



Disability discrimination

What does the law say about disability discrimination?

It is generally against the law in NSW to treat you unfairly or harass you because you have a disability. This includes the following:

- a disability you have now;
- a disability that someone thinks you have now, whether or not you actually have it;
- a disability you had in the past, or that someone thinks you had in the past;
- a disability that you will get in the future, or that someone thinks you might get in the future;
- a disability that any of your relatives, friend, work colleagues or associates has now, had in the past or will get in the future; and
- a disability that someone thinks any of your relatives, friends, work colleagues or associates has now, had in the past or might get in the future.

Anti-discrimination law covers a wide range of disabilities and health problems. These include the following:

- physical disabilities such as paraplegia, cerebral palsy, vision impairment or hemiplegia following a stroke;
- a disease that makes a part of the body or brain work differently, such as arthritis, multiple sclerosis, heart disease, diabetes, epilepsy or cancer;
- a mental illness or psychiatric disability, such as anxiety, depression, bipolar disorder, schizophrenia or an eating disorder;
- a behavioural disorder such as ADHD or Asperger's Syndrome;
- an intellectual disability such as Down syndrome;
- a learning or cognitive disability such as dyslexia;
- a change to a part of the body or brain after an accident or surgery;
- a different formation of a body part, for example a missing or short limb; and

- a virus or bacteria in the body that could cause disease or illness, such as hepatitis or HIV.

Some disabilities may fall into more than one of these categories.

For more detailed information on disease and illness, refer to our website and select "Anti-discrimination law", or ask for our factsheet *Infectious diseases discrimination*, which covers HIV/AIDs.

Equipment and assistance

The law also says that people must not discriminate against you because you have a guide dog, or because you need particular equipment or assistance from another person because of your disability. For example, you may need equipment or assistance for mobility, or to read or interpret information.

Indirect discrimination

Indirect disability discrimination is also against the law. This occurs when there is a rule or requirement that disadvantages people who have a disability more than people who don't have a disability — unless it can be shown that the rule or requirement is "reasonable in all the circumstances".

For example, a requirement for all staff to start work at a specific time might indirectly discriminate against a person whose disability means they have to get a particular bus that only runs at certain times. It may be quite possible to organise that person's work so they could start and finish later.

When does this law apply?

Disability discrimination is generally against the law in the following areas:

- **in most types of employment** — when you apply for a job or for a licence or registration to do 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 State educational institution**, which includes any government school, college or university;
- **when you rent 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 a club that sells alcohol or has gambling machines.

What are my work rights?

Applying for a job

In general, all job advertisements, jobs, apprenticeships and traineeships must be open to you, and you have the right to apply for them and be fairly considered for them on the basis of merit. This also applies to bodies which issue licences to perform particular jobs, for example taxi licences or registration to practice as a nurse.

If you are the best person for the job and you can do all the **essential** parts of the job, then you should get the job, irrespective of your disability. Employers can only refuse to give you a job if you can't do the essential parts or "inherent requirements" of that job.

For example, if you can't drive, you could not perform the essential part of a driving job. However driving would not generally be regarded as an essential part of a clerical job where the previous employee occasionally drove to pick up a parcel from the post office.

If you can't do a non-essential part of the job, the employer should make other arrangements to get this task done, such as give it to someone else. It is OK for an employer to ask you to go for a medical to work out if you can do the essential parts of the job.

Special facilities

If you are the best person for a job, the employer must also provide any special facilities or services you need to do it — unless it would cause them "unjustifiable hardship" to do so. For example, you might need your desk adapted, or a different computer mouse, or some special software.

In some cases employers may think that the facilities you need will cost too much — for example, they may say it is too expensive to install new ramps to access the building. But in deciding whether providing these facilities would cause them unjustifiable hardship, they must also consider the benefits to their other staff and clients, as well as to you.

When you are in a job

In general, you have the same right to training, promotion and work benefits as other employees if you have a disability. Again, employers must provide you with any special facilities or services you need to access training, promotion or work benefits, as long as this won't cause them unjustifiable hardship.

You generally have the right to stay on in your job if you have a disability, or you acquire a disability after you begin the job. An employer can only dismiss you, medically retire you or make you redundant because of your disability (or the disability of your relative or associate) if you can't do the essential parts of your job.

As when you apply for a job, your employer must provide any special facilities or services you need to continue to do your job, as long as this won't cause them unjustifiable hardship. If there are non-essential parts of your job that you can't do, your employer must make arrangements to cover these in some other way.

Harassment

You also have the right not to be harassed by managers, staff or clients at work because you have a disability. For more information about harassment, refer to the Anti-Discrimination Board website and select "anti-discrimination law", or ask for our factsheet *Harassment*.

Carers' responsibilities discrimination

If you are treated unfairly or harassed at work because you caring for or supporting a child or immediate family member with a disability, you may have been unlawfully discriminated against.

For more information, refer to our website and select "Anti-discrimination law", or ask for our factsheet *Carers' responsibilities discrimination*.

What are my rights to goods and services?

In general, you have the right to apply for and get goods or services in the same way as people who don't have a disability. People must not harass you because of your disability while you are getting goods or services.

