

### What is discrimination?

Discrimination is treating a person, or group of people, less favourably than you would treat others in the same circumstances because of their membership of a particular group, such as having a disability, or being a woman, being hard of hearing or having a disability.

Discrimination can be direct - when we treat someone less favourably because of negative stereotyped ideas. An example of this might be refusing to employ women because of a belief that they are too emotional or Aboriginal people because of a belief that they are unreliable.

Or it can be indirect - rules, practices or policies which appear to be neutral can have the effect of unreasonably excluding whole groups of people. Examples are:

- Police height restrictions which have the effect of excluding people of Asian backgrounds because they are generally not as tall as their European counterparts.
- Seniority rules for promotion which tend to exclude women who have had time off work for child rearing.
- Insisting that membership to a club requires reading and writing skills to complete the application form.



### Which laws make discrimination unlawful?

The following Acts make certain types of discriminatory behaviour unlawful:

- Anti-Discrimination Act (NSW)
- Racial Discrimination Act (Commonwealth)
- Sex Discrimination Act (Commonwealth)
- Human Rights and Equal Opportunity Commission Act (Commonwealth)
- Disability Discrimination Act (Commonwealth).

These Acts are concerned with discrimination in a person's public life rather than their personal life.

The most important Acts for people with an intellectual disability in NSW are the NSW Anti-Discrimination Act and the Commonwealth Disability Discrimination Act.

### NSW Anti-Discrimination Act

The Anti-Discrimination Act (NSW) provides that discrimination may be unlawful if it is based on one of the following grounds:

- race/aboriginality
- homosexuality
- HIV/AIDS
- sex
- transgender status
- carer's responsibilities
- marital status
- disability
- age
- pregnancy

All of these types of discrimination are against the law if they occur in circumstances of employment, education, accommodation, registered clubs, trade unions and qualifying bodies, obtaining goods or services.

## Commonwealth Disability Discrimination Act (DDA)

The DDA makes it unlawful to discriminate against a person based on disability in the following areas: employment and work related, education including private education, access to premises used by the public, goods and services, land, clubs and associations, accommodation, sport and Commonwealth laws and programs.

Disabilities covered by the Act are categorised as physical, intellectual, psychiatric, sensory, neurological or learning disabilities.

Discrimination against a person because they have some physical disfigurement, or because they have some disease-causing organism (for example, HIV) present in their body is also covered, as is discrimination when the person does not actually have a disability but is perceived by others as having a disability.

The Act also makes it unlawful to discriminate against a person because of their association with a person with a disability.

### How do you complain?

There are two ways of seeking redress for discriminatory acts against people with an intellectual disability through the;

- Human Rights and Equal Opportunity Commission
- Anti-Discrimination Board.

### Human Rights and Equal Opportunity Commission (HEREOC)

Under the DDA complaints of discrimination based on disability can be made to the Human Rights & Equal Opportunity Commission. Complaints can be made within 12 months after the discrimination has happened.

Complaints can also be made where an act of discrimination is proposed but has not yet happened. You do not need to wait until the damage is done.

### Complaints can be made by:

- a person directly affected by an act of discrimination
- a person affected by discrimination on their own behalf and on behalf of other people similarly affected
- a person on behalf of another person, or persons who are affected by discrimination
- an organisation, for example a trade union, on behalf of a person or persons who are affected by an act of discrimination

Phone **HEREOC 1300 656 419**

### The Anti-Discrimination Board (ADB)

Complaints can be made to the Anti-Discrimination Board within six months of the time of the discriminatory act.

### How are complaints handled?

Both acts are aimed at changing attitudes. There is therefore much more emphasis on education, negotiation and conciliation than on imposing penalties.

Both bodies will try to conciliate a settlement. The Anti-Discrimination Board (ADB) can refer the matter to the Equal Opportunity Tribunal. If your complaint to the Human Rights and Equal Opportunity Commission can not be resolved by conciliation, it may have to be heard by the Federal Court, which is likely to cost more in time and money than the State Tribunal. Both the Board and the Commission have wide ranging powers to remedy the situation.

Phone the **ADB Advice line:**  
**(02) 9268 5544 or 1800 670 812**

### For further information

#### Intellectual Disability Rights Service

2c 199 Regent Street Redfern NSW 2016

PH 02 9318 0144 (Sydney)

1800 66 66 11 (Freecall)

Legal Advice available between 2pm - 5pm weekdays.

[www.idrs.org.au](http://www.idrs.org.au)