Guidelines
for advertisers
These guidelines have been produced by the Anti-Discrimination Board of NSW. They provide information on how advertisers can meet their obligations under anti-discrimination law.

The guidelines explain what is covered by anti-discrimination law in NSW, how to follow anti-discrimination law, and how the Anti-Discrimination Board investigates complaints.

By following these guidelines, advertisers can ensure that they avoid discrimination. Discrimination-free advertising is fairer for everyone, ensures that the widest possible audience is reached and also avoids potential legal cases which may be costly and time-consuming.
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The Anti-Discrimination Board administers the Anti-Discrimination Act 1977 (NSW). The Anti-Discrimination Act ensures that as many people as possible are treated fairly in a number of areas of public life, including advertising.

Section 51 of the Anti-Discrimination Act says that it is against the law for anyone to publish, broadcast, screen or publicly display any advertisement, anywhere in NSW, that indicates an intention to break the anti-discrimination law.

**What constitutes an advertisement?**
An advertisement includes any type of public announcement, that is, anything that gives information or conveys a message to the public, such as:
- notices;
- signs;
- billboards;
- labels;
- circulars;
- display advertisements; and
- classified ads.

The advertisement can be handwritten, printed, screened, broadcast or posted on the internet.

**Discrimination that is against the law**
Under the Anti-Discrimination Act it is against the law to discriminate against someone, to treat them unfairly compared with someone else, or to harass them because of their:
- sex, including pregnancy and breastfeeding;
- race, colour, descent, nationality, ethnic or ethno-religious background;
- age;
- marital status;
- disability;
- homosexuality (male or female);
- transgender status; and
- carer’s responsibilities.

Apart from carer’s responsibilities, these types of discrimination are unlawful if they occur in the following areas of public life:
- employment;
- rental accommodation;
- the provision of goods or services;
- membership of registered clubs;
- state education.

Carer’s responsibilities discrimination is only unlawful in employment.

This means that any advertising that relates to the areas of public life listed above, and treats someone unfairly because of their sex, pregnancy, race and so on, could be against the law.

**Vilification**
It is also against the law to commit any public act that could incite, encourage, urge or stir up others to hate, be seriously contemptuous of, or severely ridicule someone or a group of people, because of:
- their race, including colour, ethnic or ethno-religious background, descent or nationality;
- their homosexuality (male or female, actual or presumed);
- their HIV/AIDS status (actual or presumed); or
- their transgender status (actual or presumed).

Under the Anti-Discrimination Act, these types of public acts are known as racial vilification, homosexual vilification, HIV/AIDS vilification and transgender vilification.

Vilification is unlawful when:
- publishing an advertisement;
- broadcasting an advertisement;
- screening an advertisement;
- publicly displaying an advertisement; or
- knowingly distributing an advertisement.
Rules and exceptions

Advertisements for employment

In general, job advertisements must not state or imply that the employer wants to employ:

- one sex rather than the other;
- people of a particular race or races only;
- people of particular ages;
- people of one marital status rather than another;
- people who do not have a disability;
- people who are not homosexual;
- people who are not transgender; or
- people who do not have carers’ responsibilities.

In addition, job titles shouldn’t imply that an employer is seeking one sex over the other. For example, using words that indicate a particular sex, such as ‘storeman’, instead of using a more inclusive word such as ‘storeperson’, could be sex discrimination.

Also, the words used to describe the requirements or characteristics of a position shouldn’t be discriminatory. For example, asking for a mature applicant or for someone to join a “young team” could be age discrimination, and asking for applicants who are above a certain height could be discrimination against women or people from racial groups who are on average shorter than others.

