

# FACT SHEET



**IMPORTANT – This Document only provides general information.**

**It is not intended to be a substitute for you getting your own specific legal advice.**

## Discrimination

### 1. What is discrimination?

Discrimination is treating a person, or group of people, less favourably on the basis of an attribute that the person, or group of people, has. The attribute might be the person's an intellectual disability or their race or their gender.

Discrimination **can be either direct or indirect**. An example of direct discrimination is refusing to employ people with intellectual disability, or flatly refusing to lease a house or unit to a person with intellectual disability.

Indirect discrimination is where rules, practices or policies, which appear to be neutral, actually have a disproportionate and detrimental impact on a person or a group of people with a certain attribute – like intellectual disability. Examples of indirect discrimination are:

- Insisting that membership to a club requires reading and writing skills to complete an application form
- A public venue that has steps and no access for people who use wheelchairs



## 2. When is discrimination unlawful?

The most important discrimination laws for people with intellectual disability in NSW are the Anti Discrimination Act 1977 (NSW) and the Disability Discrimination Act 1992 (Cth). Under these Acts, discrimination is unlawful only in certain areas of life such as employment, provision of goods and services, provision of Commonwealth programs, accommodation and education.

Accordingly, discrimination in a person's personal life is not unlawful as it is not covered by legislation.

### 3. NSW Anti-Discrimination Act

The NSW Anti Discrimination Act 1977 provides that discrimination may be unlawful if it is based on one of the following attributes:

- disability
- race
- Aboriginality
- homosexuality
- HIV/AIDS
- sex (including sexual harassment)
- transgender status
- carer's responsibilities
- marital status
- age
- pregnancy

Discriminating against someone on the basis of one of these attributes is unlawful if it occurs in the areas of employment, sport, education, accommodation, registered clubs, and the provision of goods or services.

## 4. Commonwealth Disability Discrimination Act 1992

The Commonwealth Disability Discrimination Act 1992 overlaps a fair bit with the NSW Anti Discrimination Act 1977 in the area of disability. It makes it unlawful to discriminate against a person on the basis of their disability. Disability is defined broadly in the Act to cover:

- physical disability
- intellectual disability
- mental illness
- disease states (like HIV)
- hearing impairment
- vision impairment
- acquired brain injury
- developmental disability, and
- learning disability

It is also unlawful discrimination under the Act where a person:

- does not actually have a disability but is perceived by others as having a disability and treated less favourably because of that perception, or
- could develop a disability in the future and this is used as a basis for less favourable treatment, or
- has a disability that is only temporary

The Act also makes it unlawful to discriminate against a person because of their association with a person with disability. This sometimes covers friends, carers and family members of people with disability.

Under this Act, disability discrimination is unlawful in the areas of employment, education, access to public places, provision of goods, services and facilities, clubs and associations, accommodation, sale of land, sport, administration of

Commonwealth laws and programs. It also covers harassment on the basis of a person's, or group of people's, disability, and their associates.

## Carers

It is also important to note that it is unlawful under anti discrimination legislation to discriminate against a person, or treat someone less favourably, in employment, accommodation and education, if that person has carer responsibilities – such as caring for a child, an ill parent or family member with intellectual disability.

## Victimisation

It is an offence under the NSW Anti Discrimination Act 1977 and the Commonwealth Disability Discrimination Act 1992 to victimise someone for lodging a complaint of discrimination.

## 5. How do you complain?

The first step is to try and resolve the matter directly with the service or organisation. But this isn't always possible and if reasonable attempts at resolving the matter fail, then you can make a formal complaint to either the NSW Anti- Discrimination Board (**ADB**) (under the NSW Anti Discrimination Act 1977) or the Australian Human Rights Commission (**AHRC**) (under Commonwealth Disability Discrimination Act 1992). Both bodies have standard complaint forms which may help, but you don't have to use these forms and you can call them for help.

- You can get a copy of a complaint form from the Anti- Discrimination Board either by calling (02) 9268 5555 or by going to their website:

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

- You can get a copy of a complaint form from the Australian Human Rights Commission by calling 1300 656 419 or going to their website:  
<http://www.hreoc.gov.au/about/contacts/index.html>

If you have trouble writing, you can also call AHRC and the ADB and they can write the complaint down for you. Complaints can be sent in by mail, fax or email or via the Australian Human Rights Commission website.

Make sure you keep a copy of your complaint.

## 6. Time limitations

Under both the NSW Anti Discrimination Act 1977, and the Commonwealth Disability Discrimination Act 1992, discrimination complaints must be made to the ADB or AHRC within 12 months of the alleged act of discrimination, unless you have a very good reason for not lodging it within that time. Speak with AHRC, the ADB or one of the legal centres referred to below if you have concerns about time limitations.

## **Anti-Discrimination Board**

☎ 9268 5544 or

☎ 1800 670 812

☎ TTY 9268 5522

## **Australian Human Rights Commission**

☎ 1300 656 419

☎ TTY 1800 620 241

## **Disability Discrimination Legal Centre**

☎ 9313 6000 or

☎ 1800 800 708

☎ TTY 9313 7190 or 1800664 419

## **Intellectual Disability Rights Service**

☎ 9318 0144

☎ Fax 9318 2887