



Complaining to the Anti-Discrimination Board

Before you lodge a complaint

Is your complaint against the law?

What types of discrimination and harassment are against the law in NSW?

To most people, discrimination means any type of unfair treatment. However, the Anti-Discrimination Board can only deal with complaints of discrimination or harassment that are covered by the *Anti-Discrimination Act 1977 (NSW)*.

This means the unfair treatment must have happened because of your:

- sex (this includes pregnancy, breastfeeding and sexual harassment);
- race or ethno-religion;
- age (this includes compulsory retirement);
- marital or domestic status;
- homosexuality/lesbianism;
- disability (this includes HIV/AIDS);
- transgender status;
- carer's responsibilities; or
- the race, sex, pregnancy, age, marital or domestic status, disability, homosexuality, transgender status or carer's responsibilities of any of your relatives, friends, associates or work colleagues.

When does this law apply?

We can only help you if this treatment happened in one of five main areas of public life. The exception is discrimination because of carer's responsibilities, which is only against the law in employment. The areas are:

- **Employment** – when you apply for job, when you are at work and when you leave a job. This also covers bodies which issue licences to perform particular jobs, for example taxi licences or registration to practice as a nurse;

- **Goods and services** – 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.
- **State education** – when you apply to get into or study in any State educational institution, which includes any government school, college or university. Race discrimination and sexual harassment are also unlawful in private educational institutions, but the other types of discrimination are not;
- **Accommodation** – when you rent accommodation such as houses, units, flats, hotel or motel rooms, caravans or commercial premises.;
- **Registered clubs** – when you try to enter or join a registered club, or get services from one. A registered club is a club that sells alcohol or has gambling machines.

Vilification

We can also deal with complaints of racial, homosexual, transgender and HIV/AIDS vilification. Vilification is any public act that could incite or encourage hatred, serious contempt or severe ridicule.

Public acts could include remarks in the media or on the internet, graffiti, posters, verbal abuse, speeches, badges and clothing with slogans on them. The vilification law does not cover acts that are not public, for example abuse over a back fence that no-one else can hear.

Can you resolve the complaint yourself?

If possible, you should first try to talk to the person or organisation that treated you unfairly. Be as calm as you can. Tell them that you think this unfair treatment is against the law. If you want to, take someone with you.

Use whatever help you can. For example, if it is a work problem you could ask your union for help, or ask a supervisor or manager to speak to the person or people who treated you unfairly. The organisation involved may also have a grievance procedure that you can follow.

You can phone the Anti-Discrimination Board and get advice from one of our Enquiry Officers before speaking to the person or organisation. The officers can give you more information about whether your situation is covered under anti-discrimination law, and discuss options about how you can resolve it.

If your situation is not covered by anti-discrimination law, we may be able to give you the name of another organisation that can help you, or suggest other ways to deal with the problem.

Making a complaint to the Anti-Discrimination Board

If you don't want to talk to the person or organisation, or you do talk to them but it doesn't solve the problem, the next step is to complain to the Anti-Discrimination Board in writing.

How much will it cost me?

Nothing. The Board's complaint handling service is free. However, if you employ a lawyer, you will have to pay their fees.

How much time do I have to complain?

The Anti-Discrimination Act says that if the discrimination or harassment happened more than 12 months ago, the Board can refuse to investigate your complaint. However this is not automatic. If your complaint is about events which happened more than 12 months ago, please explain the delay when you lodge your complaint.

In the case of serious vilification, which may be referred to the Attorney General and prosecuted as a crime, you should lodge your complaint as soon as possible. This is because prosecution must commence within six months from the date when the vilification occurred.

Who can make a complaint?

Both individuals and groups can make complaints. We also accept complaints made on your behalf by organisations such as trade unions and representative community groups (for example an ethnic community association or a disability support 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 person who complains to us is called the **complainant**. The person you are complaining about is called the **respondent**.

Does the person I am complaining about have to know who I am?

Yes. The respondent has to know who you are and what you said in your complaint. This is so that they have a fair chance to respond to your complaint.

Who else will know about my complaint?

Apart from you and the respondent, your complaint is kept completely confidential and no-one else will know about it. This applies from the time you phone us right through the conciliation process (see page 5).