However, there are exceptions to these rules in certain situations. These include:

- employment in a private home, for example, a housekeeper, babysitter, childminder or cleaner;
- double jobs for married couples, for example, houseparents in a summer camp;
- jobs for people aged under 21;
- jobs where a person’s sex, race, or age is an essential and relevant part of the job. Examples where this might be the case include:
  - where authenticity is required, such as in modelling or for a theatrical performance;
  - where privacy is involved, such as in fitting clothes, searching people or cleaning single-sex toilets – in these cases it would not be against the law to advertise for a person of the relevant sex;
- where the job is to promote the welfare of a particular sex, age group or ethnic group, and the best way of doing this is to have someone of the same sex, age or ethnic background. For example, a woman to work in a women’s refuge, an Aboriginal community worker to work in an Aboriginal welfare organisation, or a young person to work as a youth worker;
- in restaurants where a particular type of ethnic or national food is served, it may not be against the law to advertise for someone of that ethnic background for reasons of authenticity.

In all these cases it is preferable to include a sentence in the advertisement explaining that the employer believes that the job is covered by an exception under the Anti-Discrimination Act.

Exemptions

It is also possible to advertise for a person of a specific sex, race, age, marital status, homosexuality, disability, transgender or carer’s responsibilities in the case of a job established to help specific groups who have been disadvantaged or discriminated against in employment in the past – for example, Aboriginal traineeship schemes or apprenticeships for women in traditionally male trades.

In these cases it is generally necessary to apply to the Anti-Discrimination Board for an exemption to the Anti-Discrimination Act. The employer should then state in the advertisement that they are covered by an exemption under the Anti-Discrimination Act.

For more information about exceptions and exemptions see the Board’s Exemption Guidelines.
Advertisements for accommodation

In general, a person or organisation advertising domestic or commercial accommodation must not discriminate. This includes advertising for:

- self-contained rental accommodation;
- offices;
- motels;
- hotels;
- caravan parks; or
- holiday accommodation.

The accommodation provider must not state or imply in their advertisement that they want, or will give a better deal to:

- one sex rather than the other;
- women who are not pregnant;
- people of a particular race or races only;
- people of particular ages;
- people without children or only with children above or below a certain age;
- people of one marital status rather than another;
- people who do not have a disability;
- people who are not homosexual; or
- people who are not transgender.

The main exceptions to these rules are as follows:

- share accommodation in someone’s private household – if the tenant has to share amenities with the person advertising the shared accommodation, and the accommodation is for no more than six people, then it is not unlawful to discriminate because of someone’s sex, pregnancy, race and so on;
- accommodation that is specially designed to meet the needs of a specific age group, for example, the elderly or young people, is not against the law.

Advertisements for goods and services

In general a person or organisation must not discriminate when advertising goods or services. This includes:

- shops and department stores;
- banks and the financial industry;
- insurance and superannuation;
- travel agents;
- tradespeople;
- lawyers;
- doctors and hospitals;
- pubs and entertainment places;
- local councils and government departments;
- transport authorities.

In general, advertisers of goods or services must not state or imply in their advertisement that their product, service, or any special or better deal, is for:

- one sex rather than the other;
- women who are not pregnant – unless there is a genuine safety concern for pregnant women;
- people of a particular race or races only;
- people of particular ages;
- people of one marital status rather than another;
- people who do not have a disability;
- people who are not homosexual; or
- people who are not transgender.

The main exceptions to these rules are as follows:

- facilities or services to meet the special needs of a particular race or age group can generally be advertised as being for that particular race or age group. Also, concessions can be offered to particular age groups, for example, children or seniors;
- holiday tours can be offered to specific age groups;
- legal age limits such as for drinking, certain social security benefits, film ratings, buying cigarettes.
and alcohol, parental consent for tattoos, needing to be accompanied by an adult for safety’s sake and so on override the age discrimination laws. So people advertising these sorts of products or services can legally address or exclude the relevant age groups;

- insurance and superannuation providers can generally discriminate on the basis of age, sex, marital status, or disability for insurance and superannuation, and transgender status for superannuation – but only if there is good statistical or actuarial evidence to support doing so, or if there is another law that says they must discriminate;
- credit providers can discriminate on the basis of age – but only if there is good statistical or actuarial evidence to support them doing so, or if there is another law that says they must discriminate.

Advertisements for registered club membership
Registered clubs include any clubs that sell alcohol or have gambling machines. For example:

- 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 the Anti-Discrimination Act.

