

The Shopfront

YOUTH LEGAL CENTRE

Discrimination

1 What is discrimination?

Discrimination is treating a person or group of people less favourably than one would treat others in the same circumstances because of their membership of a particular group. In NSW there are many laws (**both state and federal**) that make many types of discrimination illegal. These laws include:

- **Anti-Discrimination Act 1977 (NSW)**
- **Racial Discrimination Act 1975 (Commonwealth)**
- **Sex Discrimination Act 1984 (Commonwealth)**
- **Disability Discrimination Act 1992 (Commonwealth)**
- **Human Rights and Equal Opportunity Commission Act 1986 (Commonwealth)**

Both direct and indirect discrimination are against the law. **Direct discrimination** is when treatment is obviously unfair such as refusing to hire someone because they are a woman. **Indirect Discrimination** may be when a requirement is the same for everyone but has an effect that is unequal and unreasonable, such as police height restrictions that have the effect of excluding certain ethnic groups or women.

The **Anti-Discrimination Board of NSW (ADB)** and the Federal **Human Rights and Equal Opportunity Commission (HREOC)** administer anti-discrimination laws (state and federal) by dealing with complaints, trying to prevent discrimination occurring through education and advising the government on law reform.

2 Types of Discrimination

There are many different types of discrimination that are against the law:

2.1 Sex Discrimination

Where someone is treated unfairly or harassed because they are a woman or man. Discrimination against a woman because she is pregnant can be sex discrimination. Sexual harassment is a form of sex discrimination.

2.2 Race Discrimination

When someone is treated unfairly or harassed because of their race, colour, ethnic background, descent or nationality.

2.3 Age Discrimination

When someone is treated unfairly or harassed because of their age, for example because they are too young.

2.4 Marital Status Discrimination

When someone is treated unfairly or harassed because of their particular marital status for example because they are single, married or in a de facto relationship.

2.5 Homosexual or Lesbian Discrimination

When someone is treated unfairly because they are gay or lesbian or someone else thinks they are gay or lesbian.

2.6 Disability Discrimination

When someone is treated unfairly or harassed because they have a disability or someone else thinks they have a disability. Disability includes physical, intellectual and psychiatric disabilities, learning and emotional disorders and any organism capable of causing disease eg HIV/AIDS. There has recently been some controversy about whether drug dependency is a disability. The *Anti-Discrimination Act* has been amended to make it clear that it is not unlawful to discriminate against people who are addicted to prohibited drugs. However, it is still unlawful to discriminate against someone with HIV, Hepatitis C, etc, regardless of whether they acquired it through drug use. It is also unlawful to discriminate against someone on the grounds that they used to be a “drug addict” or are dependent on lawfully-prescribed drugs such as methadone.

2.7 Transgender Discrimination

When someone is treated unfairly or harassed because they are transgender or others think they are transgender (if they live or seek to live as a member of the opposite gender to their birth gender).

2.8 Discrimination because of a person’s responsibilities as a carer

When someone is treated unfairly (in employment only) because of their responsibilities to care for or support a child or adult who is wholly or substantially dependent or in need of care.

2.9 Discrimination because of who someone is related to or associated with

When someone is treated unfairly or harassed because of any of the above characteristics of one of their relatives, friends or work colleagues.

3 Where can discrimination occur?

The above types of discrimination are only against the law if they occur in the following places or circumstances:

3.1 Employment

It is against the law to discriminate against someone when they are applying for a job, employed or when they are leaving a job.

3.2 Provision of goods or services

It is against the law to treat a person unfairly in the provision of goods and services. This includes buying goods and getting service from banks, lawyers, hospitals, doctors, shops, government departments, local council, pubs, entertainment places and police. Examples of this discrimination may be in the form of refusing to provide goods or the particular way the service is provided.

3.3 Education

It is against the law to treat a person unfairly in anything connected with public schools, colleges and universities, whether it be in the enrolment process or while actually in the institution.

3.4 Accommodation

It is against the law for the owner of a property or real estate agent to treat someone unfairly (on the basis of race, sex or disability) in relation to renting property.

3.5 Registered Clubs

It is against the law for a person to be treated unfairly by a registered club, such as a sporting club, in relation to becoming a member or the services they get from it.

4 Vilification

Vilification is any public act that could encourage hatred, serious contempt or severe ridicule because of someone's race, homosexuality, HIV/AIDS status or transgender identity. Generally it must have been possible for someone other than those directly involved in the act to have seen, heard or read it in order for it to be public.