It is best that you don't talk about your complaint to anyone who does not need to know. We also ask the person or organisation you have complained about not to talk to anyone who does not need to know. This gives both sides a better chance of working things out.

Punishing you for complaining to the Board is also against the law

If you are punished, harassed or treated unfairly because you complained to the Anti-Discrimination Board, this is called victimisation.

The law says that you must not be victimised if you have complained about discrimination, harassment or vilification covered under the Anti-Discrimination Act. For example, you make a complaint of sexual harassment to your manager and then he or she starts to criticise your work.

This applies whether you have complained to your employer, to another person or to the Anti-Discrimination Board. It is also against the law to victimise people who have agreed to be witnesses for your complaint, or to victimise you if you have helped someone else with a complaint.

If anyone victimises you because you made a complaint or they think you might make one, you should immediately talk to an officer at the Board.

How to lodge a complaint

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. 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.

If this is not possible, you can speak your complaint and provide it as an audio tape, video tape, CD, sound file or video file, giving the same details that you would have put in a letter or on the complaint form. If you do this you must also send us a short covering letter that says:

'I [your name] wish to make a complaint of [insert ground and area, eg sex discrimination in employment] against [insert name of person/organisation] and the details are in the enclosed [insert type of recording]. [Your signature]'

If you are an Auslan speaker, you can submit a video of yourself making your complaint and we will have it translated.

Note that a copy of your complaint and any information you send to the Board will be sent to the person or organisation you are complaining about.

Writing a complaint letter

Below are some tips for writing a complaint letter. These may also be useful if you are using the complaint form.

A complaint letter needs to be addressed to the President of the Anti-Discrimination Board and signed by you.

You should give the following information:

- your name, address, email address and telephone, TTY and/or fax numbers; and
- the name, address, telephone and fax numbers of the people and/or organisation you are complaining about. If you complain about a particular person employed in a company or organisation, give us their position as well as their name, work address and phone number, if you can.

The following details should also be included:

1. Who was involved and if you can, their names, positions and work addresses

If the discrimination happened at work we need to know:

- your position or job ;
- the correct name and address of your employer (you can get this from your pay slip or pay office, or from the Australian Taxation Office);
- the name and position of your supervisor or manager;
- how long you have been employed there; and
- if there are six or more employees working for your employer.

2. What happened and what you did about it at the time

Include the name and position or job title of any person you reported the unfair treatment to, including your union if you are a member.

3. Where it happened

Give the actual location where the discrimination occurred, if this is different from the work address of the person you are complaining about.

4. When it happened

As closely as you can remember – the day, month, year of each time you were treated unfairly.

5. The kind of discrimination, harassment or vilification you think it is

Such as race, sex, age, marital or domestic status, homosexuality, disability, transgender, carers responsibilities discrimination or harassment, or racial, homosexual, transgender or HIV/AIDS vilification.

6. Why you think it is this kind of discrimination

Give information about why you think you have been discriminated against, including any evidence you have to support this.

For example:

- anyone else who saw or heard the discrimination and is willing to provide details. Ask them to give you a written statement of what they saw or heard;
- a photograph;
- a note you made at the time in your diary or elsewhere;

- a copy of any poster, notice, letter or anything else you feel is evidence of discrimination or harassment;
- a copy of anything that shows how someone else in a similar position to you was treated differently to the way that you were treated; or
- anything else that supports what you say, eg emails or letters.

7. If the complaint is urgent

The Board usually handles complaints in the order that they are received. If your complaint is urgent, for example you are about to lose your job or your accommodation, you should write on your complaint that it is urgent and tell us why. We will consider your situation and we may try to help you quickly.

8. How you would like the problem to be resolved

If possible, include what you would like done to sort out the complaint. This is called a 'settlement proposal'. This will help us to decide how to deal with your complaint.

You may ask for any reasonable solution to resolve the unfair treatment you received, such as:

- getting your job back;
- a change at work such as a transfer, promotion or training;
- getting whatever you were previously refused – for example, accommodation, a loan, admission to a course and so on;
- an apology;
- changes to policies and procedures to make sure the discrimination does not happen again to anyone else, for example introducing an equal opportunity policy in the workplace;
- education programs in the workplace or organisation involved, so that people know what discrimination is, how to prevent it and what to do if it occurs;
- a compensation payment for any money you have lost (such as wages), or for damages or hurt feelings;
- a donation to a charity of your choice; or
- anything else that might need to be done to make up for the unfair treatment.

