



Homosexual discrimination

What does the law say about homosexual discrimination?

It is generally against the law in NSW to treat you unfairly or harass you because:

- you are gay or lesbian;
- someone thinks you are gay or lesbian; or
- because you have a relative, friend, associate or work colleague who is gay or lesbian, or someone thinks they are gay or lesbian.

Indirect homosexual discrimination is also against the law. This occurs when there is a rule or requirement that disadvantages gay men or lesbians more than heterosexuals – unless it can be shown that the rule or requirement is “reasonable in all the circumstances”.

For example, it could be indirect discrimination for a school to insist that students bring partners of the opposite sex to a school dance, because heterosexual students would be able to bring their boyfriends or girlfriends, but homosexual students would not.

When does this law apply?

Homosexual discrimination is against the law in the following areas:

- **in employment** – when you apply for a job, when you are at work and when you leave a job. This also covers bodies which issue licences to perform particular jobs;
- **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, caravans or 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.

Homosexual vilification is also against the law

Homosexual vilification is also against the anti-discrimination law. Vilification is defined as any public act that could encourage hatred, serious contempt, or severe ridicule towards people who are gay or lesbian, or who are thought to be gay or lesbian.

Public acts could include remarks in a newspaper or journal, in other publications, on radio or television or on the internet, including social networking sites. They could also include graffiti, posters, verbal abuse, speeches or statements, gestures and badges or clothing with slogans on them, as long as these are displayed, made or worn in public. The vilification law does not cover acts that are not public, for example abuse over a back fence that no-one else can hear.

For more information about vilification

refer to our website and select ‘Anti-discrimination law’, or ask for our factsheet *Vilification*.

HIV/AIDS discrimination and vilification are also against the law

It may be against the law if you are treated unfairly, harassed or vilified if any of the following are the case:

- you are HIV positive or have AIDS;
- someone thinks you are HIV positive or have AIDS;
- you have a relative, friend, work colleague or associate who is HIV positive or has AIDS, or someone thinks they are HIV positive or have AIDS.

For more information about HIV/AIDS discrimination and vilification refer to our website and select 'Anti-discrimination law' then 'Infectious diseases discrimination', or ask for our factsheet *Infectious diseases discrimination*.

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

What can I do if I am treated unfairly, harassed or vilified because I am homosexual?

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 can 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 want 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 you any money 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 are homosexual (or your relative, friend, work colleague or associate is homosexual). 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 somewhere else for help.

We also accept complaints made on your behalf by organisations such as unions and representative community groups (for example a gay rights 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, harassment or vilification 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, getting the service you were denied, changes 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 homosexual discrimination complaints we have handled

- A man who was harassed, more rigorously disciplined than other employees and eventually dismissed believed that this had happened because he was gay. The complaint was settled when the complainant agreed to accept financial compensation for the harassment and dismissal.
- Before two women were transferred to a new, predominantly male workplace, rumours were circulated that "two dykes were coming". On arrival they were questioned about their sexual preference by the branch manager and were subjected to ongoing harassment by some employees. At conciliation the employer agreed to pay the complainants substantial compensation, and the Anti-Discrimination Board conducted training on discrimination which all staff in the branch were required to attend.
- A fostering organisation refused to consider a man's application because he was gay. After conciliation, the organisation agreed to change their policy and apply the same criteria to all people applying to foster a child regardless of their sexuality.
- A lesbian complained that she was refused accommodation by a real estate agent when she made it clear to the agent that she was intending to share the accommodation with her female lover. The Anti-Discrimination Board contacted the agent and explained that discriminating against the woman because of her lesbianism was against the law. The agent then offered the woman alternative accommodation and agreed to review all the office policies for possible discriminatory practices.

Examples of homosexual discrimination complaints we have handled

- A man complained that a fellow member of a large community organisation made offensive comments about his sexuality, discouraged other members from participating in a group that he was running, and questioned his right to be a member of the organisation. The complaint was settled when organisation's representatives gave him reasons for his actions that were unrelated to his sexuality, agreed to improve their grievance procedures and gave him a statement of regret.
- A branch manager of a community organisation delivering health education programs complained that he was removed from direct involvement in a program because he was gay and male. The organisation's CEO said there were other reasons for the decision. The complaint was resolved when they agreed to provide the man with a written reference.
- A clerk complained that he was harassed by his supervisor and co-workers, for example by calling him 'gay boy' and 'chock topper'. When he complained about this, his work was subjected to increased scrutiny. The complaint was resolved when the employer gave him a written commitment of its support for anti-discrimination, harassment and victimisation, and agreed to provide training on discrimination for its employees.
- A gay man who worked at a recreational facility complained that from when he first started with the employer other members of staff referred to him in an offensive manner. When he complained about an offensive comment in a staff communication, he was subjected to an investigation and suspended from work. The complaint was settled when he agreed to accept a payment of \$6,000.

The Anti-Discrimination Board of NSW

Enquiries

Phone (02) 9268 5544
Toll free number 1800 670 812
(if you are calling from outside Sydney)
Email: adbcontact@justice.nsw.gov.au

Complaints

Phone (02) 9268 5544
Toll free number 1800 670 812
(if you are calling from outside Sydney)
Email: complaintsadb@justice.nsw.gov.au

Telephone interpreter service

Phone 13 14 50

Website

www.antidiscrimination.justice.nsw.gov.au

Parramatta

Level 7, 10 Valentine Avenue, Parramatta NSW 2150
PO Box W213, Parramatta Westfield NSW 2150
Phone (02) 9268 5555 Fax (02) 9268 5500

Wollongong

84 Crown Street, Wollongong NSW 2500
PO Box 67, Wollongong NSW 2520
Phone (02) 4267 6200 Fax (02) 4267 6261

Newcastle

Suite 5, Level 5, 400 Hunter Street,
Newcastle NSW 2300
PO Box 1077, Newcastle NSW 2300
Phone (02) 4903 5300 Fax (02) 4929 7952

For more detailed information on making a complaint and the complaint process refer to our website and select 'Making a complaint', or ask for our factsheet on *Complaining to the Anti-Discrimination Board*.