



# Discrimination and the Anti-Discrimination Board of NSW

### What is discrimination?

Discrimination occurs when someone is treated unfairly because they happen to 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 in NSW an equal chance.

### What is the Anti-Discrimination Board of NSW?

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

Staff at the Anti-Discrimination Board:

- deal with complaints of discrimination;
- try to prevent discrimination happening — 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?

The following types of discrimination are against the law:

- **Sex discrimination**  
when you are treated unfairly or harassed 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 because you are breastfeeding.
- **Race discrimination**  
when you are treated unfairly or harassed because of your race, colour, ethnic background, ethno-religious background, descent or nationality.

- **Age discrimination**

when you are treated unfairly or harassed because of your age, for example, because people think you are too old, too young or middle aged. Forcing people to retire at the old retirement age is also against the law.

- **Marital status discrimination**

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

- **Homosexual discrimination**

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

- **Disability discrimination**

when you are treated unfairly or harassed because you have a disability, or someone thinks you have a disability. It is also against the law to treat you unfairly or harass you because you had a disability in the past, or because you will or may get one in the future. Disability includes physical, intellectual and psychiatric disabilities, learning and emotional disorders, and any organism capable of causing disease (for example, HIV).

- **Transgender (transsexual) discrimination**

when you are treated unfairly or harassed because you are transgender or others think you are transgender. You are counted as transgender if you live or seek to live as a member of the opposite gender (sex) to your birth gender.

- **Carers' responsibilities discrimination**

when you are treated unfairly or harassed (in employment only) because you are responsible for caring for or supporting some adults or children, or others think you are.

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

when you are treated unfairly or harassed because of the sex, pregnancy, race, age, marital status, homosexuality, disability, transgender status or carers' responsibilities of one of your relatives, friends or work colleagues.

## ■ Harassment

when you are subjected to behaviour that you do not want, that offends, humiliates or intimidates you, and targets you because of your sex, pregnancy, breastfeeding, race, age, marital status, homosexuality, disability, transgender status or carers' responsibilities.

## ■ Sexual harassment

when you are subjected to sexually related behaviour that you do not want, and a reasonable person would have expected you to be offended, humiliated or intimidated.

## **But these types of discrimination and harassment are only against the law if they happen in one of the following places or circumstances**

### ■ Employment

this includes everything to do with work — applying for a job, what happens at work and leaving a job.

### ■ State education

this includes everything to do with State schools, colleges and universities — getting a place and what happens in them. Private educational institutions are allowed to discriminate against people because of their sex, marital status, age, homosexuality, transgender status or disability. However, they are not allowed to discriminate against people because of their race. In addition, they must not allow or tolerate sexual harassment.

### ■ Goods and services

this includes buying goods, and getting services — for example, from banks, lawyers, government departments, hospitals, doctors, pubs, entertainment places, shops, local councils...

### ■ Accommodation

this includes everything to do with renting flats, houses, hotel/motel rooms, caravans and commercial premises.

### ■ Registered clubs

this includes becoming a member of a registered club, entry into a club and the services you get in a club. A registered club is any club that sells alcohol or has gambling machines.

## **Both 'direct' and 'indirect' discrimination are against the law**

### ■ Direct discrimination

means someone is treated unfairly compared to

someone else in the same or similar circumstances, and this is because of their sex, pregnancy, race, age, marital status, homosexuality, disability, transgender status or carers' responsibilities. For example, if an employer won't hire someone just because they are a woman this is likely to be direct sex discrimination.

### ■ Indirect discrimination

means a requirement (or rule) that is the same for everyone but has an effect or result that is unequal and unreasonable having regard to the circumstances. For example, an employer who says that they need a person over 180 cm tall to do a certain job could be indirectly discriminating against women and some ethnic groups, who are less likely to be this height than men or people from other ethnic groups. They could claim indirect sex or race discrimination if they could show that the job does not really need someone that tall to do it.

## **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.

## **Racial vilification, homosexual vilification, HIV/AIDS and transgender vilification are also against the law**

Racial vilification means any public act that could incite or encourage racial hatred, serious racial contempt or severe racial ridicule.

Homosexual vilification means any public act that could incite hatred, serious contempt or severe ridicule against lesbians and/or gay men.

HIV/AIDS vilification means any public act that could incite hatred, serious contempt or severe ridicule against people who have HIV or AIDS.

