



Complaining to the Anti-Discrimination Board

Before you lodge a complaint

Is your situation against the law?

Discrimination

To most people, discrimination means any type of unfair treatment.

Legally, the Anti-Discrimination Board can only deal with complaints of unfair treatment (discrimination or harassment) that are covered by the *Anti-Discrimination Act 1977 (NSW)*. This means the unfair treatment must have happened because of your:

- race or ethno-religion;
- sex (includes pregnancy, breastfeeding and sexual harassment);
- age (includes compulsory retirement);
- marital status;
- disability (includes HIV/AIDS);
- homosexuality/lesbianism;
- transgender status;
- carers' responsibilities (in employment only); or
- the race, sex, pregnancy, age, marital status, disability, homosexuality, transgender status or carers' responsibilities of any of your relatives, friends or work colleagues.

We can only help you if this treatment happened in one of the following situations:

- at **work** – this includes when you apply for a job, when you are in a job (for example when you apply for promotion or to be trained), and if you are dismissed or forced to resign;
- in **government education** (school, college, university or other public education) – in non-government education, only sexual harassment and race discrimination are covered;
- in most types of **goods or services** – for example when you go to the doctor, buy something from a shop, get a credit card or loan, get something repaired,

go to a restaurant, ask for help from your union, use public transport or receive government services;

- in **rental accommodation** – this includes houses, flats, hotel rooms, business accommodation and caravans; and
- in **registered clubs** – that is, any club that sells alcohol or has gambling machines.

Vilification

We can also deal with complaints of racial, homosexual, transgender and HIV/AIDS vilification. Vilification is any public act that is likely to incite (stir up) hatred, serious contempt, or severe ridicule towards a person or group of people because of their race, homosexuality, transgender or HIV/AIDS status.

Public acts can include the publication of newspaper articles, magazines or journals, television, radio or films, public rallies, speeches, verbal abuse in a public place, graffiti, etc.

Can you resolve the complaint yourself?

If possible, you should first try to talk to the person or organisation that treated you unfairly. Be as calm as you can. Tell them that you think this unfair treatment is against the law. If you want to, take someone with you.

Use whatever help you can. For example, if it is a work problem you could ask your union for help, or ask a supervisor or manager to speak to the person or people who treated you unfairly. The organisation may also have a grievance procedure that you can follow.

If you think what has happened to you is discrimination and there is no-one else who can help, phone the Anti-Discrimination Board and talk with one of our Enquiry Officers. They can tell you whether what has happened to you is something the Board can help with, and sometimes suggest ways that you can sort it out for yourself.

Even if we can't help we may be able to give you the name of another organisation that can, or suggest other ways to deal with the problem.

The Board's addresses and phone numbers are listed at the back of this guide.

Making a complaint to the Anti-Discrimination Board

If your attempts to sort out the problem with the person or organisation that treated you unfairly don't work, or this is not possible, the next step is to complain to the Anti-Discrimination Board in writing.

How much will it cost me?

Nothing. The Board's complaint handling service is free. However, if you employ your own lawyer, you will need to pay for their fees.

How much time do I have to complain?

For us to be able to accept a complaint, the events involving unfair treatment because of one of the reasons listed on page 1 must have occurred in the **twelve months** before the complaint is received by the Board. If you make a complaint about events which occurred more than twelve months before you lodge your complaint, the Board may refuse to investigate your complaint.

Who can make a complaint?

- An individual who has been discriminated against, harassed or vilified based on the types of discrimination covered under the Anti-Discrimination Act.
- A group of people who have been discriminated against, harassed or vilified based on the types of discrimination covered under the Anti-Discrimination Act.

We also accept complaints on your behalf from your lawyer, or organisations such as unions and other representative bodies. However the complaint must make it clear that you agree with the complaint being made and you must be named in the complaint. In some circumstances you may also be required to show you consent to the complaint being made on your behalf.

