION**

How to Contact the Commission

By telephone

General enquiries 08 9216 3900

Training courses 08 9216 3927

Facsimile 08 9216 3960

Country callers 1800 198 149

TTY 08 9216 3936

Interpreter can be arranged on request

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