



Discrimination and the Anti-Discrimination Board of NSW

What is discrimination?

Discrimination occurs when someone is treated unfairly because they belong to a particular group of people or have a particular characteristic.

Many people have fixed ideas about groups of people who are different from themselves. If we aren't careful, this can lead us to discriminate against people who belong to those groups.

In NSW many types of discrimination are against the law. The laws dealing with discrimination help give everyone an equal chance.

What is the Anti-Discrimination Board of NSW?

The Anti-Discrimination Board of NSW is part of the NSW Department of Justice and Attorney General. It administers the anti-discrimination laws.

Staff at the Anti-Discrimination Board:

- deal with complaints of discrimination;
- try to prevent discrimination — by educating people about what the anti-discrimination laws say and why they are important; and
- report to the Government if they think the law needs changing to help prevent discrimination.

What types of discrimination and harassment are against the law in NSW?

■ Sex discrimination

when you are treated unfairly because you are a woman or because you are a man. This includes being treated unfairly or harassed or not given the same opportunities because you are pregnant or breastfeeding.

■ Race discrimination

when you are treated unfairly because of your race, colour, ethnic background, ethno-religious background, descent or nationality.

■ Age discrimination

when you are treated unfairly because of your age — for example because people think you are too old or

too young. Forcing people to retire at any particular age is also against the law.

■ Marital or domestic status discrimination

when you are treated unfairly because of your marital or domestic status — for example because you are single, or married, or living in a de facto relationship.

■ Homosexual discrimination

when you are treated unfairly because you are gay or lesbian, or someone thinks you are gay or lesbian.

■ Disability discrimination

when you are treated unfairly because:

- you have a disability,
- someone thinks you have a disability,
- you had a disability in the past, or
- you may or will get a disability in the future.

Disability includes physical disabilities, diseases that make the body or brain work differently, mental illness (psychiatric disability), behavioural disorders, intellectual disabilities, learning disabilities, changed or different body parts, and any virus or bacteria in the body that could cause disease (such as HIV).

■ Transgender (transsexual) discrimination

when you are treated unfairly because you are transgender or people think you are transgender. You are counted as transgender if you identify as the opposite gender (sex) to your birth gender and you live or seek to live as your identified gender.

■ Carer's responsibilities discrimination

when you are treated unfairly because you are responsible for caring for or supporting certain family members, or people think you are.

■ Discrimination because of who you are related to, or who you associate with

when you are treated unfairly because of the sex, pregnancy, breastfeeding, race, age, marital or domestic status, homosexuality, disability, transgender status or carer's responsibilities of one of your relatives, friends or associates.

■ Harassment

when you are subjected to behaviour that:

- you do not want,
- offends, humiliates or intimidates you,
- creates a hostile environment, and
- targets you because of your sex, pregnancy, breastfeeding, race, age, marital or domestic status, homosexuality, disability, transgender status or carer's responsibilities.

■ Sexual harassment

when you are subjected to:

- unwelcome sexual advances,
- unwelcome requests for sexual favours, or
- other unwelcome conduct of a sexual nature, and
- a reasonable person would have expected you to be offended, humiliated or intimidated by this behaviour.

Direct and indirect discrimination

There are two kinds of discrimination that are against the law, direct and indirect discrimination.

Direct discrimination is when someone is treated unfairly because of their sex, race etc as listed on the previous page, compared to someone else who does not have that characteristic, in the same or similar circumstances. For example, if a real estate agent tells an Aboriginal person they have no properties for rent but tells a Caucasian person that they do, this may be direct race discrimination.

Indirect discrimination is when there is a requirement or rule that is the same for everyone but in effect disadvantages people from a particular group more than people from other groups — unless the requirement is "reasonable in all the circumstances". For example:

- an employer says that they need a person over 180cm tall to do a certain job, which could indirectly discriminate against women and some ethnic groups (sex or race discrimination);
- a qualifying body excludes everyone with diabetes from registration on safety grounds, which could indirectly discriminate against individuals whose diabetes is controlled and would not impede them from doing the job safely (disability discrimination).

When does this law apply?

In general, people must treat you fairly and ensure that you are not harassed in five main areas of public life. The

exception is discrimination and harassment because of carer's responsibilities, which is only against the law in employment.

The areas in which the law applies are as follows:

■ Employment

when you apply for job, when you are at work and when you leave a job. This also covers bodies which issue licences to perform particular jobs, for example taxi licences or registration to practice as a nurse.

■ Goods and services

when you get or try to get most types of goods or services — for example, from shops, banks, lawyers, government departments, the police, public transport, local councils, doctors, hospitals and other medical services, hotels, sporting venues and entertainment venues.

■ State education

when you apply to get into or study in any State educational institution, which includes any government school, college or university. Also, private educational institutions are not allowed to discriminate against people because of their race, or allow sexual harassment to occur. However the law does not cover other types of discrimination in private educational institutions.

■ Accommodation

when you rent accommodation such as houses, units, flats, hotel or motel rooms, caravans or commercial premises.

■ Registered clubs

when you try to enter or join a registered club, or get services from one. A registered club is any club that sells alcohol or has gambling machines.

Vilification against certain people is also against the law

Vilification is any public act that could incite or encourage hatred, serious contempt or severe ridicule. In NSW it is against the law to vilify people because of their race, homosexuality or transgender status, or because they have HIV/AIDS.

Public acts could include remarks in the media or on the internet, graffiti, posters, verbal abuse, speeches, badges and clothing with slogans on them. The vilification law does not cover acts that are not public, for example abuse over a back fence that cannot be heard by any other people.