If you want to make a complaint on behalf of a child or a person with a disability who cannot make their own complaint, contact the Board for more information.

The person who complains to us is called the complainant.

Does the person I am complaining about have to know who I am?

Yes. The person or people you are complaining about – called the respondent(s) – will have to know about your complaint and who you are. The Board can only help to resolve complaints if we get both sides of the story, and this means both parties must know what the other person said and who said it.

Who else will know about my complaint?

The Anti-Discrimination Board must keep your complaint confidential to the parties to the complaint, that is you and the respondent(s). This applies from the time you phone us right through the conciliation process.

It is best that you don't talk about your complaint to anyone who does not need to know. We also ask the person or organisation you have complained about not to talk to anyone who does not need to know either. This gives both sides a better chance of working things out.

Punishing you for complaining to the Board is also illegal

If you are punished, harassed or treated unfairly because you complained to the Anti-Discrimination Board, this is called victimisation.

The law says that you must not be victimised if you have made a complaint of discrimination, harassment or vilification covered under the Anti-Discrimination Act, or you intend to make one or have helped someone else make one. This includes people who have agreed to be witnesses for your complaint.

This means that you must not be punished or receive further unfair treatment for making a complaint, or because someone thinks you may complain or because you have helped someone else with a complaint. For example, you make a complaint of age discrimination to your employer and then you are dismissed.

If anyone tries to make trouble for you because you made a complaint or because they think you might make one, you should talk immediately to an officer at the Board.

How to lodge a complaint

A complaint to the Board must be in writing, and it must be signed by you. You can send or fax us a completed discrimination complaints form, or write us a letter or send a fax.

Please note that a copy of your complaint and any information you send to the Board will be sent to the person or organisation you are complaining about.

You can write your complaint in any language, or in Braille. If you need help to make a written complaint, you can ask a friend or relative or someone at your local community centre to write down what you want to say and you can sign it.

If this is not possible, you can record your complaint on an audio cassette (make sure that you include the same details that you would have put in a letter or on the complaint form) and send it to the President of the Anti-Discrimination Board. If you do this you must also send us a short covering letter that says:

"I [your name] wish to make a complaint of [insert ground and area, eg sex discrimination in employment] against [insert name of person/organisation] and the details are in the enclosed cassette. [Your signature]"

Below are some tips for writing a complaint letter. These may also be useful if you are using the complaint form.

Writing a complaint letter

A complaint letter needs to be addressed to the President of the Anti-Discrimination Board.

Make sure you include the following information:

- your name, address, email address, telephone/TTY/fax number(s) and signature; and
- the name, address, and telephone/fax number(s) of the person(s)/organisation you wish to complain about. If you complain about a particular person employed in a company or organisation, tell us their position as well as their name, work address and phone number (if you can).

The following details should be included:

1. Who was involved and if you can, their names, positions and work addresses

If it happened at work we need to know:

- your position or job ;
- the correct name and address of your employer (you can get this from your pay slip or pay office, or from the Australian Taxation Office);
- the name and position of your supervisor or manager;
- how long you have been employed there; and
- if there are six or more employees working for your employer.

2. What happened and what you did about it at the time

Include the name and position or job title of any person you reported the unfair treatment to, including your union if you are a member.

3. Where it happened

Which workplace, registered club, trade union, rented accommodation, shop, service, or public place.

4. When it happened

As closely as you can remember – the day, month, year of each time you were treated unfairly.

5. The kind of discrimination, harassment or vilification you think it is

Such as race, sex, age, marital status, homosexuality, disability, transgender, carers responsibilities discrimination, or racial, homosexual, transgender or HIV/AIDS vilification.

6. Why you think it is this kind of discrimination

Give information about why you think you have been discriminated against, including any evidence you have to support this.