Racial, homosexual, transgender and HIV/AIDS vilification are all against the law in NSW. Racial vilification is also against federal laws. An example of racial vilification includes racist speeches made in public as long as they are not made reasonably and in good faith for academic, artistic, scientific or research purposes.

5 When is discrimination legal?

Although it is generally against the law to target jobs or services towards people of one particular race, sex, and so on, some bodies and activities are exempt from anti-discrimination laws. The following are a few examples.

5.1 Affirmative action

Generally, employers must treat their employees fairly and equally, and must not discriminate against anyone. However there are some situations where employers are allowed to discriminate in favour of some groups. Affirmative action is discrimination in favour of a particular group which was previously discriminated against or disadvantaged. A female-only apprenticeship scheme set up to encourage more women to take up a particular type of trade is an example of affirmative action.

5.2 Exemptions

There are exemptions listed in the law where targeting jobs or services towards a particular group of people may be lawful. Some exceptions are clearly commonsense. For example, advertising for a woman to clean the female toilets, if the cleaning is to be done when the toilets are in use. However, other exceptions are not so obvious. For example, advertising for a person from a particular racial background in order to provide authenticity for a dramatic performance, modelling, or working in an ethnic specific restaurant. In such situations, there is no need to apply for an exemption to discriminate. However, in many other circumstances discrimination is unlawful unless you apply for and are granted an exemption by the New South Wales Attorney-General. Please contact the **Anti-Discrimination Board (ADB)** to apply for an exemption under section 126 or section 126A of the *Anti-Discrimination Act*. If you discriminate without an exemption you will be breaking the law.

6 Making a Complaint

It is a good idea for a person who believes they have been discriminated against to try talking to the person or organisation they believe to be discriminating against them first.

If that is unsuccessful a complaint can be made to the **Human Rights and Equal Opportunity Commission (HREOC)** or **The Anti-Discrimination Board (ADB)**. There are two types of laws that cover discrimination, namely federal and state laws. If the complaint is covered by both laws the person must choose which law they want to lodge the complaint under. It is best to seek legal advice or ring the contact numbers below to establish which laws to lodge the complaint under.

6.1 The Anti-Discrimination Board

The Anti-Discrimination Board (ADB) is a NSW government body and handles complaints under NSW law (Anti Discrimination Act 1977). They only handle complaints made **within 6 months** of the act of the discrimination (unless there is good reason for the delay). Complaints can be made by filling out a complaint form which can be accessed on the web site or by writing a letter to the President of the Anti-

Discrimination Board. The complaint is investigated by the board and if the complaint is covered by anti-discrimination laws the board will try to conciliate it. This means that they will help the complainant and the organisation being complained about reach a private settlement with results such as an apology or financial compensation. If conciliation is not successful the complaint may go to the Equal Opportunity Tribunal, which is a court that hears discrimination matters and makes decisions that must be followed.

Free Call 1800 670 812 (outside Sydney)

Ph: 9318 5400

Level 4, 181 Lawson St, Redfern 2016

<http://www.lawlink.nsw.gov.au/adb>

6.2 Human Rights and Equal Opportunity Commission

The Human Rights and Equal Opportunity Commission (HREOC) is a Federal agency and handles complaints under Federal laws such as complaints about race, sex or disability discrimination. Complaints should be written to the Commission **within 12 months** of the last occasion of discrimination. There is a help page providing advice on how to lodge complaints at **www.hreoc.gov.au/complaint_help/**. When a complaint is received the Commission will decide what is the best course of action. If there is enough evidence to suggest that there has been discrimination the Commission will try and assist the person and the organisation reach an agreement through conciliation. The complaint will take approximately 8 months to finalise. If conciliation is unsuccessful where there is a complaint about human rights violations, the Commission may report the matter to the Attorney-General who must present the report to parliament.

If conciliation is unsuccessful or the Commission believes the complaint cannot be resolved by conciliation, the Commission may terminate the complaint. If a complaint of race, sex or disability discrimination is terminated, the case can be taken to the Federal Court of Australia within 28 days of the notice of termination.

Complaints hotline: 1300 656 419

Ph: 9284 9600

Piccadilly Tower, Level 8, 133 Castlereagh Street, Sydney NSW 2000

<http://www.hreoc.gov.au>

Shopfront Youth Legal Centre

April 2002

The Shopfront Youth Legal Centre is a service provided by Freehills, in association with the Sydney City Mission and the Salvation Army.

This document was last updated on April 2002 and to the best of our knowledge is an accurate summary of the law in New South Wales at that time.

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