



**ANDERSONS**  
S O L I C I T O R S

## LawTalk Blog



# Is that discrimination?

**Date: Thursday September 1, 2016**

Discrimination litigation is a growing area of law. It is extremely unfortunate that many South Australian workers continue to experience different forms of [workplace discrimination](#) and this discrimination can have a severe adverse impact on the individual worker (including long-term psychological injury), their family, colleagues and the business.

At Andersons, we work closely with many workers who have experienced discrimination, in an attempt to prevent or remedy the discriminatory conduct and seek [compensation](#) for the victims.

Over the coming months, we'll have some blogs that will explore different forms of workplace discrimination. If at any time you feel that you are suffering from unlawful discrimination, seek immediate legal advice.

## What is discrimination?

Under federal and state legislation, discrimination is when a person, or group of people, is/are treated less favourably than another person or group because of their:

- race;
- colour;
- national or ethnic origin;
- sex;
- sexual orientation;

- gender identity;
- pregnancy or marital status;
- age;
- disability;
- religion;
- trade union activity; or
- some other characteristic specified under anti-discrimination or human rights legislation.

Not every example of discrimination is illegal.

- Look at this scenario for example:
- A director is seeking auditions for the part of Annie in the musical of the same name.
- A 50 year old woman auditions for the role together with a 10 year old Muslim girl.
- The 50 year old is rejected because of her age; this outcome could clearly be construed as age-based discrimination but it could hardly be deemed unlawful in the circumstances.
- The 10 year old Muslim girl is rejected by the director because of her religion; an argument based on unlawful discrimination may be mounted.

Discrimination lawsuits are often much more complicated than this simple example.

## Direct and indirect discrimination

Treating a person less favourably than another person in the same circumstances because of one of the above characteristics, for example a person's age, is direct discrimination and is prohibited. Direct discrimination is often quite obvious, and easier to prove than indirect discrimination.

Indirect discrimination is also prohibited. Indirect discrimination is when a person imposes an unreasonable requirement that disadvantages, or is likely to disadvantage, a person because of one of the relevant grounds. Indirect discrimination can be subtle and difficult to prove.

*"... the Tribunal found that a pharmacist had been indirectly discriminated against on the basis of race because pharmacists from an Arabic background could not meet the hospital's promotion criteria.?"*

For example, in the case of *Awad v Western Sydney Local Health District*, the Tribunal found that a pharmacist had been indirectly discriminated against on the basis of race because pharmacists from an Arabic background could not meet the hospital's promotion criteria.

One of the criteria for promotion is the requirement to hold a specialist position.

The Tribunal found that the hospital had numerous specialist positions, with none held by anyone of Arabic background, while four people of Arabic background held non-specialist roles.

As a result, the four pharmacists of Arabic background would not have been successful in obtaining promotion because they were not in specialist roles, whereas 100% of people from non-Arabic background could comply with the requirements.

## **Anti-discrimination legislation**

There are four main pieces of federal anti-discrimination legislation, each with specific complexities. They are:

1. The *Age Discrimination Act 2004* which ensures that people are not discriminated against on the basis of their age.
2. The *Disability Discrimination Act 1992* which aims to eliminate discrimination against people with disabilities.
3. The *Racial Discrimination Act 1984* which promotes equality before the law for all people regardless of race, colour, national or ethnic origin and makes discrimination on the basis of any of these characteristics unlawful.
4. The *Sex Discrimination Act 1984* which promotes equality between men and women, aims to eliminate discrimination on the basis of sex, sexual orientation, gender identity, marital status, pregnancy and family responsibilities, and aims to eliminate sexual harassment at work.

Each State and Territory of Australia also has anti-discrimination laws which make employment discrimination unlawful. Under this law, a person can make a complaint to an agency which will investigate and attempt to settle the matter by conciliation. In South Australia, the relevant agency is the Equal Opportunity Commission.

If you have been the victim of discrimination in the workplace and would like some advice or assistance, please feel free to get in touch directly with today's blog writer, Associate in Civil Litigation, [Michael Irvine](#).

---

*Please note, this Blog is posted in Adelaide, South Australia by Andersons Solicitors. It relates to Australian Federal and South Australian legislation. Andersons Solicitors is a medium sized law firm servicing metropolitan Adelaide and regional South Australia across all areas of law for individuals and businesses.*