For example:

- anyone else who saw or heard the discrimination and is willing to provide details. Ask them to give you a written statement of what they saw or heard;
- a photograph;
- a note you made at the time in your diary or on a piece of paper;
- a copy of any poster, notice, letter or anything else you feel is unfair to you;
- a copy of anything that shows how someone else in a

similar position to you has been treated differently to the way you were treated; or

- anything else that supports what you say, eg emails or letters.

8. If the complaint is urgent

The Board usually handles complaints in the order that they are received. If you have an urgent complaint, for example you are about to lose your job or your accommodation, you should write on your complaint that it is urgent and tell us why. We will then decide if your complaint can be prioritised.

9. How you would like the problem to be resolved

If possible, include what you would like to sort out the complaint. This is called a “settlement proposal”. This will help us to decide how to deal with your complaint.

You may ask for any reasonable solution to resolve the unfair treatment you received, such as:

- getting your job back – or a transfer, promotion, or extra training at work;
- getting whatever you were previously refused – for example, accommodation, a loan if you applied for one, admission to a course, and so on;
- an apology;
- changes to policies and procedures to make sure the discrimination does not happen again to anyone else, for example introducing an equal opportunity policy in the workplace;
- education programs in the workplace or organisation involved, so that everyone there, including managers, knows what discrimination is, how to prevent it, and what to do if it happens to them or to anyone else;
- compensation (money) paid for any money you have lost (such as wages), or for damages or hurt feelings;
- a donation to a charity of your choice; or
- anything else that might need to be done to make up for the unfair treatment.

Because the Board is impartial, we are unable to help you decide on a settlement proposal. If you are unable to decide on a settlement proposal, you should seek independent legal advice from your own lawyer or a community legal centre.

What happens when you lodge a complaint

The Board will send you a letter of acknowledgment within two weeks of receiving your complaint. The Manager of the Enquiries and Conciliation Branch will assess your complaint to determine if it is covered under the Anti-Discrimination Act.

How long will it take to resolve my complaint?

Resolving complaints can take several months and very complex cases may take longer. However, many complaints can be sorted out more quickly. We aim to deal with complaints within six months from the time you lodge your complaint.

Your complaint may be declined

If your complaint is not covered by the Anti-Discrimination Act, or there is not enough information to show that you have been discriminated against, we will send you a letter to tell you that we cannot help with your complaint and explain why. If we can, we will also tell you who else might be able to help you.

If your complaint is covered by the Anti-Discrimination Act

If your complaint does show that you may have been discriminated against under the law, your complaint handler will contact you for any other information we need, either by phone or letter. We will explain what we can and can't do, and the steps involved in our complaint resolution process.

After we have contacted you, the Board will send a copy of your complaint and any paperwork you have provided to the respondent(s), that is the person or people you are complaining about. This is in fairness to the respondent, and so that the Board can get as much information about your complaint as possible.

Remember, complaints to the Anti-Discrimination Board are confidential and it is also against the law to treat you badly because you have made a complaint.

The respondent's reply

We will give the respondent a deadline to respond to us in writing about your complaint. You will then receive a copy of the respondent's letter to us for your comment. Often complaints are resolved at this point.

If not, the next step is a conciliation conference.

Conciliation conferences

A conciliation conference is a meeting where you and the respondent meet to talk about the complaint and ways to sort it out, usually with the assistance of two of the Board's officers. The complainant and respondent(s) can meet directly or through their representatives if the President allows this. It is a free service provided by the Board.

Do I have to attend?

The President of the Board can tell people that they must attend a conciliation conference. If complainants or respondents refuse to attend, the person who refuses to attend can be fined by the courts.

It is in the interest of both sides to attend the conciliation conference in order to sort out the matter as quickly and cheaply as possible instead of having to go to the Administrative Decisions Tribunal.

What are the aims of a conciliation conference?

The aims of a conciliation conference are:

- to allow both sides to discuss the alleged discrimination and the issues around it;
- to attempt to resolve the complaint;
- to educate both sides about their rights and responsibilities under anti-discrimination law; and
- to advise respondents on how to prevent discrimination in the future.

