



Marital or domestic status discrimination

What does the law say about marital or domestic status discrimination?

It is generally against the law in NSW to treat you unfairly or harass you because of your marital or domestic status, that is, because you are:

- single;
- married;
- in a de facto relationship;
- separated;
- divorced; or
- widowed.

It is also against the law to treat you unfairly or harass you because of the marital or domestic status of any of your relatives, friends, associates or work colleagues.

Indirect marital or domestic status discrimination is also against the law. This occurs when there is a rule or requirement that disadvantages people of a particular marital or domestic status more than people of another marital or domestic status — unless it can be shown that the rule or requirement is “reasonable in all the circumstances”.

For example, a financial institution might not give loans to people with an unstable accommodation history. This could be indirect discrimination against people who are recently divorced, if they are otherwise able to repay the loan.

What if I’m treated unfairly or harassed because of who my partner is?

Sometimes a person can be discriminated against because of who their partner is. For example, you may not get a job or promotion because your partner already works for the same employer. Or you may be dismissed because your partner starts work with a business that is in competition with the company you work for.

If this type of decision is based on assumptions or stereotyped views of how people of a particular marital or domestic status behave, then it could be discriminatory. An example of a stereotyped view might be that married people can’t work together or that the personal character of one partner is relevant to the other.

It won’t always be against the law when someone treats you unfairly because of who your partner is, but we advise employers and service providers that it is best to avoid this kind of discrimination. There is usually a way of dealing with their concerns without having to discriminate. For more information about this part of the law, contact our Enquiry Service.

When does this law apply?

Marital or domestic status discrimination is generally against the law in the following areas:

- **in employment** — when you apply for a job or for a licence or registration to perform a job, when you are at work, or when you leave a job;
- **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;
- **when you apply to get into or study in any educational institution**, which includes any government school, non-government school, college or university;
- **when you rent or buy accommodation** such as houses, units, flats, hotel or motel rooms and commercial premises; and
- **when you try to enter or join a registered club, or when you get services from one.** A registered club is any club that sells alcohol or has gambling machines.

What can I do if I am treated unfairly or harassed because of my marital or domestic status?

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 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 talking to the person or organisation 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 to lodge 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.

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 marital or domestic status discrimination;
- you have complained to the Anti-Discrimination Board; or
- you have supported someone with a marital or domestic status discrimination complaint, or acted as a witness in a marital or domestic status discrimination case.

You can lodge a separate complaint of victimisation with the Anti-Discrimination Board if you have been victimised because of a complaint relating to marital or domestic status discrimination.

Making a complaint

Your complaint must be in writing. You can make a complaint by completing our discrimination complaint form, which is available on our website or from our Enquiry Service. Another option is to write to the President of the Anti-Discrimination Board, explaining what happened and why you think you have been discriminated against because of your marital or domestic status. 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 organisation representing single parents). 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, getting your job back, changes to your working arrangements, getting the service you were denied, 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.

For more detailed information on making a complaint

refer to our website and select "Making a complaint", or ask for our factsheet *Complaining to the Anti-Discrimination Board*.

Examples of marital or domestic status discrimination complaints we have handled

A married couple worked in the same government department, and they were told that they couldn't work in the same area because it would be a conflict of interest. They made a complaint to the Board, saying that there was no evidence that there would be a conflict of interest in their case. In conciliation, the department agreed to review the application of their policy in this case.

A woman worked as a cleaner for the respondent and was told she could not work at certain sites because of her husband's past criminal record. She made a complaint to the Board, and the respondent agreed that this should not have occurred, even though she was given alternative work. They undertook to give her work at the sites in question when it came up, and to write to the sites advising them of this.

A woman attended a presentation by a holiday club, which was offering a travel voucher as an inducement. When she arrived she was told she was not eligible as she was separated rather than single or married. She made a complaint, and when the Board contacted the company they said they wanted people who were financially stable, but agreed that they had not adequately assessed the woman's financial status. The company agreed to change their procedures and to give the complainant the travel voucher.

A woman attended a job interview at which she was asked if she was married, whether she was in a relationship, how long they had been together, and when they would get married and have children. On her request, the Board advised the respondent about marital or domestic status discrimination and their obligations under anti-discrimination law.

The Anti-Discrimination Board of NSW

Enquiries

Phone (02) 9268 5544

Toll free number 1800 670 812

(if you are calling from rural or regional NSW)

TTY (02) 9268 5522

Email: adbcontact@agd.nsw.gov.au

Complaints

Phone (02) 9268 5544

Toll free number 1800 670 812

(if you are calling from rural or regional NSW)

TTY (02) 9268 5522

Email: complaintsadb@agd.nsw.gov.au

Website

www.lawlink.nsw.gov.au/adb

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