



## UNSW Course Outline

# LAWS3412 Discrimination and the Law - 2024

Published on the 25 Aug 2024

## General Course Information

Course Code : LAWS3412

Year : 2024

Term : Term 3

Teaching Period : T3

Is a multi-term course? : No

Faculty : Faculty of Law and Justice

Academic Unit : School of Global and Public Law

Delivery Mode : In Person

Delivery Format : Standard

Delivery Location : Kensington

Campus : Sydney

Study Level : Undergraduate

Units of Credit : 6

### Useful Links

[Handbook Class Timetable](#)

## Course Details & Outcomes

### Course Description

Anti-discrimination laws are a central feature of human rights protection in Australia, promoting the right to equality in public life. This course will examine Federal and NSW laws prohibiting discrimination on grounds including sex, race, disability and age from both a practical and

theoretical perspective. It will:

- Consider the theoretical underpinnings of anti-discrimination laws and encourage students to think critically about the limitations of concepts of 'equality' and 'non-discrimination' in the promotion and protection of human rights
- Give students a solid practical understanding of the operation and coverage of anti-discrimination legislation and provide an overview of relevant case law to equip students for professional practice
- Examine the relationship between Federal and State anti-discrimination laws
- Develop skills in statutory interpretation and legal problem-solving in the context of discrimination laws
- Cover practical issues in the resolution of discrimination complaints, including administrative procedures before complaint-handling bodies, the process of conciliation and taking a matter before the Federal Court, Federal Circuit and Family Court or NSW Civil and Administrative Tribunal
- Consider the appropriateness of conciliation and litigation as methods of resolving complaints of discrimination
- Encourage students to critique the operation of anti-discrimination laws as a means of overcoming social inequality and disadvantage and consider the experiences of groups that anti-discrimination laws are designed to 'protect'

## **Main Topics**

- Introduction and overview
- Theoretical underpinnings - equality, equal opportunity and discrimination
- The Australian approach to discrimination law - 'Direct' and 'indirect' discrimination; special measures, affirmative action and 'positive discrimination', vicarious liability, ancillary liability and victimization
- Sex, marital status and pregnancy discrimination
- LGBTIQA+ discrimination
- Religious discrimination
- Sexual harassment
- Race discrimination
- Racial vilification
- Disability discrimination
- Age discrimination
- Practice and procedure and options for law reform

# Course Learning Outcomes

Course Learning Outcomes
CLO1 : Apply knowledge and understanding regarding the central legal principles of anti-discrimination law with reference to the relevant legislation and any case law and explain them in plain English (PLOs 1 & 5)
CLO2 : Identify the legal issues in a hypothetical fact situation raising possible issues of discrimination and provide an opinion in the form of a legal advice on those issues (PLOs 5 & 6)
CLO3 : Identify procedural, evidentiary and other issues that may impact upon a person's ability to assert their rights under anti-discrimination law (PLOs 4, 5 & 6)
CLO4 : Critique the operation of anti-discrimination laws from a practical and theoretical perspective (PLO 4, 5 & 6)
CLO5 : Present an argument in relation to the issues covered in the course in a reasoned manner, including the ability to recognise weaknesses in the argument and identify (and counter) contrary views (PLOs 6 & 9)
CLO6 : Communicate effectively in relation to the subject matter of this course both orally and in writing (PLO 6, 9 & 10)

