



Sex discrimination

What does the law say about sex discrimination?

Sex discrimination is against the law in NSW. This includes the following:

- **when you are treated unfairly or harassed because of your sex** – that is, because you're a woman or because you're a man;
- **when you are sexually harassed** – this includes unwanted sexual comments or abuse, unwanted sexual suggestions, offensive gestures and unwanted sexual contact;
- **where you are treated unfairly or harassed because you are pregnant or you are breastfeeding;**
- **where you are treated unfairly or harassed because of the sex, pregnancy or breastfeeding of your relatives, friends or associates.**

It is mostly women who experience sex discrimination, however sex discrimination against men does happen sometimes and it is also against the law.

Differing dress standards for men and women may be sex discrimination – for example, it could be against the law if women are allowed to wear earrings in a workplace but men are not, if the earrings do not affect their work in any way.

Dress rules do not have to be exactly the same in terms of individual garments, as dress norms are different for men and women. However, they should be of a similar standard – for example, if men are required to wear 'neat casual clothes' then women should be also.

Indirect discrimination

Indirect sex discrimination is also against the law. This occurs when there is a rule or requirement that disadvantages people of one sex more than people of the other sex – unless it can be shown that the rule or requirement is 'reasonable in all the circumstances'.

For example, it might be indirect sex discrimination to have a requirement that you must be 180 cm tall to do a particular job, if the work could be arranged so this was not necessary. This is because on average men are taller than women and so more men would be able to meet the height requirement than women.

When does this law apply?

Sex discrimination is against the law in the following situations:

- **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. Sexual harassment is **also against the law in independent (private) educational institutions**, but other types of sex discrimination are not;
- **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.

For more detailed information on pregnancy, carer's responsibilities and harassment refer to our website and select 'Anti-discrimination law', or ask for our factsheets on

- pregnancy and breastfeeding discrimination
- carer's responsibilities discrimination
- harassment and sexual harassment

Victimisation is also against the law

It is against the law for anyone to victimise you or treat you unfairly because:

- you have complained to your employer or another person about sex discrimination;
- you have complained to the Anti-Discrimination Board; or
- you have supported someone with a sex discrimination complaint, or acted as a witness in a sex discrimination case.

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

What can I do if one of these things happens to me?

First you need to decide if what has happened to you seems to be against the anti-discrimination law. If you are not sure after reading this factsheet, phone our Enquiry Service or refer to our website 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 to the Anti-Discrimination Board

Your complaint must be in writing and if possible you should sign it. 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 sex. 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 trade unions and representative community groups (for example an ethnic community association). 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 12 months before we receive the complaint. If you make a complaint about events that occurred more than 12 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 when you lodge a complaint?

The Board will send you a letter of acknowledgment within two weeks of receiving your complaint, and will assess your complaint to determine if it is covered under the Anti-Discrimination Act.

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 Administrative and Equal Opportunity Division of the NSW Civil and Administrative 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 sex discrimination complaints we have handled

- A woman who had acted as the manager at a club complained that she was removed from the position when the club directors decided to fill it permanently, as they wanted a man for the job. The complaint was settled when the club asked her to return to the position and compensated her for lost wages.
- A woman who worked at a plant nursery made a complaint of sex discrimination and sexual harassment after a male co-worker made a number of comments including 'you're butch, you can lift that up'. She said she was told by her manager that he was like that with everyone and there weren't enough grounds for a complaint of sexual harassment. The man apologised when asked by the employer, but the woman still felt intimidated by him. She asked the Board to explain to her employer that sexual harassment can be subject to interpretation. The man then wrote to her and acknowledged to her satisfaction that this could be the case. He also altered his behaviour in the workplace.
- Three men complained that they were refused entry to a bar and were told that the management did not want to admit any unaccompanied men. The complaint was settled when the manager of the bar offered each of them a written apology, a number of free meals and a party including food, drinks and entertainment for the men and their guests.
- A club member complained that she was refused access to the club's pool and snooker tables because they were for men only and 'women playing pool is a joke'. The complaint was settled when the club apologised and undertook to tell its staff and place notices around the club stating that all facilities and amenities must be fairly available to all members, whether male or female.

Examples of sex discrimination complaints we have handled

- A woman who worked for a mortgage broker complained that when her section was closed down while she was on maternity leave she was not given a chance to transfer to other positions as other staff were, and was dismissed. The woman did not experience any loss of wages as she found another job, but she said she had suffered distress because she lost her job and had to look for a new one while she had a new baby. The complaint was settled when the woman accepted a payment of \$4,000.
- A woman complained that she was told not to breastfeed her baby while visiting a government-run institution. When we contacted the relevant department, they said that this was contrary to their policy and they would tell the relevant staff member that he or she had been wrong. They also undertook to provide further training to ensure that staff would implement their policy correctly. The complaint was settled as the woman was satisfied with this response.
- A woman complained that a contractor working for her employer sexually harassed her by frequently invading her personal space, blocking her exit from confined spaces and behaving in a sleazy manner towards her and the other women working in the office. She said that when she complained about this she was told she should apologise to him, and she had no option but to resign. The complaint was settled when the woman accepted a payment of \$3,500.
- A woman was refused an interview for a driver's position with a minibuss company — they 'didn't think she'd fit in' because she was female. When the Board spoke with the company, they offered her an apology, disciplined the person responsible and stated that they were prepared to consider her immediately for either a driver's or a telephonist's position.

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*.