

Discrimination

As a tenant in NSW you have rights under the *NSW Anti-Discrimination Act 1977* and federal anti-discrimination laws. This factsheet explains the law in NSW about discrimination and renting

What is discrimination?

Discrimination means treating someone unfairly because they belong to a particular group of people.

Unlawful discrimination

Discrimination can take many forms, including harassing or treating people unfairly on the basis of their:

- race
- sexual orientation
- gender identity (e.g. transgender)
- intersex status
- disability (e.g. physical, intellectual or psychiatric)
- marital status, or
- age (includes discrimination due to having children).

In some circumstances, it is against the law to discriminate against a person because of who they associate with.

Sexual harassment is where a person makes unwelcome sexual advances or requests to another, or unwelcome conduct of a sexual nature in a situation where such behaviour is likely to intimidate, humiliate or offend.

These types of discrimination and sexual harassment are prohibited under the following laws:

- *Racial Discrimination Act 1975* (Commonwealth)
- *Sex Discrimination Act 1984* (Cth)
- *Disability Discrimination Act 1992* (Cth)
- *Anti-Discrimination Act 1977* (NSW).

It is against the law to discriminate against people for any of the above reasons but only in certain circumstances. It is unlawful for a landlord or real estate agent to discriminate against you:

- when rental accommodation is advertised (e.g. an ad that says that people of a particular ethnic group cannot apply)
- when you enquire about the availability of advertised accommodation (e.g. an agent refuses to show a vacant rental property to two unmarried women)
- when you apply for rental accommodation (e.g. by refusing to take your application, placing you
- lower on a list of applicants, or refusing to rent the premises to you)
- while you are renting accommodation by imposing terms

or conditions which are discriminatory (e.g. limiting the people you can invite to visit)

- by ending the tenancy because of your race, sex, gender identity, sexuality, disability, marital status, or age
- by sexually harassing you in the course of being provided or offered accommodation
- by not giving you all the benefits associated with your accommodation (e.g. you live in flats with a pool and are not allowed to use the pool because you have a child with disability).

Exceptions – shared accommodation

Whether it is unlawful to discriminate in shared accommodation depends on the type of discrimination and whether you are living with the owner or their close relative and how many people you are sharing with.

Under the *Racial Discrimination Act 1975*, an act is not unlawful in relation to accommodation if sharing with the owner or their close relative.

Under the *Sex Discrimination Act 1984* and the *Disability Discrimination Act 1992*, an act is not unlawful in relation to accommodation:

- if sharing with the owner or their close relative, and
- if it is for no more than 3 people.

Under the *Anti-Discrimination Act 1977*, an act is not unlawful:

- if the tenant is sharing with the owner or their close relative, and
- if the accommodation is for no more than 6 people.

It may not be unlawful to discriminate if the accommodation is designed to meet the needs of particular groups (e.g. women, older persons, youth)
– we recommend you get advice on your specific situation.

If you are discriminated against

If you believe you have been discriminated against, you can make a complaint to the Anti-Discrimination Board of NSW (ADB) or the Australian Human Rights Commission (AHRC). You can only choose one jurisdiction to lodge the complaint and in some cases, you cannot change your mind after lodging the complaint.

You have 12 months from the date of the unlawful

discrimination to make a complaint to the ADB and 6 months to make a complaint to AHRC. Contact the ADB or AHRC for up-to-date advice about how to make a complaint and the time it will take to sort it out. Do not delay.

ADB staff can help to put your complaint in writing. The ADB can also deal with complaints urgently, if necessary.

You can also contact your local or a specialist Community Legal Centre for legal advice.

The complaints process

Written complaints to the ADB are investigated by a conciliation officer. They may ask you for more written information, or talk to you by phone or in person. They will ask the landlord or real estate agent to respond to your complaint.

If the ADB finds that there is a basis for your complaint, it may propose a conciliation conference where both sides meet with the conciliation officer to try to work out a solution to the complaint. This may include a written apology and/or compensation.

If you cannot come to an agreement, the matter may be referred to the Administrative and Equal Opportunity Division of the NSW Civil and Administrative Tribunal (NCAT) for more formal proceedings.

AHRC has a similar process. If you cannot come to an agreement, the matter may go to the Federal Circuit Court (FCC) for more formal proceedings.

Tribunal proceedings

Tenancy proceedings of the NSW Civil and Administrative Tribunal (NCAT) do not take unlawful discrimination into account.

The FCC can make different decisions to those that the Tribunal can make.

The Tribunal is less formal, easier to navigate and usually, each party pays their own costs. The FCC is more formal, has technical rules and if you are unsuccessful, you may have to pay the other party's costs.

It is important to seek advice before lodging a complaint.

Contacts

- Anti-Discrimination Board of NSW: phone 9268 5544 (Sydney), 4224 9960 (Wollongong), 4926 4300 (Newcastle), free call 1800 670 812
- Australian Human Rights Commission: phone 1300 656 419, TTY 1800 620 241, complaintsinfo@humanrights.gov.au
- Community Legal Centres NSW: phone 02 9212 7333, <https://www.clcnsw.org.au>
Centres specialising in discrimination law:
 - Disability Discrimination Legal Centre: phone 9310 7722, free call 1800 800 708, TTY 1800 644 419
 - Kingsford Legal Centre: phone 9385 9655

Factsheet updated July 2021

For free tenancy advice, call your local Tenants' Advice and Advocacy Service:

SYDNEY:

| | |
|--------------|-----------|
| • Eastern | 9386 9147 |
| • Inner | 9698 5975 |
| • Inner West | 9559 2899 |
| • Northern | 9559 2899 |
| • Southern | 9787 4679 |
| • South West | 4628 1678 |
| • Western | 8833 0933 |

REGIONAL:

| | |
|-----------------------|--------------|
| • Blue Mountains | 4704 0201 |
| • Central Coast | 4353 5515 |
| • Hunter | 4969 7666 |
| • Illawarra Sth Coast | 4274 3475 |
| • Mid Coast | 6583 9866 |
| • Northern Rivers | 6621 1022 |
| • Northwest NSW | 1800 836 268 |
| • Southwest NSW | 1300 483 786 |

ABORIGINAL:

| | |
|-------------|--------------|
| • Sydney | 9833 3314 |
| • West NSW | 6881 5700 |
| • South NSW | 1800 672 185 |
| • North NSW | 1800 248 913 |

WEBSITE: tenants.org.au

NSW FAIR TRADING: 13 32 20

This factsheet is intended as a guide to the law and should not be used as a substitute for legal advice. It applies to people who live in, or are affected by, the law as it applies in New South Wales, Australia. ©Tenants' Union of NSW