Who should come to a conciliation conference?

Complainants should attend the conference themselves. You can ask permission to bring along a support person such as a friend or work colleague – you should talk to your complaint handler about this.

Can I bring a lawyer to the conciliation conference?

You must get permission from the President of the Board if you want to have a lawyer present at a conciliation conference. So that you can be prepared, it is best to discuss this with your complaint handler when you are notified of the conciliation conference.

If you aren't allowed to bring a lawyer, you should get the advice you need about settling the matter before you attend the conciliation conference so that you are ready to discuss a solution on the day of the conference.

You can negotiate through your lawyer outside the conference itself, but ultimately the President must decide if solicitors can attend the conference or not.

What is the complaint handler's role at the conciliation conference?

The complaint handler's role is to:

- help everyone remain calm and polite;
- be fair to both sides – the complaint handler is not allowed to take sides;
- ensure that each side can put forward their point of view without being interrupted;
- make sure the conference deals with the main issues and not irrelevant matters; and
- assist the complainant and respondent(s) to resolve the complaint in a way that is satisfactory for everyone.

Complaint handlers may meet separately with either side at any time during the conference. Either of you has the right to ask the complaint handler for a break at any time to help you gather your thoughts and consider your position.

Resolving your complaint

You should bring a proposal for settling your complaint to the conciliation conference – see page 4 for further information. The Board aims to resolve the complaint at the conference, but if necessary, both sides can have a period of time after the conciliation conference to consider the settlement proposal.

The complaint handler cannot tell either side what to settle on. If you have no idea about what would be a fair or reasonable resolution, we can give you information about how to get advice on this.

Usually when the complaint is finalised there will be a deed of release or a conciliation agreement. These documents set out the outcome that both parties have agreed to. A deed of release is generally provided by the respondent and is legally binding. A conciliation agreement is not legally binding and the Board cannot enforce it, but you can register the agreement with the Administrative Decisions Tribunal and have it enforced.

What happens if the complaint isn't resolved during the conciliation conference?

- Both parties can continue negotiations after the conciliation conference, if this is appropriate;

- you can withdraw the complaint;
- you can ask the President to refer the complaint to the Equal Opportunity Division of the Administrative Decisions Tribunal as being unable to be conciliated; or
- the President may decline the complaint as lacking in substance because there doesn't seem to be enough evidence. If this happens, then you can still take the complaint to the Administrative Decisions Tribunal.

Withdrawing a complaint

You can ask the Board to stop dealing with your complaint at any time during the investigation or conciliation process. No-one else can withdraw a complaint except the complainant.

To withdraw your complaint, you need to write to the person handling your complaint and tell them that you want to withdraw it. Your file will then be closed. We won't do anything more with it and we will not re-open it later if you change your mind.

The Administrative Decisions Tribunal

If you and the respondent cannot agree on a way to resolve the complaint, you can ask the President to send it to the Equal Opportunity Division of the Administrative Decisions Tribunal for a legal decision.

The Tribunal is like a court and its hearings are public. It will consist of three people who are experienced in anti-discrimination law. The Tribunal listens to all the arguments and evidence from both sides.

The Tribunal is the only place where a legally binding decision can be made as to whether or not discrimination happened. If the Tribunal finds that NSW anti-discrimination law has been broken, they will decide what should be done about it. If the Tribunal decides the law has not been broken they will say so.

Outcomes of the Tribunal

If the Tribunal decides that unlawful discrimination has happened, it can make an order that the person who has been discriminated against should:

- be paid compensation (money);
- get the thing or service they were denied; and/or
- receive an apology.

The Tribunal can also make an order that the respondent must do whatever is needed to make sure that the unfair treatment does not happen again. Sometimes the Tribunal may order that a public apology be made to the person who complained.