Course Learning Outcomes	Assessment Item
CLO1 : Apply knowledge and understanding regarding the central legal principles of anti-discrimination law with reference to the relevant legislation and any case law and explain them in plain English (PLOs 1 & 5)	<ul style="list-style-type: none"> <li>• Mid-Term Online Exam</li> <li>• Final Examination</li> </ul>
CLO2 : Identify the legal issues in a hypothetical fact situation raising possible issues of discrimination and provide an opinion in the form of a legal advice on those issues (PLOs 5 & 6)	<ul style="list-style-type: none"> <li>• Mid-Term Online Exam</li> <li>• Final Examination</li> </ul>
CLO3 : Identify procedural, evidentiary and other issues that may impact upon a person's ability to assert their rights under anti-discrimination law (PLOs 4, 5 & 6)	<ul style="list-style-type: none"> <li>• Class Participation</li> <li>• Mid-Term Online Exam</li> <li>• Final Examination</li> </ul>
CLO4 : Critique the operation of anti-discrimination laws from a practical and theoretical perspective (PLO 4, 5 & 6)	<ul style="list-style-type: none"> <li>• Mid-Term Online Exam</li> <li>• Final Examination</li> </ul>
CLO5 : Present an argument in relation to the issues covered in the course in a reasoned manner, including the ability to recognise weaknesses in the argument and identify (and counter) contrary views (PLOs 6 & 9)	<ul style="list-style-type: none"> <li>• Mid-Term Online Exam</li> <li>• Final Examination</li> </ul>
CLO6 : Communicate effectively in relation to the subject matter of this course both orally and in writing (PLO 6, 9 & 10)	<ul style="list-style-type: none"> <li>• Class Participation</li> <li>• Mid-Term Online Exam</li> <li>• Final Examination</li> </ul>

# Learning and Teaching Technologies

Moodle - Learning Management System

## Learning and Teaching in this course

The classes in this course are taught in four hour seminars/workshops (4 hours total per week). These seminars will interrogate the assigned readings that you have completed and students will then critically engage with that content during class discussions.

## Assessments

### Assessment Structure

Assessment Item	Weight	Relevant Dates
Class Participation Assessment Format: Individual	20%	Start Date: Not Applicable Due Date: Not Applicable
Mid-Term Online Exam Assessment Format: Individual	30%	Start Date: Week 6 Due Date: Week 6: 14 October - 20 October Post Date: 13/10/2024 09:00 AM
Final Examination Assessment Format: Individual	50%	Start Date: Not Applicable Due Date: Exam period

## Assessment Details

### Class Participation

#### Assessment Overview

This assessment requires you to prepare for and actively engage in class-based and online activities.

#### Course Learning Outcomes

- CLO3 : Identify procedural, evidentiary and other issues that may impact upon a person's ability to assert their rights under anti-discrimination law (PLOs 4, 5 & 6)
- CLO6 : Communicate effectively in relation to the subject matter of this course both orally and in writing (PLO 6, 9 & 10)

#### Detailed Assessment Description

Please note that class attendance is obligatory in the law school. Under the 80% rule you may not be assessed if you do not attend at least 80% of classes held.

### Class participation

This component will be assessed according to the contribution made by students to class discussions and activities.

This form of assessment has been chosen because for a number of reasons. First, because it develops important skills in students, including: your ability to think critically about the subject, your ability to apply analytical and problem-solving skills to the material, your ability to develop an argument and defend it, your oral communication skills and your self-confidence. Second, it allows for instant and continuous feedback on your progress in the subject. Finally, it encourages preparation for class, facilitating a more informed and stimulating discussion.

Reading the 'required readings' prior to each class and thinking about the issues and questions that are identified in the course schedule for each topic is the groundwork for success in this aspect of the course.

Students are reminded that often asking questions is as important as having answers, that listening and being receptive to differing points of view are important components of communication and that open and informed discussion is likely to make for a more interesting and rewarding class. Emphasis will be on quality (informed, thoughtful and relevant contributions) rather than quantity.

### **Class participation**

In assessing class participation weight will be given to a demonstrated understanding of the course materials and engagement in class discussion, analysis and participation in class exercises.

#### **Assessment information**

As a general guide, marks for class-participation will be allocated in accordance with the scale below:

**High Distinction (85% and over):** Student attends regularly, is invariably well prepared and has thought carefully about the issues for discussion. Regularly contributes to class discussion in ways which advance the learning experience of all students in the class. Is sensitive to the learning needs of other students.

