



Disability discrimination

Is disability discrimination against the law?

Yes. It is generally against the law to treat you unfairly or harass you, because of:

- any disability you have now;
- any disability that someone thinks you have now;
- any disability you had in the past, or that someone thinks you had in the past;
- any disability that someone knows you will get in the future, or thinks you might get in the future;
- any actual past, existing or future disability of any of your relatives, work colleagues, or people you associate with; and
- any past, existing or future disability that someone thinks that any of your relatives, work colleagues or people you associate with had in the past, has now, or will have in the future.

The term disability is very broad indeed. Disability includes:

- physical disability;
- physical illness or disease that makes, or has made, any part of the body or brain work differently;
- mental or psychiatric disability — including any behavioural disorder;
- intellectual disability;
- learning difficulty;
- disfigurement or different formation of any part of the body; and
- any organism in the body that could cause disease or illness — for example, hepatitis with no symptoms or HIV with no symptoms.

For more detailed information on disease and illness

refer to our website at www.lawlink.nsw.gov.au/adb or ask for our factsheet on *Infectious diseases discrimination*, which includes HIV/AIDs.

When is disability discrimination against the law?

Disability discrimination is against the law:

- in most types of **employment**;
- when you try to get, or get, most types of **goods or services**;
- when you rent, or try to rent, **accommodation**;
- when you apply to get into, or are studying in, any **government school, college, TAFE or university**; and
- when you try to enter, join or get services from a **registered club** – that is, any club that sells alcohol or has gambling machines.

People must not discriminate against you because you have a guide dog, or because you need particular equipment or assistance from another person because of your disability. For example, the equipment or person might help you to read or interpret information.

What are my work rights?

In general, you have the right to apply for and be fairly considered for jobs, apprenticeships and traineeships on the basis of merit.

In other words, if you are the best person for the job and you can do all the essential things that the job requires, then you should get it. In addition, employers must provide any special facilities or services you need to do the job – unless it would cause them “unjustifiable hardship” to do so.

Obviously there will be times when an employer will be able to say that it would cost them too much, for example to install lots of ramps or provide you with expensive special equipment. Before they decide that this would cause them unjustifiable hardship they must first take into account the benefit that you, and the workplace generally, would get from the service or facility if they provided it.

Employers can refuse to give you a job if you can't do the essential or inherent requirements of the job. For example, if you don't have a driver's licence or you can't

use a phone, and driving or using the phone is essential for the job, the employer can refuse to employ you.

If there is something that the employer can buy that would enable you to use the phone, and you are the best person for the job, then they must buy it unless this would cause them unjustifiable hardship. But if driving or using the phone are not an essential part of the job, or that part of the job could easily be done by someone else, then they must not refuse to employ you.

Instead, the employer may exchange these duties for other duties that you can do, or sort out the problem in some other way. It is OK for an employer to ask you to go for a medical to work out if you can do the essential or inherent parts of the job.

In general, you have the right to be trained and to get all other work benefits in the same way as other employees.

Again, employers must provide you with any extra help or facilities you need — as long as this won't cause them 'unjustifiable hardship'.

In general, you have the right to stay on in the job.

An employer can only dismiss you, medically retire you or make you redundant because of your disability (or your relative's or associate's disability) if the disability stops you doing your job properly.

Employers must not make you do non-essential parts of the job, and they must provide you with any facilities or services you need to stay on in your job — as long as this won't cause them unjustifiable hardship. Employers must do this if you, or your relative or associate, had the disability when you started the job, or if the disability began after you started the job.

Carers' responsibilities discrimination

If you are treated unfairly or harassed at work because you are responsible for caring for or supporting a child or immediate family member with a disability, you may have been unlawfully discriminated against.

For more information, refer to our website at www.lawlink.nsw.gov.au/adb or ask for our factsheet *Carers' responsibilities discrimination*.

In general, you have the right to not be harassed about your disability....

when you apply for a job, when you're at work or when you leave your job.

What are my rights to goods and services?

'Goods and services' include goods or services that you get from shops, pubs, restaurants, coffee houses or cafes, entertainment places, banks, lawyers, government departments, local councils, doctors, hospitals, public transport...

You have the right to get most goods or services in the same way as people who don't have a disability.

For example:

- People must not refuse you service because you (or your relative or associate) have a **guide dog** (for seeing, hearing or mobility) with you. All guide dogs must be allowed to accompany their owners, even into eating areas.
- People must not refuse you service because you (or your relative or associate) use a **wheelchair**. Any building that you have to get into in order to get to a service (including transport) that you need to use must be accessible — unless it would cause the person who owns the building or service unjustifiable hardship to make it accessible. Obviously, to make some existing places accessible will be very expensive.

However, in many instances there may be less costly changes that would improve accessibility without causing unjustifiable hardship. In these cases, the changes should be made. At the very least, major service providers should have plans for how they are going to make their service accessible in the future.

In general, the cost of making new buildings or services accessible from the start will be lower than the cost of remodelling old buildings. So it may be harder for the owner of a new building or service to prove unjustifiable hardship.

