



Homosexual discrimination

Is homosexual discrimination or harassment against the law?

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

- you are gay or lesbian;
- someone thinks you are gay or lesbian; or
- because you have a relative, friend or work colleague who is gay/lesbian, or who someone thinks is gay/lesbian.

It is against the law to do this:

- **in most types of employment** — when you apply for a job, at any time during your employment, or when you leave a job;
- **when you get, or try to get, most types of goods or services** — for example, from shops, pubs and entertainment places, banks, lawyers, government departments, doctors or hospitals;
- **when you rent or try to rent accommodation** — including a hotel or motel room, unit, house, caravan or commercial premises;
- **when you apply to get into, or are studying in any State education institution** — State school, college, TAFE, university; and
- **when you try to enter or join a registered club, or when you're inside one** — a registered club includes any club that sells alcohol or has gambling machines.

It is also against the law to have any rule or policy that disadvantages gay men or lesbians more than heterosexuals — *unless* that rule or policy is reasonable. It is against the law to do this in any of the circumstances listed above. For example, depending on the circumstances, it may be against the law for an employer to give benefits to their employees' spouses and heterosexual de facto partners and not to homosexual employees' partners.

Homosexual vilification is also against the law

It is also against the law to do anything publicly that could encourage hatred, serious contempt, or severe ridicule of lesbians and/or gay men. This type of behaviour is called homosexual vilification.

The following types of behaviour could be homosexual vilification and against the law:

- graffiti that vilifies lesbians/gay men;
- speeches and statements made in public that vilify lesbians/gay men;
- abuse that happens in public that vilifies lesbians/gay men;
- statements or remarks in a newspaper or journal, in other publications, or on the radio or television that vilify lesbians/gay men;
- people wearing symbols (such as badges), or clothing with slogans in public that vilify lesbians/gay men; or
- gestures made in public that vilify lesbians/gay men
- posters or stickers in a public place that vilify lesbians/gay men.

For more information about vilification

refer to our website at www.lawlink.nsw.gov.au or ask for our factsheet on *Vilification*.

HIV/AIDS discrimination is also against the law

If you are treated unfairly, harassed or vilified because you are (or your relative, friend or associate is) HIV positive or have AIDS, or someone thinks you are HIV positive or have AIDS, this may also be against the law.

For more information about HIV/AIDS discrimination

refer to our website at www.lawlink.nsw.gov.au or ask for our factsheet on *Infectious diseases discrimination*.

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

What can I do if one of these things happens to me?

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 your homosexuality.

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 your homosexuality 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 homosexual 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 or ask for our factsheet on *Complaining to the Anti-Discrimination Board*.

Examples of homosexual discrimination complaints we have handled

A man who was harassed, more rigorously disciplined than other employees and eventually dismissed believed that this had happened because he was gay. The complaint was settled when the complainant agreed to accept financial compensation for the harassment and dismissal.

Before two women were transferred to a new, predominantly male workplace, rumours were circulated that 'two dykes were coming'. On arrival they were questioned about their sexual preference by the branch manager and were subjected to ongoing harassment by some employees.

At conciliation the employer agreed to pay the complainants substantial compensation, and the Anti-Discrimination Board conducted training on discrimination which all staff in the branch were required to attend.

A fostering organisation refused to consider a man's application because he was gay. After conciliation, the organisation agreed to change their policy and apply the same criteria to all people applying to foster a child regardless of their sexuality.

A lesbian complained that she was refused accommodation by a real estate agent when she made it clear to the agent that she was intending to share the accommodation with her female lover.

The Anti-Discrimination Board contacted the agent and explained that discriminating against the woman because of her lesbianism was against the law. The agent then offered the woman alternative accommodation and agreed to review all the office policies for possible discriminatory practices.

**The Anti-Discrimination
Board of NSW**

(open weekdays 9am-4.30pm)

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(if you are calling from rural or regional NSW)

Website

www.lawlink.nsw.gov.au/adb