Transgender vilification means any public act that could incite hatred, serious contempt or severe ridicule against people who are or are thought to be transgender.

## **What can I do if I have been discriminated against in one of the ways listed above?**

Read through this factsheet to check that what has happened seems to be against the law. If you are not sure, you can get a more detailed factsheet on each of the types of discrimination listed in this factsheet, or refer to our website for more information. You can also phone the Anti-Discrimination Board for confidential advice about your rights.

If what has happened seems to be against the law, try talking to the person or organisation that you think is discriminating against you. The organisation may have a policy on these issues and/or a process 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 unions.

If this doesn't work, or isn't appropriate, you may decide to make a complaint to the Anti-Discrimination Board. It won't cost you any money for the Board's staff to help you, and you don't need a lawyer.

## **Making a complaint**

If you want to make a complaint, it must be in writing and it is best if it is signed by you. You can either send us a completed discrimination complaint form, or write a letter to the President of the Anti-Discrimination Board, explaining what happened and why you think you have been discriminated against on one or more of the grounds listed in this factsheet. Our addresses and phone numbers are at the end of this factsheet.

You can write to us in any language, or in Braille. If you need assistance to make a written complaint, phone the Board and we can help you or refer you to an organisation that can help you.

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.

For us to be able to accept a complaint, the events involving discrimination or vilification must have occurred in the

twelve months before the complaint is received by the Board. If you make a complaint about events that occurred more than twelve months before you lodge your complaint, the Board may refuse to investigate your complaint.

If your problem is urgent (for example, you think you are about to lose your job), tell us this in your letter and we will get back to you in time to do what we can to help.

## **What happens after you make a complaint?**

We have the legal power to investigate your complaint, and if it is against the law, to try to conciliate it. This means we will help you and the person or organisation you are complaining about try to reach a private settlement that you both agree on. The Board is impartial in this process and does not take sides.

Any settlement will depend on the circumstances of your case, and on what you and the other parties are willing to offer and accept. It could be an apology, financial compensation, your job back, that the organisation involved in the discrimination, harassment or vilification will run an education program to try to ensure it doesn't happen again, and so on.

We treat all complaints confidentially, but we will need to inform the organisation or person you are complaining about of the 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 judgement that must be followed. However, very few cases need to go to the Tribunal and in some circumstances it's possible to ask the Tribunal to keep your details confidential.

**For more detailed information** refer to our website at [www.lawlink.nsw.gov.au/adb](http://www.lawlink.nsw.gov.au/adb), or ask for our factsheets on

sex discrimination  
pregnancy discrimination  
breastfeeding discrimination  
race discrimination  
age discrimination  
marital status discrimination  
homosexual discrimination

disability discrimination  
infectious diseases discrimination  
transgender discrimination  
carers' responsibilities discrimination  
harassment and sexual harassment  
vilification

## Examples of complaints we have handled

**Sex discrimination:** A female security guard was dismissed after complaining about being harassed by her supervisor. In conciliation the company agreed to pay her substantial compensation, give her a good reference and remove inaccurate false records from her personnel file.

**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. In conciliation 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. After a conciliation conference, 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 status discrimination:** After being told by a real estate agent that the owner of the house wanted 'a family to move in', a single man and his friend complained to the Board. The real estate agent agreed that the agency had discriminated against the man, paid him financial compensation and agreed to train staff and owners about their responsibilities under anti-discrimination law.

**Race discrimination:** An Indian woman came to the Board for help after she was dismissed from her job. She believed it was because of her accent. Conciliation of the complaint resulted in a financial settlement, an apology and training of senior staff.

**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. In conciliation, the company agreed to review its anti-discrimination policies and pay the complainant \$4,000.

**Disability discrimination:** A woman with an intellectual disability was refused a cheque account because she worked in supported employment, and the local branch office felt that she would not be able to manage an account. We contacted the organisation's head office, and they agreed to grant the woman a cheque account and instruct the branch office about fair customer service.

## The Anti-Discrimination Board of NSW

(open weekdays 9am-4.30pm)

### Sydney

Level 4, 175 Castlereagh Street  
Sydney NSW 2000  
PO Box A2122, Sydney South NSW 1235  
Phone (02) 9268 5555, Fax (02) 9268 5500  
TTY 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](http://www.lawlink.nsw.gov.au/adb)