Because the Board is impartial in the complaint process, we can't help you decide on a settlement proposal. If you are unable to do this, you should get independent legal advice.

What happens when you lodge a complaint

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

How long will it take to resolve my complaint?

Resolving complaints can take several months and complex cases may take longer. However, many complaints can be sorted out more quickly. We aim to deal with complaints within six months from the time you lodge your complaint.

Your complaint may be declined

If your complaint is not covered by the Anti-Discrimination Act, or there is not enough information to show that you have been discriminated against, we will send you a letter to tell you that we cannot help with your complaint and explain why. Where possible, we will tell you who else might be able to help you.

If your complaint is covered by the Anti-Discrimination Act

If your complaint does show that you may have been discriminated against under the law, your complaint handler will contact you for any other information we need. We will explain what we can and can't do, and the steps involved in our complaint resolution process.

After we have contacted you, the Board will send a copy of your complaint and any paperwork you have provided to the person or people you are complaining about (the respondent). This is in fairness to the respondent, and so that the Board can get as much information about your complaint as possible.

Remember, complaints to the Anti-Discrimination Board are confidential and it is also against the law to treat you badly because you have made a complaint.

The respondent's reply

We will give the respondent a deadline to respond to us in writing about your complaint. You will then receive a copy of the respondent's letter to us for your comment. Often complaints are resolved at this point.

Conciliation conferences

If your complaint is not resolved initially, the next step is a conciliation conference. This is a free service provided by the Board.

A conciliation conference is a meeting where you and the respondent meet to talk about the complaint and ways to sort it out, usually with the assistance of two Conciliation Officers from the Board. The complainant and respondent(s) can meet directly, or their representatives can meet if the President of the Board allows this.

Do I have to attend?

It is in the interest of both sides to attend the conciliation conference so the matter can be sorted out as quickly and cheaply as possible, instead of having to go to the NSW Civil and Administrative Tribunal.

In some cases, the President of the Board may tell people that they must attend a conciliation conference. If someone refuses to attend after they have been told to do so, they can be fined by the courts.

What are the aims of a conciliation conference?

The aims of a conciliation conference are:

- to allow both sides to discuss the alleged discrimination and the issues around it;
- to try to resolve the complaint;
- to educate both sides about their rights and responsibilities under anti-discrimination law; and
- to advise respondents on how to prevent discrimination in the future.

Who should come to a conciliation conference?

Complainants should attend the conference themselves. You can ask permission to bring along a support person such as a friend or work colleague – you should talk to your complaint handler about this.

Can I bring a lawyer to the conciliation conference?

You must get permission from the President of the Board if you want to bring a lawyer to the conciliation conference. You should discuss this with your complaint handler when you are notified about the conference.

If you aren't allowed to bring a lawyer, you should get any advice you need about settling the complaint before you attend the conference. This is so that you are ready to discuss a solution on the day. You can still negotiate through your lawyer outside the conference itself.

What is the complaint handler's role at the conciliation conference?

The complaint handler is not allowed to take sides in the conciliation conference. Their role is to:

- help everyone to remain calm and polite;
- ensure that each side can put forward their point of view without being interrupted;
- make sure the conference deals with the main issues and not things that are irrelevant; and
- assist the complainant and respondent(s) to reach a satisfactory resolution of the complaint.

The complaint handler may meet separately with either side at any time during the conference. You can also ask for a break at any time if you need to gather your thoughts and consider your position.

Resolving your complaint

You should bring your settlement proposal to the conciliation conference – see 'How you would like the problem to be resolved' on page 4 for more information. Generally the goal is to resolve the complaint at the conference, but if necessary both sides can have a period of time afterwards to consider the proposal.

The complaint handler cannot tell either side what to settle on. If you don't know what would be a fair or reasonable resolution, we can give you information on how to get advice on this.

Usually when the complaint is settled there will be a deed of release or a conciliation agreement. These documents set out the details of what the parties have agreed to. A deed of release is generally provided by the respondent and is legally binding. A conciliation agreement is not legally binding and the Board cannot enforce it, but you can register the agreement with the NSW Civil and Administrative Tribunal and have it enforced.