Note that if the registered club is advertising goods, services, facilities or entertainment, as opposed to membership, then the legislation relating to goods or services will apply.

In general, a club advertising for members must not state or imply in their advertisement that they want:

- one sex rather than the other;
- women who are not pregnant;
- people of a particular race or races only;
- people of particular ages;
- people of one marital status rather than another;
- people who do not have a disability;
- people who are not homosexual; or
- people who are not transgender.

The main exceptions for advertising for registered clubs are:

- clubs operating as single sex clubs can exclude people of the opposite sex from membership;
- clubs set up for the purpose of benefiting a single ethnic group or nationality can exclude people of other ethnic groups or nationalities from membership;
- clubs can provide benefits to a particular age group if their main purpose is to benefit that age group – for example youth clubs or senior citizens clubs;
- clubs can generally exclude people aged under 18 from membership, however, they can give ‘junior membership’ to people aged under 18;
- clubs can have different categories of membership for different age groups and provide benefits based on age.

Advertisements for state education
In general, advertisements for any type of government education should not discriminate. This includes:

- state schools;
- colleges;
- TAFEs; and
- universities.

State educational authorities must not state or imply that the education, or any educational benefits or special deals they offer, are for:

- one sex rather than the other;
- women who are not pregnant;
- people of a particular race or races only;
Avoiding discrimination

Advertisers must make sure that the advertisements they create do not breach NSW anti-discrimination law and media of all kinds must make sure that the advertisements they accept do not breach NSW anti-discrimination law either. The steps to achieve this are as follows:

1. Understand what the law says

Individuals and organisations need to make sure that any members of staff who are responsible for creating or accepting advertisements for publishing, broadcasting, screening or displaying understand their responsibilities and liabilities under anti-discrimination law as explained in these guidelines.

2. Check advertisements for possible vilification

Check advertisements for any possible racial, homosexual HIV/AIDS, or transgender vilification as explained in these guidelines.

If it seems that an advertisement may vilify someone or a group of people, check the advertisement with your organisation’s management, legal officers or lawyers, or with the Anti-Discrimination Board for more information. The Board won’t be able to say precisely what is or isn’t vilification, as this can only be decided by the NSW Civil and Administrative Tribunal and courts.

3. Check whether the advertisement shows any intention to discriminate

When a person or organisation wants to advertise employment, rental accommodation, goods or services, registered clubs, or state education, they should check that the advertisement does not contain anything that indicates an intention to discriminate against someone because of their:

- sex;
- pregnancy;
- race;
- age;
- marital status;
- disability;
- people of particular ages;
- people of one marital status rather than another;
- people who do not have a disability;
- people who are not homosexual; or
- people who are not transgender.

The main exceptions for advertising state education are:

- single sex schools, universities and colleges;
- scholarships established to benefit one particular group;
- different facilities, benefits or concessions for different age groups;
- entry ages can be fixed at a particular age, but leaving ages cannot.

The Anti-Discrimination Act only applies to private and religious educational authorities in relation to race discrimination and sexual harassment.
● homosexuality;
● transgender; or
● carers’ responsibilities (employment only).

The person or organisations publishing or broadcasting the advertisement should also check that it does not discriminate against someone for the above reasons.

4. If the advertisement seems to show an intention to discriminate, check whether there is an exception or exemption to cover it

If the advertisement appears to show an intention to discriminate, check these guidelines or contact the Board to find out if the advertisement is covered by an exception or exemption under the Anti-Discrimination Act.

If there does not appear to be an exception or exemption covering the particular situation, check the advertisement with your organisation’s management, legal officers or lawyers, or with the Anti-Discrimination Board for more information.

5. Print a standard reminder or warning in the advertisements section

If an advertiser is part of the print media, it may also be a good idea to run a standard box in the classified advertisements or job advertisement pages reminding or warning people about the anti-discrimination law.

It could say something like this:

**IMPORTANT NOTICE ABOUT DISCRIMINATORY ADVERTISING**

The NSW Anti-Discrimination Act 1977 generally makes it unlawful for an advertiser to show any intention to discriminate on the basis of sex, pregnancy, race, age, marital status, disability, homosexuality, HIV/AIDS status, transgender status or carers’ responsibilities. It is also against the law for advertisements to vilify people because of their race, homosexuality, HIV/AIDS status or transgender status.

