



Marital status discrimination

Is it against the law to discriminate against people because of their marital status?

Yes. In NSW it is generally against the law to treat you unfairly or harass you because of your particular marital status, that is, because you are:

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

It is also against the law to have any rule or policy that disadvantages people of your marital status more than people with a different marital status — if that rule or policy is “unreasonable with regards to all the circumstances”.

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 status behave (for example, that married people can’t work together or that the personal character of one partner will affect the other), then actions based on this view could be discriminatory.

While discriminating against you because of who your partner is won’t be against the law in every situation, we advise employers and service providers that it is best to avoid this kind of discrimination. There is almost always a way of dealing with an employer’s or service

provider’s concern without having to discriminate against you. If you want more information about this, please contact us.

Where is marital status discrimination against the law?

It is against the NSW law for someone to discriminate against you because of your marital status in any of the following situations:

- **in employment** — when you apply for a job, during employment, or when you leave a job;
- **when you get, or try to get, most types of goods or services** — for example, from shops, pubs and entertainment venues, banks, lawyers, government departments, doctors or hospitals;
- **when you rent, or try to rent, accommodation** — for example, a unit, house, commercial premises, or a hotel or motel room;
- **when you apply to get into, or are studying in, any State educational institution** — that is, any government school, college or university; and
- **when you try to enter or join a registered club, or when you get services from one.**

It is also against the law to treat you unfairly or harass you because of the marital status of any of your friends, relatives or associates in any of the above places or circumstances. If this happens to you and you can’t sort it out yourself, please contact the Anti-Discrimination Board.

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

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

Read through this factsheet to check that what's happened seems to be against the law. If you aren't sure if it's against the law, phone us to check on your rights.

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

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 complaints 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 because of your marital status.

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 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, contact the Board for more information.

For us to be able to accept a complaint, the events involving unfair treatment because of your marital status 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's against the law, to try to conciliate it. This means that we will try to help you and the person or organisation you are complaining about 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, transfer to another position, the person who discriminated against you being reprimanded, awareness training about discrimination at your workplace, access to facilities you were previously denied, 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 be able to 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. 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 on making a complaint

refer to our website at www.lawlink.nsw.gov.au/adb or ask for our factsheet on *Complaining to the Anti-Discrimination Board*.

Examples of marital 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 vacation club, which was offering a travel voucher as an inducement. When she arrived she was told she was ineligible as she was separated rather than single or married. She made a complaint of marital status discrimination, and when the Board pursued the matter the company agreed that they had not adequately assessed her financial status. The complaint was resolved when 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 she had been with her partner, and when they would get married and have children. On her request, the Board advised the respondent about marital status discrimination and their obligations under anti-discrimination law.

**The Anti-Discrimination
Board of NSW**

(open weekdays 9am-4.30pm)

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(if you are calling from rural or regional NSW)

Website

www.lawlink.nsw.gov.au/adb