

FACTS SHEET: UNLAWFUL DISCRIMINATION

When discrimination is against the law

Discrimination is only unlawful when it occurs in an area of 'public life', that is:

- During the course of employment;
- At an educational institution;
- While applying for accommodation;
- Using or applying for membership to a registered club;
- In attempting to purchase goods or access services.

Exemptions

The unlawful discrimination laws may not apply to particular areas, such as:

- Some private schools;
- Very small businesses;
- Some charities & religious organizations;
- Some jobs in the defence forces.

Grounds for Unlawful Discrimination

You may have a claim for unlawful discrimination if you have, either directly or indirectly, been unfairly treated because of:

- sex, race, age or disability;
- pregnancy;
- marital Status;
- homosexuality;
- carer and/or family responsibilities;
- transgender;
- associated or related to a person who has one of the above characteristics.

You may also have a claim for discrimination if your employer or a Commonwealth body or agency treats you unfairly on the basis of your race, sex, religion, political opinion, national extraction, social origin, age, medical record, criminal record, marital status, impairment, disability, nationality, sexual preference, trade union activity.

Exemptions

There are particular situations when discrimination laws do not apply. It is important to get legal advice to see whether the discrimination laws apply to your particular situation or problem.

MAKING A COMPLAINT

Informal Complaint

May write complaint to or meet with person/organisation responsible for the discrimination.

Formal Complaint

Complaints about discrimination must be made within **12 months** to either:

- Human Rights & Equal Opportunity Commission (HREOC) under federal law; OR
- NSW Anti-Discrimination Board (ADB) under NSW law.

HREOC

Complaints made under federal law should be lodged with HREOC. Complaints may include:

- sex, race, age or disability discrimination;
- Employment related complaints for sexual preferences;
- Complaints against federal government department;
- Complaints against small businesses with less than six employees (unless complaint about race or age discrimination or sexual harassment);
- If dismissed from employment on because of carer's responsibilities;
- Human Rights complaints.

ANTI-DISCRIMINATION BOARD

Generally, the following complaints are lodged with ADB:

- Religious discrimination (the *Racial Discrimination Act* does not refer to religion);
- Homosexual, transgender & Carer's responsibilities;
- Homosexual, transgender & HIV/AIDS vilification;
- Sex, race, age or disability discrimination.

HREOC or ADB

There may be circumstances where a complaint may be lodged with either HREOC or the ADB. You will need to elect a jurisdiction. In electing a jurisdiction it is important to consider:

- If ADB refuses to investigate a complaint, you cannot apply to the Administrative Decisions Tribunal (ADT);
- If the ADB investigates and declines complaint you may apply for leave to ADT **within 21 days**;
- If HREOC terminates complaint – you may apply to Federal Court or Federal Magistrates Court **within 28 days**. It is important to consider that if you lose in the Court, a costs order may be awarded against you;
- The outcome you are seeking:
 - *ADT may order* the other party to: pay compensation (up to \$40,000); cease discrimination; do certain things; publish an apology or retraction; remove or change discriminatory parts; set up program to stop future discrimination.
 - *Federal Court may order* the other party to: pay compensation; do things to make up for loss or damage; cease discriminatory behaviour; employ or re-employ complainant; publish an apology or retraction.

Industrial Relations Commission: Employees may lodge unfair dismissal claim for discrimination on basis of race, disability, religion, sex or trade union activity (within 21 days from dismissal).

Contacts

Human Rights & Equal Opportunity Commission (HREOC)

www.hreoc.gov.au Ph: 1300 656 419

Anti Discrimination Board (ADB)

www.lawlink.nsw.gov.au/adb Ph: (02) 9268 5555

Disclaimer: This fact sheet provides general information and does not provide legal advice. If you have a legal issue, you should contact a lawyer before making a decision about what to do or applying to a court.