



Diversity in the Workplace

Key Concepts

Concept No 1

Federal and State anti-discrimination legislation define **discrimination** as treating an individual differently because of a particular characteristic and in such a way that they are at a disadvantage.

Concept No 2

Indirect discrimination – an unreasonable requirement that is more likely to put a person with a particular characteristic at a disadvantage when compared to people without that characteristic.

Concept No 3

Reasonableness is another concept that appears throughout discrimination legislation. Basically whether a set of circumstances amounts to discrimination will often depend on a reasonableness test:

- in the case where an individual claims offence it becomes a question of whether a reasonable person would be offended
- where a particular requirement is put in place with which an individual must comply, the test will be whether that requirement is reasonable; and
- where an individual needs certain modifications or equipment to enable them to work in or use a particular place, the question is whether it is a reasonable accommodation of that person's characteristic (for example changes made to the workplace to accommodate a person in a wheel chair).

What is reasonable depends on many factors and importantly what is reasonable for one employer may not be reasonable for another.

Concept No 4

An employer will be held responsible for the actions of its employees unless it can show it has taken reasonable steps to ensure they did not commit discriminatory acts. This is known as **vicarious liability**.

Concept No 5

Not all forms of discriminatory behaviour are illegal. Discrimination legislation only covers certain behaviours in certain situations.

Summary of Anti-discrimination Legislation

Human Rights & Equal Opportunity Act 1986

Discrimination in employment on the basis of race, colour, sex, religion, political opinion, national extraction, social origin, age, medical record, criminal record, marital status, impairment, disability, nationality, sexual preference, trade union activity **Harassment on any of these grounds is a form of discrimination.**

Racial Discrimination Act 1975

Race, colour, descent or national or ethnic origin. **Harassment on any of these grounds is a form of discrimination**

Sex Discrimination Act 1984

Sex, marital status, pregnancy, family responsibility (dismissal only), sexual harassment

Disability Discrimination Act 1992

Physical, intellectual, psychiatric, sensory, neurological or learning disabilities, physical disfigurement, presence in body of disease-causing organism (eg HIV virus). **Harassment on any of these grounds is a form of discrimination.**

Western Australia Equal Opportunity Act 1984

Sex, marital status, pregnancy, race, religious or political conviction, age, racial harassment, impairment, family responsibility or family status, sexual harassment