What happens if the complaint isn't resolved during the conciliation conference?

- If appropriate, both parties can continue negotiations after the conciliation conference;
- you can withdraw the complaint;
- you can ask the President to refer the complaint to the Administrative and Equal Opportunity Division of the NSW Civil and Administrative Tribunal as being unable to be conciliated; or
- the President may decline the complaint as lacking in substance because there doesn't seem to be enough evidence. If this happens, then you can still take the complaint to the NSW Civil and Administrative Tribunal.

Withdrawing a complaint

You can ask the Board to stop dealing with your complaint at any time during the investigation or conciliation process. No-one else can withdraw a complaint except the complainant.

To withdraw your complaint, you need to write to the person handling your complaint and tell them that you want to withdraw it. Your file will then be closed. We won't do anything more with it and we will not re-open it later if you change your mind.

The NSW Civil and Administrative Tribunal

If you and the respondent cannot agree on a way to resolve the complaint, you can ask the President to send it to the Administrative and Equal Opportunity Division of the NSW Civil and Administrative Tribunal for a legal decision.

The Tribunal is like a court and its hearings are public. It consists of three people who are experienced in anti-discrimination law. The Tribunal listens to all the arguments and evidence from both sides.

The Tribunal is the only place where a legally binding decision can be made about whether or not discrimination occurred.

Outcomes of the Tribunal

If the Tribunal finds that the anti-discrimination law has been broken, it will also decide what should be done about it. It can make an order that the person who has been discriminated against should:

- receive a compensation payment;
- get the thing they were denied; and/or
- receive an apology (private or public).

The Tribunal can also make an order that the respondent must do whatever is needed to make sure that the unfair treatment does not happen again. For example, they may be ordered to provide training for their staff on their responsibilities under anti-discrimination law.

Because the Tribunal is like a court, people directly involved in the complaint usually need solicitors. Each side normally pays its own legal costs. Generally the Tribunal is open to the public and the complaint will no longer be confidential. However, the Tribunal may keep names and address confidential in special cases.

What if I'm unhappy with the way the complaint is being handled?

If you are unhappy at any time during the process of resolving your complaint, speak to your complaint handler about your concerns. If it happens during a conciliation conference, ask for a break so you can speak to the complaint handler privately.