- If your disability means that you **can't drive**, and they ask you to provide identification before they will give you goods or services, they must give you a choice of identification. They must not insist that you show them only a driver's licence.

- They must not turn you away because they think that you (or your relative or associate) **might offend or worry other customers.**

You have the right to get most goods or services on the same terms as people who don't have a disability.

For example:

- you must not be harassed because of your (or your relative's or friend's) disability; and
- they must not make you pay more, or meet harder rules, than people who don't have a disability.

Exceptions

Note that there are two main exceptions to these two goods and services rights:

- **superannuation and insurance providers** can discriminate against people with disabilities if there is good statistical, actuarial or other reasonable evidence to support their decision, or if another law says that they must discriminate against you; and
- **people organising sporting activities can sometimes legally discriminate against people with disabilities.** For example, they can do this if the person's disability means that they are not capable of performing the actions required, or if they don't meet the relevant skill/ability level.
- In addition, sporting activities can legally be aimed at people with a particular type of disability. This means that people who don't have that type of disability can be excluded.

What are my accommodation rental rights?

Rental accommodation includes self-contained houses, units or flats, hotel or motel rooms, caravans and commercial premises.

You have the right to rent accommodation in the same way as people who don't have a disability.

If you can pay the rent and look after the accommodation adequately, you have the same right to the accommodation as anyone else. The accommodation provider must not refuse you accommodation because other tenants or others living nearby might be offended or troubled by your disability.

They must not put you on a waiting list for any longer than people who don't have a disability.

They can only refuse you accommodation because of your (or your relative's or associate's) disability if:

- it would cause them unjustifiable hardship to provide you with access to the accommodation;
- they can't provide any special services or facilities that you need. They must provide you with any special services or facilities that you need — unless it would cause them unjustifiable hardship to provide them;
- the accommodation is provided by a charitable or other not-for-profit body especially for people with a particular type of disability that you don't have; or
- it is share accommodation in someone's private household — if you have to share amenities with the person advertising the accommodation and/or their relative and the accommodation is for no more than 6 people, then they can refuse you.

You have the right to rent accommodation on the same terms as people who don't have a disability.

For example:

- the accommodation provider must not make you pay extra rent or a larger bond just because of your (or your relative's or associate's) disability — even if they are providing you with special services or facilities;
- they must not give you a shorter tenancy or evict you just because of your (or your relative's or associate's) disability; and
- they must not harass you just because of your (or your relative's or associate's) disability.

What are my rights to government education?

Government education includes education at any State university, State college, TAFE or State school. It does not include private educational establishments.

You have the right to generally apply for and get education and any educational benefits at any State educational establishment in the same way as people who don't have a disability.

They can only refuse you enrolment if you can't meet the relevant academic level, or if you need special

building adjustments, special services or special facilities that they can't provide.

They must make any adjustments to the building and provide any special services or facilities that you need — unless it would cause them unjustifiable hardship to do this. This means that they must generally make adjustments to allow you to attend classes, learn, study, and sit for tests and examinations. For example:

- if you have limited mobility, they should try to make sure that your classes are in rooms that are accessible and near enough to each other to allow you to get to each class;
- if you have difficulty writing, it may be appropriate for them to provide help with taping classes;
- if you need a reader, it may be appropriate for them to provide one or help with the cost of this; or
- if you have your own equipment to help you read or interpret information, you should be allowed to use that equipment. Or if you have someone who helps you read or interpret information, or helps you in some other way relating to your disability, that person should be allowed to help you.

Note that educational establishments can provide education specifically for people with a particular type of disability. This means that these places can refuse admission to people who don't have that type of disability.

If you have a complaint about a private school, you may be covered by Federal discrimination laws. Contact the Human Rights and Equal Opportunity on (02) 9284 9600 for more information, or refer to their website at www.hreoc.gov.au.

What are my registered club rights?

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 can therefore discriminate against people with disabilities if they want to.

You have the right to become a member of a registered club in the same way as people who don't have a disability.

In general, the club can only refuse you membership for the same reason that they would refuse membership

to people who don't have a disability — for example, because you are violent towards others.

They can only refuse you membership because of your (or your relative's or associate's) disability if they can't provide you with access, or any special services or facilities that you need. They must give you access and any special services or facilities you need unless it would cause them 'unjustifiable hardship' to do this. They must not refuse you membership because other members might be offended or troubled by your (or your relative's or associate's) disability.

You have the right to get registered club benefits and services on the same basis as people who don't have a disability.

Again, they must provide you with any access or special services or facilities that you need, unless it would cause them 'unjustifiable hardship' to do this. For example:

- if you want to dance on the dance floor in a wheelchair they should allow this; or
- if you need any type of guide dog (for seeing, hearing or mobility) they must allow the dog to accompany you at all times, including into eating areas.

However, they may be able to refuse you access to some sporting activities. For example, they can do this if your disability means that you are not capable of performing the actions required, or if it means that you don't meet the relevant skill/ability level.