For example, people must not refuse you service because you (or your relative, friend, work colleague or associate) have a **guide dog** (for seeing, hearing or mobility) with you. All guide dogs must be allowed to accompany their owners, even into eating areas.

People must not refuse you service because you (or your relative, friend, work colleague or associate) use a **wheelchair**. Anything that you need to get into to access a service (for example a building or transport) must be accessible to you, unless it would cause the owner "unjustifiable hardship" to make it accessible. Obviously, to make some existing buildings and vehicles wheelchair accessible may be very expensive.

However, there may be less expensive changes that could improve accessibility without causing unjustifiable hardship. If this is the case, the changes should be made. At the very least, service providers should have plans for how they are going to make their service accessible in the future.

The cost of making new buildings or services accessible from the start will generally be lower than the cost of modifying old buildings. So it may be harder for the owner of a new building or service to prove unjustifiable hardship.

Goods or service providers must not turn you away because they think that you (or your relative, friend, work colleague or associate) **might offend or worry other customers**.

If your disability means that you **don't have a driver's licence**, goods or service providers should allow you to provide other forms of identification.

You also have the right to get most goods or services on the same terms as people who don't have a disability. For example, for example you must not be charged higher prices, or have to meet different rules.

Exceptions — superannuation and sport

There is an exception in the law for **superannuation and insurance providers**. They can discriminate against people with disabilities if there is good statistical evidence to support their decision, or if another law says that they must discriminate on the basis of disability.

There is also an exception for **sport**. Sport organisers can exclude a person with a disability if they are not capable of performing the actions required, or they don't meet the relevant skill level. Also, sporting activities can legally be targeted for people with a particular type of disability, and exclude people who don't have that disability.

What are my rental accommodation rights?

Applying to rent premises

In general, you have the right to rent accommodation in the same way as people who don't have a disability. A real estate agent or landlord can't refuse you accommodation because you have a disability, or because others living nearby might be offended or troubled by your disability.

Generally, a real estate agent or landlord can only refuse to rent to you if the accommodation is not large enough for your family or group, or you can't pay for it, or your references don't check out.

The agent or landlord must also provide you with any special facilities that you need to use the property, unless this would cause them "unjustifiable hardship". If it would cause them unjustifiable hardship, they can refuse to rent the property to you. See page 2 for more information about special facilities and unjustifiable hardship.

Exceptions — shared households and special accommodation

There is an exception in the law for shared accommodation in a private household. If you share facilities with the owner of the accommodation or their close relative, and the shared accommodation is for six or less people, then they are allowed to choose who they want to live with them. It won't be against the law if they decide they don't want to live with you because you have a disability. This does not apply if the accommodation is self-contained and does not shared facilities.

There is also an exception for accommodation that is provided by a charitable or other not-for-profit body specially for people with a particular type of disability. They can exclude you if you don't have that type of disability.

When renting

You also have the right to rent accommodation on the same terms as people who don't have a disability. For example:

- the accommodation provider must not make you pay extra rent or a larger bond because you have a disability, or your friend, relative, work colleague or associate has one — even if they are providing you with special facilities;
- they must not give you a shorter tenancy or evict you because you have a disability, or your friend, relative, work colleague or associate has one; and
- they must not make you wait any longer for accommodation than people who don't have a disability.

You also have the right not to be harassed while renting because you have a disability, or your friend, relative, work colleague or associate has one.

What are my State education rights?

State education includes education at any State university, State college, TAFE or State school. It does not include private schools, colleges or universities, which are not covered by NSW disability discrimination law.

In general, you have the right to apply for and get education at any State educational institution in the same way as people who don't have a disability. You can generally only be refused entry if you don't meet the relevant academic requirement.

The institution must also make any adjustments to their buildings and provide you with any special facilities you need to access their education, unless this would cause them unjustifiable hardship.

This means that they must generally make adjustments to allow you to attend classes, study and sit for tests and exams. For example:

- if you have limited mobility, they should try to ensure that your classes are in accessible rooms that are close

- together, so you can get easily from class to class;
- if you have difficulty writing, they may provide assistance such as a recording of the class, note-taking equipment or an amanuensis (note taker);
 - if you have a print disability, they may provide assistance such as recordings of textbooks, reading equipment or a personal reader; or
 - if you have your own equipment or a person to help you, the education provider should allow you to use these, and assist you to use them if needed.

If the building adjustments or special facilities you need would cause the educational institution unjustifiable hardship, they may be able to refuse to admit you, or refuse to provide these requirements. However, in many cases there may be a compromise solution that will solve the problem.

Educational institutions can provide education specifically for people with a particular type of disability, and refuse admission to people who don't have that type of disability.

If you have a complaint about a private school, you may be covered by Federal discrimination laws. Contact the Australian Human Rights Commission on (02) 9284 9600 for more information, or refer to their website at www.hreoc.gov.au.

What are my registered club rights?

Registered clubs may include RSL clubs, workers clubs, most ethnic clubs and most sporting clubs. Voluntary clubs such as Rotary and Lions are not registered clubs and are not covered by NSW disability discrimination law. They can discriminate against people with a disability if they choose to.