**Distinction (75-84%):** Student attends regularly, is generally well prepared and contributes thoughtfully and constructively to class discussion. Is sensitive to the learning needs of other students.

**Credit (65-74%):** Student attends regularly and is generally prepared and able to respond to appropriate questions from the teacher.

**Pass (50-64%):** Attends regularly but class preparations and willingness to answer appropriate questions irregular.

**Fail:** Minimum attendance and negligible participation and willingness to answer appropriate questions and little, if any, indication of preparation.

**Assignment submission Turnitin type**

Not Applicable

**Generative AI Permission Level**

Not Applicable

Generative AI is not considered to be of assistance to you in completing this assessment. If you do use generative AI in completing this assessment, you should attribute its use.

For more information on Generative AI and permitted use please see [here](#).

## **Mid-Term Online Exam**

**Assessment Overview**

This assessment requires you to answer a set number of questions within a fixed time period

**Course Learning Outcomes**

- CL01 : Apply knowledge and understanding regarding the central legal principles of anti-discrimination law with reference to the relevant legislation and any case law and explain them in plain English (PLOs 1 & 5)
- CL02 : Identify the legal issues in a hypothetical fact situation raising possible issues of discrimination and provide an opinion in the form of a legal advice on those issues (PLOs 5 & 6)
- CL03 : Identify procedural, evidentiary and other issues that may impact upon a person's ability to assert their rights under anti-discrimination law (PLOs 4, 5 & 6)
- CL04 : Critique the operation of anti-discrimination laws from a practical and theoretical perspective (PLO 4, 5 & 6)
- CL05 : Present an argument in relation to the issues covered in the course in a reasoned manner, including the ability to recognise weaknesses in the argument and identify (and counter) contrary views (PLOs 6 & 9)
- CL06 : Communicate effectively in relation to the subject matter of this course both orally and in writing (PLO 6, 9 & 10)

### Detailed Assessment Description

The mid-session exam will potentially address all materials covered in the assigned readings.

### Submission notes

This assignment will be an online exam

### Assignment submission Turnitin type

This is not a Turnitin assignment

### Generative AI Permission Level

#### **Simple Editing Assistance**

In completing this assessment, you are permitted to use standard editing and referencing functions in the software you use to complete your assessment. These functions are described below. You must not use any functions that generate or paraphrase passages of text or other media, whether based on your own work or not.

If your Convenor has concerns that your submission contains passages of AI-generated text or media, you may be asked to account for your work. If you are unable to satisfactorily demonstrate your understanding of your submission you may be referred to UNSW Conduct & Integrity Office for investigation for academic misconduct and possible penalties.

For more information on Generative AI and permitted use please see [here](#).

## **Final Examination**

### Assessment Overview

This assessment requires you to complete a written examination within the University examination period.

### Course Learning Outcomes

- CL01 : Apply knowledge and understanding regarding the central legal principles of anti-discrimination law with reference to the relevant legislation and any case law and explain them in plain English (PLOs 1 & 5)
- CL02 : Identify the legal issues in a hypothetical fact situation raising possible issues of discrimination and provide an opinion in the form of a legal advice on those issues (PLOs 5 & 6)
- CL03 : Identify procedural, evidentiary and other issues that may impact upon a person's ability to assert their rights under anti-discrimination law (PLOs 4, 5 & 6)
- CL04 : Critique the operation of anti-discrimination laws from a practical and theoretical perspective (PLO 4, 5 & 6)
- CL05 : Present an argument in relation to the issues covered in the course in a reasoned manner, including the ability to recognise weaknesses in the argument and identify (and

counter) contrary views (PLOs 6 & 9)

- CLO6 : Communicate effectively in relation to the subject matter of this course both orally and in writing (PLO 6, 9 & 10)

### Detailed Assessment Description

The main criteria upon which you will be examined in any of your assessment tasks is evidence of *depth of thinking*. Depth of thinking is the extent to which you are able to proceed past the descriptive and into critical ways of thinking. This involves your ability to analyse, synthesise, abstract and generalize the central principles and themes of discrimination law.