Because the Tribunal is like a court, people directly involved in the complaint do usually need solicitors. Each side normally pays its own legal costs. Usually the Tribunal is open to the public and the complaint will no longer be kept confidential. However, the Tribunal may keep names and address confidential in special cases.

What if I'm unhappy with the way the complaint is being handled?

If you are unhappy at any time during the process of resolving your complaint, speak to your complaint handler about your concerns. If it happens during a conciliation conference, ask for a break so you can speak to the complaint handler privately.

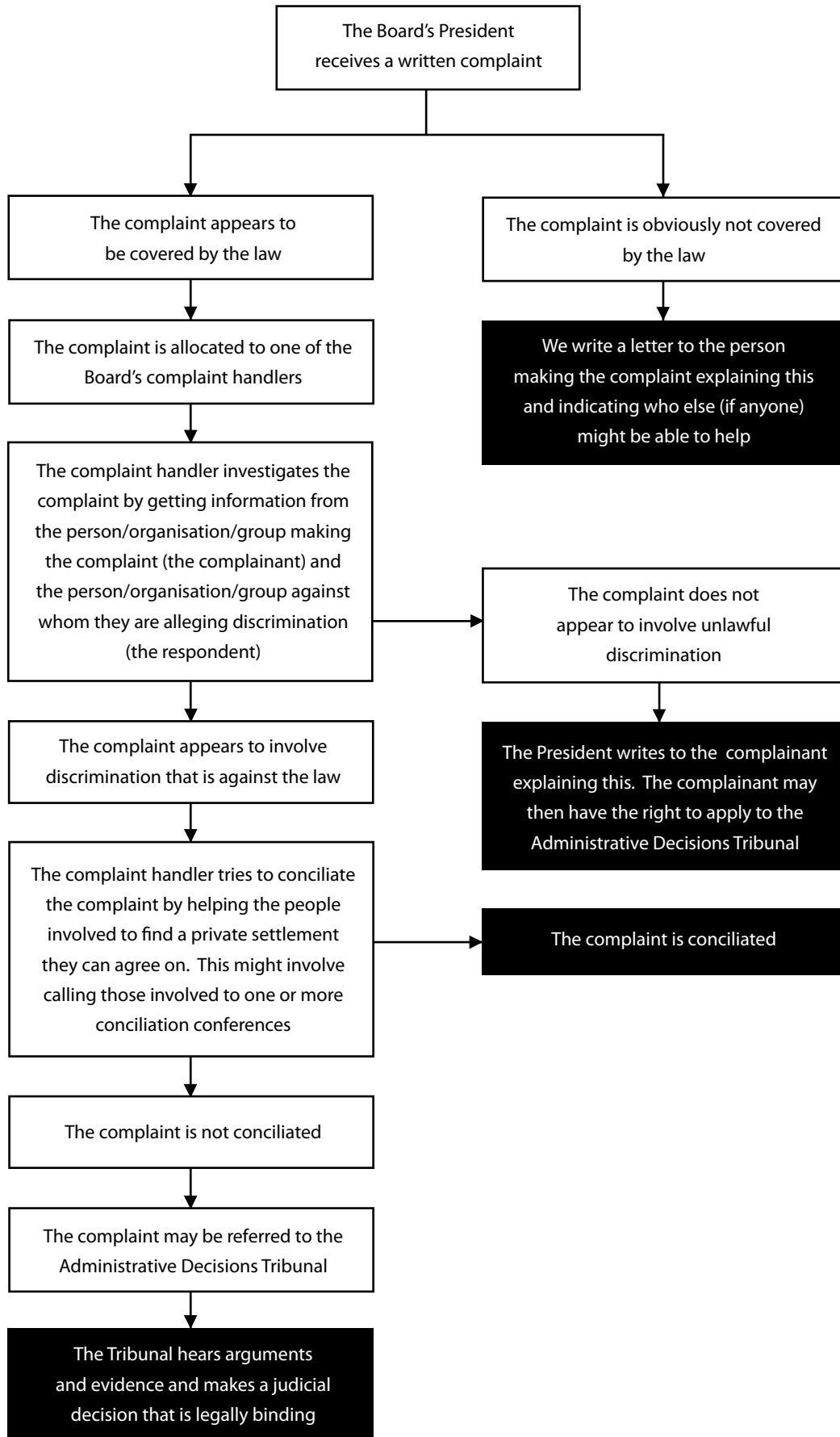
Tell the complaint handler exactly what you are feeling and why. It may be something that can be cleared up straight away.

