



## Infectious diseases discrimination

### Is it against the law to discriminate against me because I have an infectious disease?

Yes. In NSW it is generally against the law to treat you unfairly or harass you because you have an infectious disease, including hepatitis A, B or C; if you are HIV positive or have AIDS; or if you have an airborne disease such as tuberculosis. It is against the law to discriminate against you if:

- you have an infectious disease, even if you have no symptoms;
- someone thinks you have an infectious disease, even if you don't;
- you had an infectious disease in the past, or someone thinks you had one in the past;
- someone thinks you might get an infectious disease in the future; and
- you have a relative, friend or work colleague who has (or someone thinks has) an infectious disease.

### When is it against the law to discriminate?

Discrimination is against the law in the following areas:

- **in most types of employment** — when you apply for a job, at any time during your employment or when you leave a job. If you can do the job safely and effectively then you must not be discriminated against;
- **when you try to get, or get, most types of goods or services** — for example, from shops, dentists, doctors, hospitals, pubs and entertainment places, banks, lawyers, government departments and local councils;
- **when you rent, or try to rent, accommodation** — for example, a unit, house, commercial premises, hotel or motel room or caravan;
- **when you apply to get into, or are studying in any State educational institution** — for example a government school, college, TAFE or university;

- **when you try to enter, join or get services from a registered club** — a registered club includes any club that sells alcohol or has gambling machines.

Employers, service providers, education providers, etc also have a legal duty to provide you with any special facilities or services you need in order to do the job, access the service, study at the educational institution, etc, as long as it won't cause them 'unjustifiable hardship' to do so. For more information about what unjustifiable hardship means, please contact the Anti-Discrimination Board.

#### Homosexual discrimination

If you are HIV positive or have AIDS and someone discriminates against you because you are homosexual or they think you are homosexual, this could also be against the law. For more information, refer to our website at [www.lawlink.nsw.gov.au/adb](http://www.lawlink.nsw.gov.au/adb) or ask for our factsheet on *Homosexual discrimination*.

#### Carers' responsibilities discrimination

If you are treated unfairly or harassed at work because you are caring for or supporting a child or immediate family member with an infectious disease, you may have been unlawfully discriminated against. For more information, refer to our website at [www.lawlink.nsw.gov.au/adb](http://www.lawlink.nsw.gov.au/adb) or ask for our factsheet on *Carers' responsibilities discrimination*.

## Infectious diseases and privacy laws

If an employer, workmate or service or accommodation provider tells anyone else about your infectious disease when you haven't said they can, this could also lead to discrimination that is against the law. It may also be against privacy laws. For more information on privacy laws contact Privacy NSW on (02) 9229 8585 or refer to their website at [www.lawlink.nsw.gov.au/privacynsw](http://www.lawlink.nsw.gov.au/privacynsw).

However, some infectious diseases are classified as "notifiable". This means that a health care practitioner may have to notify a Public Health Unit about your infectious disease. Contact your local Public Health Unit for more information.

## Public health and safety exceptions

An employer or service provider is allowed to discriminate against you if another law tells them that they must.

- They may have to discriminate against you because of public health or occupational health and safety laws. For example, you are not allowed to handle food when you are in the acute stage of many infectious diseases such as hepatitis A, or you may not be able to do certain specialised medical work because you have hepatitis C. For more information on this contact your local Public Health Unit.
- If there is an outbreak of an infectious disease (eg whooping cough or measles) in a day care centre, pre-school, or primary school, the organisation's director or principal can be instructed by the Public Health Unit to exclude an unimmunised child for the duration of the outbreak.

However, there are only rare occasions when health and safety obligations mean that someone can discriminate.

This means that it is generally not OK to:

- refuse to hire you or provide you with a service or accommodation because you have hepatitis or some other infectious disease;
- make you have a blood test, or isolate, dismiss or segregate you because you have an infectious disease;
- breach your confidentiality or privacy in the belief that others have the right to know about your disease for their own safety;
- treat you badly because they think you use drugs and therefore assume that you have an infectious disease; or

- treat you unfairly because they think you are gay and therefore assume that you have an infectious disease.

## 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 infectious diseases discrimination;
- you have complained to the Anti-Discrimination Board; or
- you have supported someone with an infectious diseases discrimination complaint, or acted as a witness in an infectious diseases discrimination case.

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

### HIV/AIDS vilification

It is also against the law to do anything publicly that could encourage or stir up hatred, serious contempt or severe ridicule because you are HIV positive or have AIDS. For more information, refer to our website at [www.lawlink.nsw.gov.au/adb](http://www.lawlink.nsw.gov.au/adb) or ask for our factsheet on *Vilification*.

## What can I do if I'm treated unfairly or harassed because of an infectious disease?

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, you can try talking to the person or organisation that you think is discriminating against 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.

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 to lodge a complaint, 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 an infectious disease.

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 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, contact the Board for more information.

For us to be able to accept a complaint, the events involving unfair treatment because of an infectious

disease 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, transfer to another position, the person who discriminated against you being reprimanded, awareness training about discrimination at your workplace, access to facilities you were previously denied, 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 be able to 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.

### For more detailed information on making a complaint

refer to our website at [www.lawlink.nsw.gov.au/adb](http://www.lawlink.nsw.gov.au/adb) or ask for our factsheet on *Complaining to the Anti-Discrimination Board*.

## Examples of infectious diseases discrimination complaints we have handled

A woman complained to the Board that when she revealed that she had hepatitis B to a specialist doctor, he told her that he was too busy and to go elsewhere. The complaint was settled when the doctor gave her a written apology, and agreed to change his policy to ensure that this would not happen again.

A man complained to the Board that he was forced to resign from his job after he told a supervisor about his hepatitis C status and the supervisor told all the employees, and he had to undergo a compulsory blood test. As a result of conciliation he received financial compensation for lost wages and the humiliation he had suffered, and the organisation agreed to change its work policies and practices.

A man complained to the Board that he had been refused surgery at a private hospital when they found out that he was HIV positive. The hospital claimed that their facilities weren't equipped to cope with someone with HIV. The man's complaint was settled when the hospital paid him substantial compensation, gave him a written apology and agreed to change their policy to ensure that this would not again.

A cook in a canteen, suspected of being homosexual and of having AIDS, was asked to leave the workplace because his presence was "upsetting other staff". In conciliation, the employer agreed to give him his job back, and to run workplace education of employees about the transmission of HIV and AIDS, and HIV and AIDS-related discrimination.

## 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 (02) 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](http://www.lawlink.nsw.gov.au/adb)