### **Exam**

The exam will be worth 50% of your final mark and will potentially cover all aspects of the course. It will have a practical, problem-solving focus and will also require an understanding of the theoretical issues that will be discussed throughout the course.

The exam will not be designed to trick you. Keeping up with the required readings and participating in class discussion and exercises will provide a solid foundation for good performance in the exam.

The exam answers will be assessed according to students' ability to display a good practical understanding of federal discrimination laws and to show skills of analysis, synthesis, critical judgment, reflection and/or evaluation. Students will be assessed on the intellectual and critical depth of their answer. Assertions made in the exam concerning legal principles should be fully supported by authority.

### Assessment information

The following is a general guide to grading for your written assessments:

**High Distinction [85% and over]:** demonstrates an extensive understanding of the concepts of the unit of study content and the commensurate high order ability to analyse and evaluate the law, policy goals and the broader legal, economic and social context in which discrimination law operates.

**Distinction [75% to 84%]:** demonstrates a thorough understanding of the concepts of the unit of study content and the unambiguous ability to analyse and evaluate the law and policy goals in the context in which discrimination law operates.

**Credit [65% to 74%]:** demonstrates a sound understanding of the concepts of the unit of study



content and the unambiguous ability to analyse and evaluate the law and policy goals in the context in which discrimination law operates.

**Pass [50% to 64%]:** demonstrates a basic understanding of the concepts of the unit of study content and has some demonstrated ability to analyse and evaluate the law and policy goals in the context in which discrimination law operates.

**Fail [below 50%]:** demonstrates insufficient understanding of the concepts of the unit of study content AND/OR fails adequately to demonstrate ability to analyse and evaluate the law and policy goals in the context in which discrimination law operates.

#### **Assignment submission Turnitin type**

This assignment is submitted through Turnitin and students do not see Turnitin similarity reports.

#### **Generative AI Permission Level**

##### **No Assistance**

This assessment is designed for you to complete without the use of any generative AI. You are not permitted to use any generative AI tools, software or service to search for or generate information or answers.

For more information on Generative AI and permitted use please see [here](#).

## **General Assessment Information**

For further information on generative AI use in the Faculty of Law & Justice, please review the section titled 'Academic Honesty and Plagiarism' under the 'Other Useful Information' tab.

Full assessment details are available on the course Moodle page.

#### **Grading Basis**

Standard

#### **Requirements to pass course**

Students must achieve a total mark of 50% or more to pass the course.

# Course Schedule

Teaching Week/Module	Activity Type	Content
Week 1 : 9 September - 15 September	Seminar	Introduction: Equality, discrimination. Regulatory framework and human rights antecedents
Week 2 : 16 September - 22 September	Seminar	Legal standards
Week 3 : 23 September - 29 September	Seminar	Disability Discrimination
Week 4 : 30 September - 6 October	Seminar	Sex discrimination
Week 5 : 7 October - 13 October	Seminar	Sex discrimination and employment law. Religious discrimination
Week 6 : 14 October - 20 October	Other	Reading week - no classes
Week 7 : 21 October - 27 October	Seminar	Race discrimination
Week 8 : 28 October - 3 November	Seminar	Practice and process
Week 9 : 4 November - 10 November	Seminar	Practice and process
Week 10 : 11 November - 17 November	Seminar	Alternatives and revision
Week 11 : 18 November - 24 November	Other	Reading week - no classes

## Attendance Requirements

Please see information about attendance requirements in **Law & Justice Assessment Procedure and Student Information** located in the Other Useful Information tab in the Academic Information field.

Please be advised there will be no classes on public holidays. If your class falls on a public holiday, alternative arrangements will be made by the course convenor to make up the missed class.

## Course Resources

### Prescribed Resources

Gaze, Beth. and Smith, Belinda. (2016) Equality and Discrimination Law in Australia: An Introduction.

