

Fact Sheet 2: Disability Discrimination Complaints in the Australian 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 under the *Discrimination Act 1991* (ACT) or to the Australian Human Rights Commission (AHRC) under the *Disability Discrimination Act 1992* (Cth) (DDA).

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 AHRC. If you decide to make a complaint to the ACT Human Rights Commission, please see our Fact Sheet “Disability Discrimination Complaints in the ACT Human Rights Commission”.

What is a disability?

Disability is broadly defined in the DDA 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 carer, an assistant 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 DDA:

- Direct discrimination and
- Indirect discrimination.

What is direct disability discrimination?

Direct disability discrimination is when you are treated less favourably because of your disability than another person without the disability would have been treated in similar circumstances.

You must be able to show that the person or organisation was aware of your disability and treated you the way they did 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 less favourable treatment of you than another person without your disability would have received in similar circumstances.

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 you cannot meet because of your disability and which has the effect of disadvantaging people with 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. This rule has the effect of disadvantaging people who are diabetic.

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.

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 DDA. These areas include but are not limited to: employment; education; the provision of goods, services and facilities; access to premises; accommodation; sport; and in the administration of Commonwealth laws and programs.

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 effect of the disability;
- The cost to the person or organisation taking discriminatory action of avoiding discrimination; and
- The availability of financial assistance to the person or organisation involved such as through the Australian Government's Employment Assistance Fund.

You can also be discriminated against lawfully by your employer if:

- You are unable to carry out the inherent requirements of the work even if the employer made reasonable adjustments for you; or
- Avoiding the discrimination would impose unjustifiable hardship on the employer.

There are other exceptions in the DDA 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 the online complaint form or download a complaint form from the AHRC website at www.humanrights.gov.au/complaints/make-complaint or you can contact the AHRC to get one.

You can fill in the complaint form and post, fax or lodge it online. If you are unable to put the complaint in writing, the AHRC 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 AHRC can usually arrange this for you.

Is there a time limit for making a complaint?

You should generally make a complaint within 2 years of the discrimination. The AHRC 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 AHRC.

How does the ACTHRC deal with complaints?

The AHRC will decide whether to accept or reject your complaint. If the AHRC decides to accept your complaint it will usually contact the person or organisation complained about (called 'the respondent') and will invite them to respond. The AHRC might also contact people other than the respondent if there is an adverse allegation made against them that arises from your complaint.

After receiving the response, the AHRC 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 AHRC.

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 AHRC 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 and signed by both sides.

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

If an agreement cannot be reached, the AHRC will terminate the complaint. In certain circumstances, you then have 60 days to make an application to the Federal Court or the Federal Circuit and Family Court for the court to make a decision about what happened.

You should seek legal advice before making an application to a court. You can seek free legal advice at the legal services listed below. You will have to pay filing fees and hearing fees for a court application although you can apply to have them waived if you are in financial hardship. While generally you will not need to pay costs if your complaint is successful, there are exceptions. You may have to pay costs as a part of court proceedings, including the other side's costs in limited circumstances.

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 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

Further information: womenslegalact.org

Legal Aid ACT

Phone: 1300 654 314

Email: legalaid@legalaidact.org.au

Further information: www.legalaidact.org.au

Australian Human Rights Commission

Phone: 1300 656 419

Email: inforservice@humanrights.gov.au

Further information: www.humanrights.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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