If you feel you cannot continue with the complaint handler after discussing the problem with them, you should tell them this and say what you think the next step should be. You could also speak to the Manager of the Enquiries and Conciliation Branch, or make a written complaint to the President of the Anti-Discrimination Board.

You also have the right to complain to the NSW Ombudsman's Office about the way your complaint was handled. But you cannot complain to the Ombudsman about the result of conciliation or about decisions of the Equal Opportunity Division of the Administrative Decisions Tribunal.

If your complaint goes to the Equal Opportunity Division of the Administrative Decisions Tribunal and you are not satisfied with the decisions they make, you may be able to appeal to a higher court. Before you do this, it is a good idea to get legal advice about whether this is worthwhile.

The complaint process



Examples of conciliated complaints

An accountant went on maternity leave and before she was due to return to work she proposed to her employer that she come back three days per week. The employer rejected this proposal and a second proposal that she work four days and be available by phone on the other day.

The woman made a complaint of carers' responsibilities discrimination in employment. At the conciliation conference the employer said the woman was a valuable employee but they were not prepared to make the position part time. To settle the complaint, the employer agreed to pay the woman \$12,500 and give her a good reference.

The complainant was a below the knee amputee who wears a prosthesis. She said she was refused further drinks in her local club and was told that she seemed to be drunk. When she explained that she had only one leg and was unsteady on her feet, a staff member laughed at her.

The woman made a complaint of disability discrimination in registered clubs. The complaint was resolved by the club agreeing to undertake staff training on discrimination issues.

The complainant worked for a transport provider and was one of only two women working in her division. She said that she was subjected to sexual harassment by the men in the area, including sexual references and comments about her body.

After an internal investigation at the company did not produce any results, the woman made a complaint of victimisation to the Board (the original incidents of harassment were by then out of time) and went on sick leave. She initially wanted compensation, but decided that it was more important to get her job back. The company agreed to retrain her to work in another division as it would have been difficult for her to return to her original job.

A 45-year-old man registered with an employment agency was referred to an employer who had asked for people with sales experience. When he applied for the position he was told by the agency that he was unsuitable, even though he had worked in sales for many years. He contacted the employer directly and was told that the company wanted younger sales people to work in their store.

After the man made a complaint of age discrimination, the employer said that there were no actual vacancies at that time. The complainant accepted a payment of \$1,000 to resolve the complaint.

The Anti-Discrimination Board of NSW

(open weekdays 9am-4.30pm)

Sydney

Level 4, 175-183 Castlereagh Street
Sydney NSW 2000
PO Box A2122, Sydney South NSW 1235
Phone (02) 9268 5555, Fax (02) 9268 5500
TTY (02) 9268 5522

Wollongong

84 Crown St, Wollongong NSW 2500
PO Box 67, Wollongong NSW 2520
Phone (02) 4224 9960, Fax (02) 4224 9961
TTY (02) 4224 9967

Newcastle

Level 1, 414 Hunter St
Newcastle West NSW 2302
Phone (02) 4926 4300, Fax (02) 4926 1376
TTY (02) 4929 1489

Enquiries (02) 9268 5544

Employers Advisory Service (02) 9268 5544

Toll free number 1800 670 812
(if you are calling from rural or regional NSW)

Website www.lawlink.nsw.gov.au/adb