Victimisation is also against the law

It is against the law for anyone to hassle or victimise you or treat you unfairly because:

- you have complained to your employer or another person about discrimination or harassment;
- you have complained to the Anti-Discrimination Board; or
- you have supported someone with a discrimination or harassment complaint, or acted as a witness in a discrimination or harassment case.

You can lodge a separate complaint of victimisation with the Anti-Discrimination Board if you have been victimised because of a discrimination or harassment complaint.

What can I do if I have been discriminated against?

First you need to work out if what has happened to you seems to be against the law. If you are not sure after reading this factsheet, phone our Enquiry Service or refer to our website for more information.

If what's happened to you does seem to be against the law, you should try talking to the person or organisation involved. The organisation may have a policy on these issues or a process in place to deal with grievances, and you may be able to address your problem through these channels. You can also get help from other sources such as trade unions.

If you don't feel able to talk to the person or organisation, or you talk to them but it doesn't solve the problem, you can make a complaint to the Anti-Discrimination Board. It won't cost anything to make a complaint, and you don't need a lawyer.

If what has happened to you is not against the law, there may be other ways you can solve the problem. Refer to our factsheet *How to deal with discrimination, unfair treatment or harassment* or phone our Enquiry Service for advice.

Making a complaint

Your complaint must be in writing and if possible you should sign it. You can complete our discrimination complaints form, or you can write a letter to the President of the Anti-Discrimination Board, explaining what happened and why you think you have been discriminated against. Our addresses and phone numbers are at the end of this factsheet.

You can write to us in any language, or in Braille, and we will have your complaint translated free of charge. If you need assistance to write your complaint down, phone us and we will help you or refer you to somewhere else for help.

We also accept complaints on your behalf by organisations such as trade unions and other representative bodies (for example an ethnic community association). In this case you must be named in the complaint and it must be clear in the complaint that you agree with it being made. You may also be asked to show that 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 us for more information.

The Board can only accept a complaint if the discrimination or harassment occurred in the twelve months before we receive the complaint. If you make a complaint about events that occurred more than twelve months before we receive it, we may not investigate the complaint.

If your problem is urgent (for example you are about to lose your job or housing), make this clear in your complaint and we will try to help you quickly.

What happens after you make a complaint?

We will generally investigate your complaint to make sure that what has happened to you is against the law. If this is the case, we will try to conciliate your complaint. This means we will try to help you and the person or organisation you are complaining about to reach a private settlement that you both agree on. The Board is impartial in this process and does not take sides.

The settlement will depend on the circumstances of your case, on what the other parties are willing to offer and what you are willing to accept. It could be an apology, financial compensation, your job back, modifications to your working arrangements, and so on.

We treat all complaints confidentially, but we have to inform the organisation or person you are complaining about of the complaint. This is so we can give them a fair chance to respond to your complaint. We will not release information about your complaint to anyone else except with your permission or if we are required to by law.

Most complaints are conciliated. If yours isn't, you may go to the Equal Opportunity Division of the Administrative Decisions Tribunal, which is like a court. It provides a legal judgment that must be followed. Very few cases need to go to the Tribunal and in some circumstances you can ask for your details to be kept confidential.

Examples of complaints we have handled

Pregnancy discrimination: A woman complained that her employer suddenly became critical of her work when she told him she was pregnant, and she had to take stress leave. It was agreed that it was not viable for her to return to the job, but the employer agreed to give her a statement of performance and a payment for lost wages.

Age discrimination: A man was told that he was dismissed from work because his employer wanted someone younger. The employer acknowledged that the matter could have been handled better and gave the man an apology, a reference and financial compensation for the loss of his job.

Marital or domestic status discrimination: A single man and his friend were told by a real estate agent that the owner “wanted a family” to rent his property. The agent agreed that the agency had discriminated against the man, paid him financial compensation and agreed to train staff and owners about anti-discrimination law.

Homosexual discrimination: A lesbian complained that she was barred from a local club because she is a lesbian. After we contacted the club, she applied to join and was successful.

Transgender discrimination: A woman alleged she was made redundant because her supervisor did not want to employ a ‘weirdo’. She was the only person made redundant and her position was later advertised. The company agreed to review its anti-discrimination policies and pay the woman \$4,000.

Disability discrimination: A woman with an intellectual disability was refused a cheque account at a bank. We contacted the organisation’s head office, and they agreed to give the woman the account and instruct the branch office about fair customer service.

Carer’s responsibilities discrimination: A man complained that he was refused annual leave to look after his daughter while his partner was overseas. The request was reconsidered and he was granted the leave.

The Anti-Discrimination Board of NSW

Enquiries

Phone (02) 9268 5544; TTY (02) 9268 5522
Toll free number 1800 670 812
(if you are calling from rural or regional NSW)
Email: adbcontact@agd.nsw.gov.au

Complaints

Phone (02) 9268 5544; TTY (02) 9268 5522
Toll free number 1800 670 812
(if you are calling from rural or regional NSW)
Email: complaintsadb@agd.nsw.gov.au

Website

www.lawlink.nsw.gov.au/adb

Sydney

Level 4, 175 Castlereagh Street, Sydney NSW 2000
PO Box A2122, Sydney South NSW 1235
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Wollongong

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Newcastle

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PO Box 1077, Newcastle NSW 2300
Phone (02) 4926 4300; Fax (02) 4926 1376
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For more detailed information, refer to our website at www.lawlink.nsw.gov.au/adb and select “Anti-discrimination law”; or ask for our factsheets on

- sex discrimination
- pregnancy and breastfeeding discrimination
- race discrimination
- age discrimination
- marital or domestic status discrimination
- homosexual discrimination
- disability discrimination
- transgender discrimination
- infectious diseases discrimination
- carers’ responsibilities discrimination
- harassment and sexual harassment
- vilification
- complaining to the Anti-Discrimination Board