

Fact Sheet 1: Disability Discrimination Complaints in the ACT Human Rights Commission

What can I do if I am discriminated against because of my disability in the ACT?

If you have been discriminated against because of your disability in the ACT you can make a complaint to the ACT Human Rights Commission (ACTHRC) under the *Discrimination Act 1991* (ACT) (Discrimination Act) or to the Australian Human Rights Commission under the *Disability Discrimination Act 1992* (Cth).

You should consider several factors in deciding which commission to complain to. You should seek legal advice to make this decision. You can seek free legal advice at the legal services listed below.

You should refer to this Fact Sheet when making a complaint to the ACTHRC. If you decide to make a complaint to the Australian Human Rights Commission, please see our Fact Sheet “Disability Discrimination Complaints in the Australian Human Rights Commission”.

What is a disability?

Disability is broadly defined in the Discrimination Act and includes physical, intellectual, and mental illness disabilities.

Disabilities that you have now, have had in the past, may have in the future or are believed to have are included in the definition of disability for the purposes of protection from discrimination.

Can I make a complaint?

You can make a complaint if:

- You have been discriminated against because of your disability; or
- You are an associate of a person with a disability (including a family member, friend or carer) and you have been discriminated against because of this association; or
- You have an assistance animal, a support person or a disability aid and have been discriminated against because of this.

What is disability discrimination?

There are two types of discrimination that are unlawful under the Discrimination Act:

- Direct discrimination; and
- Indirect discrimination.

What is direct disability discrimination?

Direct disability discrimination is when you are treated unfavourably because of your disability.

You must be able to show that the person or organisation that treated you unfavourably was aware of your disability and treated you that way because of your disability. It is not enough to show that you have a disability and believe that that is the reason for how you were treated.

You can also make a complaint about direct disability discrimination if another person or organisation has failed to make reasonable adjustments for you and this failure results in unfavourable treatment because of your disability.

An example of direct disability discrimination is if you are refused service in a shop because you have a speech impediment.

What is indirect disability discrimination?

You can make a complaint about indirect discrimination if a person or organisation imposes an unreasonable condition or requirement which has the effect of disadvantaging you because of your disability.

An example of indirect discrimination is if your employer has a rule that people not keep food at their desks and you are diabetic and need immediate access to food while at work.

What is a reasonable adjustment?

A reasonable adjustment is a necessary modification so that you can participate in or access something equally to someone without your disability.

An example of a reasonable adjustment is an employer providing you screen reading software if you are blind.

There is a positive duty for a person to make reasonable adjustments to accommodate another person's disability related needs.

Where must the disability discrimination have occurred?

If you want to make a complaint about an incident of disability discrimination, it needs to have happened in an area of 'public life' specified in the Discrimination Act. These areas include but are not limited to: employment; education; the provision of goods, services and facilities; access to premises; accommodation; organised sporting activities; and in the administration of ACT laws or an ACT government program or policy.

If you are unsure about whether the area in which you experienced discrimination is covered, you should seek legal advice. You can seek free legal advice at the legal services listed below.

When can disability discrimination be lawful?

Discrimination might not be unlawful if a person or organisation would experience 'unjustifiable hardship' in avoiding the discrimination.

Unjustifiable hardship involves several factors including – the nature of the benefit or detriment for all of the people concerned, the nature of the disability and the cost to the person or organisation taking discriminatory action of avoiding discrimination.

You can also be discriminated against lawfully by your employer if they believe on reasonable grounds that because of your disability:

- You are unable to carry out the essential requirements of the work; or
- You require reasonable adjustments to carry out the work and providing these would impose unjustifiable hardship on the employer; and
- the discrimination is reasonable, proportionate and justifiable in the circumstances.

There are other exceptions in the Discrimination Act which would make some discrimination lawful. It is a good idea to get legal advice to see if an exception might apply to your situation.

How do I make a Disability Discrimination Complaint?

You need to make your complaint in writing. You should write down what happened, when and where it happened and who was involved.

You can complete an online complaint form on the ACTHRC website at <https://forms.act.gov.au/smartforms/servlet/SmartForm.html?formCode=1663> or contact the ACTHRC to get one.

You can fill in the complaint form and post, fax or lodge it online or in person. If you are unable to put the complaint in writing, the ACTHRC can help you with this.

You do not need a lawyer to make a complaint, but it can help to discuss your complaint with a lawyer before you lodge it so that you are sure that you have included all relevant information.

A complaint can be made in any language. If you need a translator or interpreter, the ACTHRC can usually arrange this for you.

Is there a time limit for making a complaint?

You should generally make a complaint within two years of the discrimination. The ACTHRC might accept older complaints in limited circumstances but they do not have to. You should seek legal advice in this situation. You can seek free legal advice at the legal services listed below.

Does it cost anything to make a disability discrimination complaint?

You do not have to pay a fee to make a disability discrimination complaint to the ACTHRC.

How does the ACTHRC deal with complaints?

The ACTHRC will decide whether your complaint raises issues under the Discrimination Act or not.

If the ACTHRC decides that your complaint raises issues under the Discrimination Act, it will usually contact the person or organisation complained about and will invite them to respond.

After receiving the response, the ACTHRC may recommend conciliation.

What is conciliation?

Conciliation is a meeting between you and the person or organisation you have complained about. The meeting attempts to resolve the complaint with the assistance of a conciliator from the ACTHRC.

The conciliator will meet with you and the person or organisation complained about individually before the conciliation to make sure that everyone is clear about the aim of the conciliation.

You and the person or organisation complained about may each bring an advocate, lawyer or support person with you if the ACTHRC agrees.

The conciliator does not take sides and makes sure that each side can put across their point of view. The conciliator does not push a recommended way of settling the complaint but can suggest ideas for both sides to consider.

Conciliation is private and confidential.

What happens if an agreement is reached at the conciliation?

Conciliation can be resolved in a number of ways such as the person or organisation complained about providing an apology, compensation or a policy change in response to what happened.

If an agreement is reached, it is generally put in writing, signed by both sides and registered at the Australian Capital Territory Civil and Administrative Tribunal (ACAT).

Either side can ask the ACAT to make the other side comply with a conciliation agreement if they believe the other side has not kept the agreement.

What happens if the complaint is not resolved by the ACTHRC?

If an agreement cannot be reached, the ACTHRC will write to you and ask you to advise them within 60 days if you want the complaint referred to ACAT to make a decision about what happened. You do not have to pay a fee to have your complaint referred to ACAT. You should seek legal advice before asking for your complaint to be referred to ACAT. You can seek free legal advice from the legal services listed below.

Useful Contacts and Information:

Disability Law

Located at Canberra Community Law, you can speak to a solicitor by calling 02 6218 7900

If you need an interpreter, please call the Translating and Interpreting Service on 131 450 and ask them to ring us

If you are deaf or have a hearing or speech impairment, contact us through the National Relay Service. For more information visit www.relayservice.gov.au

If you prefer to email, please contact us at info@canberracommunitylaw.org.au

Further information:
www.canberracommunitylaw.org.au

Women's Legal Centre ACT

Phone: 02 6257 4377 or 1800 634 669

Email: admin@wlc.org.au

Further information: www.wlc.org.au

Legal Aid ACT

Phone: 1300 654 314

Email: legalaid@legalaidact.org.au

Further information: www.legalaidact.org.au

ACT Human Rights Commission

Phone: 02 6205 2222

Email: human.rights@act.gov.au

Further information: www.hrc.act.gov.au

Disclaimer

This Fact Sheet contains general information available at the time of printing. It does not constitute legal advice. If you have a specific legal problem, please contact Canberra Community Law on 6218 7900.

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