

Appendix A

List of exceptions and exemptions in the Equal Opportunity Act 1995

Source: reproduced from Appendix A of the Department of Justice's Background Paper for SARC.

Division 1 – Discrimination in employment

Section	Exception	Attribute/s
16	Exception – domestic or personal services	All
17	Exception – genuine occupational requirements	Sex (all employment) Age, sex, race (dramatic / artistic performance, photographic or modelling work etc) Physical Features (dramatic / artistic performance, photographic or modelling work etc)
18	Exception – political employment	Political belief or activity
19	Exception – welfare services	All
20	Exception – family employment	<i>May limit to relatives</i>
21	Exception – small business	All
22	Exception – special services or facilities	Impairment
23	Exception – reasonable terms of employment	<i>May set reasonable terms</i>
24	Exception – standards of dress and behaviour	<i>May set standards</i>
25	Exception – care of children	All
26	Exception – compulsory retirement of judicial officers	Age
27	Exception – youth wages	Age
27A	Exception – early retirement schemes	Age
27B	Exception – gender identity	Gender identity
28	Exemption – single sex accommodation	Sex

Division 2 – Discrimination in employment-related areas

Section	Exception	Attribute/s
32	Exception – special services and facilities	Impairment
33	Exception – reasonable terms of partnership	<i>May set reasonable terms</i>
36	Exception – reasonable terms of qualification	Impairment, physical features

Division 3 – Discrimination in education

Section	Exception	Attribute/s
38	Exception – educational institutions for particular groups	Sex, race, religious belief, age or age group, impairment
39	Exception – special services or facilities	Impairment
40	Exception – standards of dress and behaviour	All
41	Exception – age based admission schemes and age quotas	Age

Division 4 – Discrimination in the provision of goods and services

Section	Exception	Attribute/s
43	Exception – insurance	All
44	Exception – credit providers	Age
45	Exception – supervision of children	Age, parental status, personal association
46	Exception – special manner of providing a service	Impairment, physical features
48	Exception – disposal by will or by gift	All

Division 5 – Discrimination in accommodation

Section	Exception	Attribute/s
53	Exception – accommodation unsuitable for children	Age, parental status, personal association
54	Exception – shared accommodation	All
55	Exception – welfare measures	Sex, age, race or religious belief
56	Exception – accommodation for students	Sex, race, religious belief, age, impairment
57	Exception – accommodation for commercial sexual services	Lawful sexual activity

Division 6 – Discrimination by clubs and club members

Section	Exception	Attribute/s
61	Exception – clubs for disadvantaged people or minority cultures	All
62	Exception – clubs and benefits for particular age groups	Age
63	Exception – separate access to benefits for men and women	Sex

Division 7 – Discrimination in sport

Section	Exception	Attribute/s
66	Exception – competitive sporting activities	Sex, gender identity, age, impairment

Division 8 – Discrimination in Local Government

Section	Exception	Attribute/s
68	Exception – political belief or activity	Political belief or activity

General Exceptions to and Exemptions from the prohibition of Discrimination in the Equal Opportunity Act 1995

Section	Exception	Attribute/s
69	Things done with statutory authority;	All
70	Things done to comply with orders of the courts and tribunals	All
71	Pensions	All
72	Superannuation – existing fund conditions	All
73	Superannuation – new fund conditions	Age, sex, marital status, impairment
74	Charities	All
75	Religious bodies	All
76	Religious schools	All
77	Religious beliefs or principles	All
78	Private clubs	All
79	Incapacity and age of majority	Age, impairment
80	Protection of health, safety and property	Impairment, physical features, pregnancy

81	Age benefits and concessions	Age
82	Welfare measures and special needs	All
83	Exemptions by the tribunal	All
84	Exemptions to allow compulsory retirement in the public sector	Age

Appendix B

Sample Special Measures Provisions

EO Act 1994 South Australia

47—Measures intended to achieve equality

This Part does not render unlawful an act done for the purpose of carrying out a scheme or undertaking intended to ensure that persons of the one sex, or of a particular marital status, have equal opportunities with persons of the other sex, or of another marital status, in any of the circumstances to which this Part applies.

65—Act does not apply to projects for benefit of persons of a particular race

This Part does not render unlawful an act done for the purpose of carrying out a scheme or undertaking for the benefit of persons of a particular race.

82—Exemption for projects for benefit of persons with a particular impairment

This Part does not render unlawful an act done for the purpose of carrying out a scheme or undertaking for the benefit of persons who have a particular impairment.

SDA (Cth) 7D Special measures intended to achieve equality

- (1) A person may take special measures for the purpose of achieving substantive equality between:
 - (a) men and women; or
 - (b) people of different marital status; or
 - (c) women who are pregnant and people who are not pregnant; or
 - (d) women who are potentially pregnant and people who are not potentially pregnant.
- (2) A person does not discriminate against another person under section 5, 6 or 7 by taking special measures authorised by subsection (1).
- (3) A measure is to be treated as being taken for a purpose referred to in subsection (1) if it is taken:
 - (a) solely for that purpose; or
 - (b) for that purpose as well as other purposes, whether or not that purpose is the dominant or substantial one.

- (4) This section does not authorise the taking, or further taking, of special measures for a purpose referred to in subsection (1) that is achieved.

DDA (Cth) 45 Special measures

This Part does not render it unlawful to do an act that is reasonably intended to:

- (a) ensure that persons who have a disability have equal opportunities with other persons in circumstances in relation to which a provision is made by this Act; or
- (b) afford persons who have a disability or a particular disability, goods or access to facilities, services or opportunities to meet their special needs in relation to:
 - (i) employment, education, accommodation, clubs or sport; and
 - (ii) the provision of goods, services, facilities or land; or
 - (iii) the making available of facilities; or
 - (iv) the administration of Commonwealth laws and programs; or
 - (v) their capacity to live independently; or

- (c) afford persons who have a disability or a particular disability, grants, benefits or programs, whether direct or indirect, to meet their special needs in relation to:
 - (i) employment, education, accommodation, clubs or sport; or
 - (ii) the provision of goods, services, facilities or land; or
 - (iii) the making available of facilities; or
 - (iv) the administration of Commonwealth laws and programs; or
 - (v) their capacity to live independently.

Appendix C

Comparison of Statutory Authority provisions in other States and Territories

Source: reproduced from Appendix B of the Department of Justice's Background Paper for SARC.

State/Territory	Exception	Scope of Application
NSW	✓	Where necessary to comply with Act, regulation, by law rule etc or where necessary to comply with order of Court or Tribunal
QLD	✓	Allows discrimination where necessary to comply with or specifically authorised by Act etc. Only applies to provisions in existence at commencement of section
AS	✗	Allows discrimination where necessary to comply with or specifically authorised by Act etc, order or court etc
WA	✗	
NT	✓	
Tas	✓	Allows discrimination where reasonably necessary to comply with a law of State of Commonwealth or in order of commission, court or Tribunal.
Act	✓	Allows discrimination for anything done necessary to comply with law etc.
VIC	✓	Allows discrimination if necessary to comply with or is authorised by an Act or enactment. It is not necessary for the Act to specifically authorise discrimination it just needs to authorise the conduct that would otherwise be discrimination.