As we could be legally liable if we print an unlawful advertisement, this newspaper will not accept advertisements that appear to break the law. For more information about anti-discrimination law contact the Anti-Discrimination Board of NSW, PO Box W213, Parramatta Westfield NSW 2150, ph (02) 9268 5544 or 1800 670 812, or refer to their website at www.antidiscrimination.justice.nsw.gov.au.

6. Explain the legislation about advertising in any material you give to potential advertisers

If you issue printed instructions, application forms or other material to potential advertisers, it might also be a good idea to include something similar to the above warning in that material.

**Legal responsibility**

The person or organisation that is offering the product, job, service and so on that is being advertised will be legally liable if the anti-discrimination law is broken. However the person or organisation that published or broadcast the advertisement may also be held legally liable, particularly in relation to vilification. This includes media organisations, publishers and other places where advertisements are displayed, such as websites, newsagents or local cafes and shops that display advertisements in their windows or on their noticeboards.

In the case of advertisements that indicate an intention to discriminate unlawfully, the person publishing the advertisement won’t be legally liable if they can show that on reasonable grounds they did not think the advertisement showed such an intention.

In the case of advertisements that appear to vilify, a person communicating such an advertisement won’t be legally liable if they can show that they publicly distributed the advertisement without knowing that the advertisement was vilifying.
If an advertisement breaks the law

Advertisements that indicate an intention to discriminate

Anyone who thinks that an advertisement indicates an intention to unlawfully discriminates against them because of their sex, pregnancy, race, marital status, homosexuality, disability, age, transgender status or carers’ responsibilities can lodge a complaint with the Anti-Discrimination Board against the person or organisation offering the job, product, service etc being advertised.

If this happens, the person or organisation responsible for publishing or broadcasting the advertisement would not be involved in the complaint. Only the person or organisation that offered the job, product, service and so on that was advertised would be involved in the complaint.

However, anyone, whether or not they are directly affected by the advertisement, can take a case against an advertiser or placement agency which they believe to have breached the Anti-Discrimination Act through the local courts. If the offence is proved, the court can fine the advertiser.

Advertisements that vilify

Anyone who thinks that an advertisement vilifies them or others because of their race, homosexuality, HIV/AIDS status or transgender status can complain to the Board. Complaints of vilification can only be made by a person belonging to the group that is alleged to have been vilified.

If the advertisement appears to vilify others, and it includes threats of violence towards people or their property, the Board may refer the complaint to the Attorney General. The Director of Public Prosecutions will advise the Attorney General whether to prosecute the matter as a crime.

The Board’s investigation process

If someone (known as the complainant) complains to the Board about discrimination that appears to be covered under the Anti-Discrimination Act, we will investigate the complaint. The Board is impartial and does not take sides in this process.

The first stage of the investigation is to write to the person or organisation who placed the advertisement, and the person or organisation that published or broadcast the advertisement in the case of vilification complaints. The Board will then try to resolve the complaint by helping the complainant and the respondent to reach a settlement in an informal meeting called a conciliation conference. This process is confidential and free of charge.

There are many different types of settlements depending on the circumstances. For example, the settlement could involve a published apology, a promise that it won’t happen again, a payment of financial compensation, an agreement to run an education program with the respondent to stop the same thing occurring again, and so on.

The vast majority of complaints are conciliated. If a particular complaint isn’t conciliated, the person or organisation that made the complaint can go to the NSW Civil and Administrative Tribunal. The Tribunal is a court that makes a legal judgment and can award compensation of up to $100,000 to be paid by the organisation that broke the law.
The Anti–Discrimination Board of NSW
(open weekdays 9am-1pm and 2pm - 4pm)

www.antidiscrimination.justice.nsw.gov.au

Email
Enquiries: adbcontact@justice.nsw.gov.au
Lodging complaints: complaintsadb@justice.nsw.gov.au

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