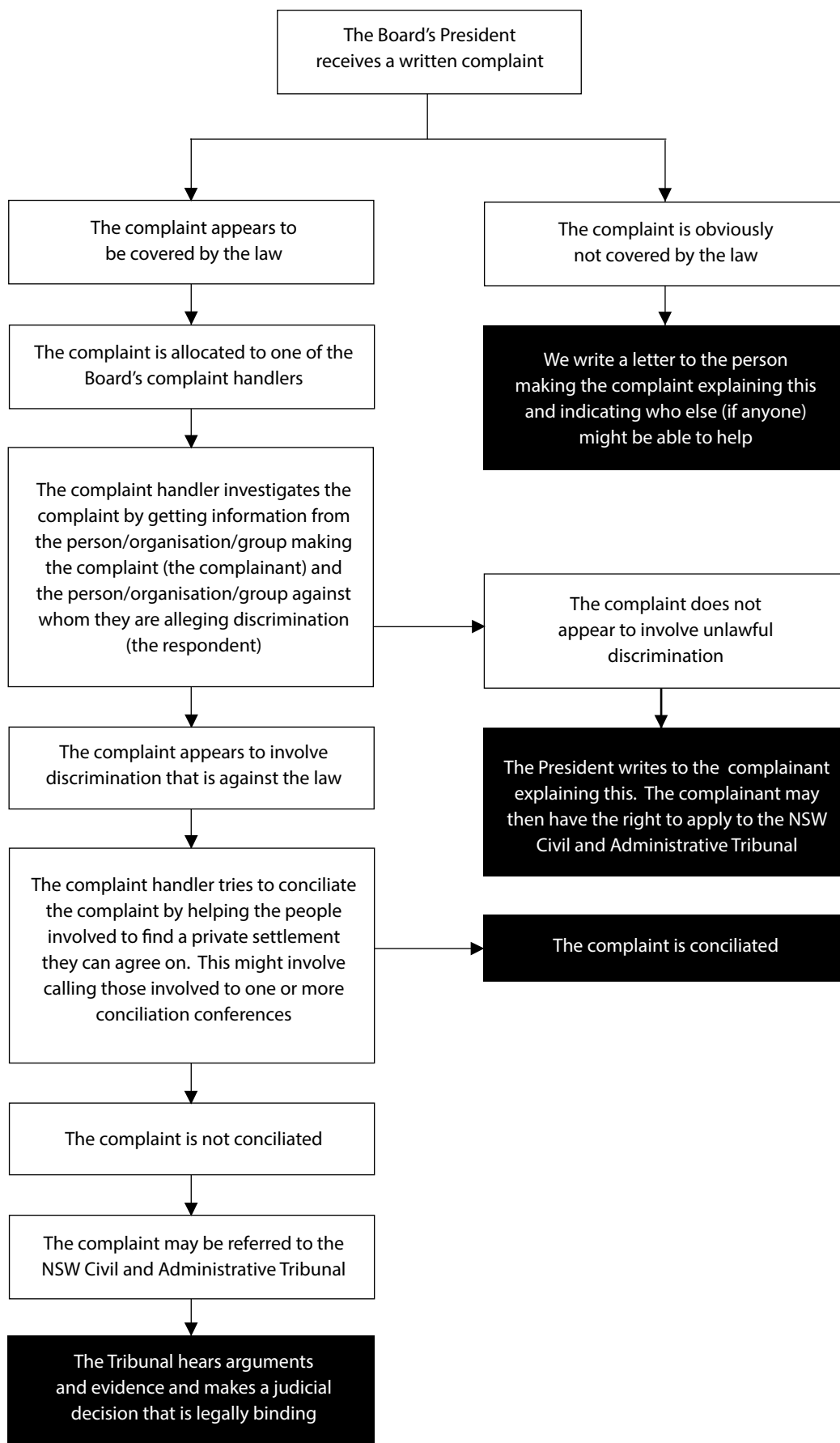
Tell the complaint handler exactly what you are feeling and why. It may be something that can be cleared up straight away.

If you feel you cannot continue with the complaint handler after discussing the problem with them, you should tell them this and say what you think the next step should be. You could also speak to the Manager of the Enquiries and Conciliation Branch, or make a written complaint to the President of the Anti-Discrimination Board.

You also have the right to complain to the NSW Ombudsman's Office about the way your complaint was handled. But you cannot complain to the Ombudsman about the result of conciliation or about decisions of the NSW Civil and Administrative Tribunal.

If your complaint goes to the Tribunal and you are not satisfied with the decisions they make, you may be able to appeal to a higher court. Before you do this, you should get legal advice about whether it is likely to be worthwhile.

The complaint process



Examples of complaints we have handled

- An accountant went on maternity leave and before she was due to return to work she proposed to her employer that she come back three days per week. The employer rejected this proposal and a second proposal that she work four days and be available by phone on the other day.

The woman made a complaint of carers' responsibilities discrimination in employment. At the conciliation conference the employer said the woman was a valuable employee but they were not prepared to make the position part time. To settle the complaint, the employer agreed to pay the woman \$12,500 and give her a good reference.

- The complainant was a below the knee amputee who wears a prosthesis. She said she was refused further drinks in her local club and was told that she seemed to be drunk. When she explained that she had only one leg and was unsteady on her feet, a staff member laughed at her.

The woman made a complaint of disability discrimination in registered clubs. The complaint was resolved by the club agreeing to provide training for staff on discrimination issues.

- The complainant worked for a transport provider and was one of only two women working in her division. She said that she was subjected to sexual harassment by the men in the area, including sexual references and comments about her body.

After an internal investigation at the company did not produce any results, the woman made a complaint of victimisation to the Board (the original incidents of harassment were by then out of time) and went on sick leave. She initially wanted compensation, but decided that it was more important to get her job back. The company agreed to retrain her to work in another division as it would have been difficult for her to return to her original job.

The Anti-Discrimination Board of NSW

Enquiries

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

Telephone interpreter service

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antidiscrimination.justice.nsw.gov.au

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