You have the right to keep your membership in the same way as people who don't have a disability.

For example, they must only take away or suspend your membership if they would do the same to someone who does not have a disability. The membership suspension and removal rules must be the same for everyone.

Note that a registered club whose main object is to provide benefits for people with a particular type of disability can refuse membership, entry and/or services to people who don't have that type of disability.

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 disability discrimination;

- you have complained to the Anti-Discrimination Board; or
- you have supported someone with a disability discrimination complaint or acted as a witness in a disability discrimination case.

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

What can I do if I'm treated unfairly or harassed because of my disability, or my relative's or friend's disability?

Read through this factsheet to check that what's happened seems to be against the law. If you aren't sure if it's against the law, phone us to check on your rights.

If what's happened seems to be against the law, try talking to the person or organisation that you think is discriminating against you or harassing you. The organisation may have a policy on these issues and/or a process in place to deal 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 or organisations that promote the interests of people with disabilities.

If talking to the person or organisation doesn't work, or isn't appropriate, you may decide to make a complaint to the Anti-Discrimination Board. It won't cost you any money for the Board's staff to help you, and you don't need a lawyer.

Making a complaint

If you want to make a complaint, it must be in writing and it is best if it is signed by you. You can either send us a completed discrimination complaints form, or write a letter to the President of the Anti-Discrimination Board, explaining what happened and why you think you have been discriminated against because of your disability. Our addresses and phone numbers are at the end of this factsheet.

You can write to us in any language, or in Braille. If you need assistance to make a written complaint, phone the Board and we can help you or refer you to an organisation that can help you.

We also accept complaints on your behalf from your lawyer, or organisations such as unions and other

representative bodies. However the complaint must make it clear that you agree with the complaint being made and you must be named in the complaint. In some circumstances you may also be required to show 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 the Board for more information.

For us to be able to accept a complaint, the events involving disability discrimination must have occurred in the twelve months before the complaint is received by the Board. If you make a complaint about events that occurred more than twelve months before you lodge your complaint, the Board may refuse to investigate your complaint.

If your problem is urgent (for example, you think you are about to lose your job), tell us this in your letter and we will get back to you in time to do what we can to help.

What happens after you make a complaint?

We have the legal power to investigate your complaint, and if it's against the law, to try to conciliate it. This means that we will try to help you and the person or organisation you are complaining about reach a private settlement that you both agree on. The Board is impartial in this process and does not take sides

Any settlement will depend on the circumstances of your case, and on what you and the other parties are willing to offer and accept. It could be an apology, financial compensation, your job back, modifications to your working arrangements, and so on.

We treat all complaints confidentially, but we will need to inform the organisation or person you are complaining about of the 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. However, very few cases need to go to the Tribunal and in some circumstances it's possible to ask the Tribunal to keep your details confidential.

Examples of disability discrimination complaints we have handled

A woman with an intellectual disability was refused a cheque account because she worked in supported employment, and the local branch office felt that she would not be able to manage an account. We contacted the organisation's head office. They agreed to grant the woman a cheque account and instruct the branch office about fair customer service.

A deaf data entry operator approached us for help with her employer. She had been waiting two years for further training and permanent employment and felt that this was due to her deafness. Her union had offered to negotiate with the employer if she lodged a disability discrimination complaint. This negotiation was successful — she got a permanent position and training.

A man lodged a complaint with us after he was dismissed when his employer became aware that he had a terminal illness. The complaint was settled when the employer offered the man a testimonial and compensation for lost wages.

A man had an employment offer withdrawn after a medical examination revealed he had a knee injury. The injury was irrelevant to his ability to do the particular (largely desk-bound) job. As the job had already been given to someone else, conciliation led to the man receiving a monetary settlement.

Two women, both of whom had a mobility disability, approached us after being refused the lease of the ground floor of a warehouse. The lease had been refused because the toilet on that floor was a male toilet and they were unable to get to the first floor female toilet because of their disabilities. When we investigated this, it was clear that the ground floor toilet could be used by the women as it had one entrance with a lock. After discussions about this alternative, the agent offered the women the lease and they accepted.

The Anti-Discrimination Board of NSW

(open weekdays 9am-4.30pm)

Sydney

Level 4
175 Castlereagh Street
Sydney NSW 2000
PO Box A2122
Sydney South NSW 1235
Phone (02) 9268 5555
Fax (02) 9268 5500

TTY 9268 5522

Wollongong

84 Crown St
Wollongong NSW 2500
PO Box 67
Wollongong NSW 2520
Phone (02)4224 9960
Fax (02) 4224 9961

TTY (02) 4224 9967

Newcastle

Level 1
414 Hunter St
Newcastle West 2302
Phone (02) 4926 4300
Fax (02) 4926 1376
TTY (02) 4929 1489

Enquiries

(02) 9268 5544

Employers Advisory Service

(02) 9268 5544

Toll free number

1800 670 812
(if you are calling from rural or regional NSW)

Website

www.lawlink.nsw.gov.au/adb