Joining a club

In general, you have the right to become a member of a registered club in the same way as people who don't have a disability. They must not refuse you membership because other members might be offended or troubled by your disability, or the disability of your friend, relative, work colleague or associate. The club can generally only refuse you membership for the same reason that they would refuse it to people who don't have a disability — for example because you have been violent towards other customers.

The club must also give you access to its buildings and provide you with any special facilities you need to use its services, unless this would cause them unjustifiable hardship. If giving you access or special facilities would cause them unjustifiable hardship, they may be able to refuse you entry. However, in many cases there may be a compromise solution that will solve the problem.

Being a club member

You have the right to get registered club benefits and services on the same basis as people who don't have a disability. Again, they must provide you with access and any special facilities you need, unless it would cause them unjustifiable hardship. For example:

- if you want to dance in a wheelchair they should allow this; or
- if you need a guide dog, they must allow it to accompany you at all times, including in eating areas.

You have the right to keep your membership in the same way as people who don't have a disability, and the membership suspension and removal rules must be the same for everyone. You can only be suspended or barred from a club for the same reasons as a person who does not have a disability.

Exceptions — sport and special clubs

A club may be able to refuse you access to some sporting activities. For example, they can do this if you are not capable of performing the actions required, or you don't meet the relevant skill level.

A registered club whose main object is to provide benefits for people with a particular type of disability can refuse membership and services to people who don't have that type of disability.

What can I do if I'm treated unfairly or harassed because of my disability?

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 for dealing 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. 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 you (or your relative, friend, work colleague or associate) have a disability. Our addresses and phone numbers are at the end of this factsheet.

You can write your complaint in any language, or in Braille, and we will have it translated free of charge. If you are unable to write or type your complaint, a staff member from the Board can help you. Another option is to dictate your complaint over the phone and we will send you a draft that you can approve and sign.

You can also speak your complaint and provide it as an audio tape, video tape, CD, sound file or video file, as long

as you include a letter saying that you intend to lodge the complaint. If you are an Auslan speaker, you can submit a video of yourself making your complaint and we will have it translated.

We also accept complaints made on your behalf by organisations such as trade unions and representative community groups (for example a disability organisation). 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, access to 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.

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 disability discrimination;
- you have complained to the Anti-Discrimination Board; or
- you have supported someone with a disability discrimination complaint or been a witness in a disability discrimination case.

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

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 disability discrimination complaints we have handled

A woman with an intellectual disability was refused a cheque account because the local bank branch felt that she would not be able to manage the account. We contacted the organisation's head office, and they agreed to give the woman a cheque account and instruct the branch office about fair customer service.

Two women who both had a mobility disability were refused the lease of one floor of a warehouse, on the grounds that there was only a male toilet on that floor. Upon investigation, it became clear that they could use the ground floor toilet, as it had one entrance with a lock. After discussions, the agent offered the women the lease.

A woman who worked as a merchandiser complained that after she had a mastectomy for breast cancer, her manager bullied, intimidated and harassed her. He stopped arrangements to accommodate her inability to lift above the shoulder and changed her roster to stores where there was no assistance for her. The employer agreed to pay the woman \$8,000, give her a statement of service, and review its equity and grievance policies.

A woman who worked as a lab technician had rheumatoid arthritis and needed to take regular breaks to take medication. She complained that changes to the company's services meant she was rostered at short notice and it was more difficult to manage her condition. At conciliation, the complainant and respondent agreed on a new rostering arrangement that would suit her.

A woman with multiple sclerosis applied for a job as a driver, and was interviewed and offered the position. She stated her condition on the application form and explained that it did not affect her driving. She was then asked to provide a medical certificate, but before she did this the employment offer was withdrawn. The employer agreed to pay her \$3000 to settle the complaint.

Examples of disability discrimination complaints we have handled

The complainant had a stoma and used a colostomy bag, which prevented him from bending. He used a device to lock the trigger of the petrol pump at a petrol station, so he wouldn't need to bend. When the petrol station owner realised this, he told the man to stop as it was dangerous. After he made a complaint, the man accepted a solution where he would notify the station when he was coming and an attendant would help him.

A young man with an intellectual disability was ejected from a store by a security guard. He was told that he had been harassing the staff and there had been complaints about him. A relative who wrote the complaint on his behalf said that he was a very quiet person who was now reluctant to go into a store on his own. The store apologised, said the man was welcome in the store, and agreed to send the staff involved to training about discrimination.

A woman with post-polio syndrome who walked with a limp complained that she was severely humiliated and embarrassed by an external training provider when she attended training at work. In front of other participants, he asked her what was wrong with her leg and mimicked the way she walked. The complaint was settled by a payment of \$6,000 to the woman.

The complainant was deaf and communicated mainly in Auslan. He worked as a labourer and complained that he had not been considered for promotion to leading hand because he was deaf, and his employer relied too much on informal communication methods to tell him about important workplace issues. The employer agreed to provide deafness awareness training to its staff, Auslan interpreters at important meetings, technical aids to assist communication, and training for the man in supervision, the company's promotion structure and the career paths available to him.

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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