Revitalising Australia's Commitment to Human Rights - [Free and Equal Summary Report 2023](#) - Australian Human Rights Commission

Federal Discrimination Law (free online)

AHRC [A Quick Guide for Complying with the Positive Duty under the SDA](#)

Respect@Work National Inquiry into Sexual Harassment in Australian Workplaces [Report \(2020\)](#)

[Final Report](#) Maximising the Realisation of Human Rights: Religious Educational Institutions And Anti-Discrimination Laws, ALRC Report 142, December 2023.

Australian Human Rights Commission Amendment (Costs Protection) Bill 2023 - [Explanatory Memorandum](#)

“Let’s talk about confidentiality: NDA use in sexual harassment settlements since the Respect@Work [Report](#)”

## Course Evaluation and Development

As part of the myExperience process, your student evaluations on various aspects of the course are graded; the Course Convenor prepares a summary report for the Head of School. Any problem areas are identified for remedial action, and ideas for making improvements to the course are noted for action the next time that the course is run.

## Staff Details

Position	Name	Email	Location	Phone	Availability	Equitable Learning Services Contact	Primary Contact
	Sharmilla Bar gon					No	No
	Theunis Roux					Yes	Yes

## Other Useful Information

### Academic Information

Upon your enrolment at UNSW, you share responsibility with us for maintaining a safe, harmonious and tolerant University environment.

You are required to:

- Comply with the University’s conditions of enrolment.
- Act responsibly, ethically, safely and with integrity.
- Observe standards of equity and respect in dealing with every member of the UNSW community.
- Engage in lawful behaviour.
- Use and care for University resources in a responsible and appropriate manner.
- Maintain the University’s reputation and good standing.

For more information, visit the [UNSW Student Code of Conduct Website](#).

## UNSW Law & Justice Assessment Policy

It is essential that all students undertaking this course read and abide by the [UNSW Law & Justice Assessment Policy & Student Information](#). This document includes information on Class Attendance, Late Work, Word Limits, Marking, Special Consideration, Workload, and Academic Misconduct & Plagiarism. More information can also be found at [Assessment & Exam Information](#).

Information regarding Course Outlines are subject to change and students are advised to check updates. If there is a discrepancy between the information posted here and the handbook or the UNSW Law & Justice website, please contact [Student Services via The Nucleus Hub](#) for advice. UNSW Law & Justice reserves the right to discontinue or vary such courses or staff allocations at any time. If your course is not here, please visit [Handbook](#) for information.

## Academic Honesty and Plagiarism

As a student at UNSW you are expected to display [academic integrity](#) in your work and interactions. Where a student breaches the [UNSW Student Code](#) with respect to academic integrity, the University may take disciplinary action under the Student Misconduct Procedure. To assure academic integrity, you may be required to demonstrate reasoning, research and the process of constructing work submitted for assessment.

To assist you in understanding what academic integrity means, and how to ensure that you do comply with the UNSW Student Code, it is strongly recommended that you complete the [Working with Academic Integrity](#) module before submitting your first assessment task. It is a free, online self-paced Moodle module that should take about one hour to complete.

## Generative AI

Using generative AI to conduct research or to organise your argument is not prohibited but is not encouraged. We note that the output from generative AI tools is often incorrect and almost always more superficial than is required to achieve a passing grade. Moreover, any substantive errors in the assessment, such as inappropriate references or incorrect statements, will be regarded negatively by the marker, just as they would if not generated by AI. You should limit your use of AI to simple editorial assistance, such as standard editing and referencing functions in word processing software in the creation of your submission. You must not use any functions

that generate or paraphrase passages of text, whether based on your own work or not. If your marker or Turnitin identify the wrongful use of generative AI in the text of your assessment submission, including the use of paraphrasing software, your assessment may be referred to the Student Integrity team for investigation. Please go to the link for further information about [referencing and acknowledging the use of artificial intelligence tools](#).

### **Prohibition on use of translation apps**

With limited exceptions for language study, the course of study and assessment in Australian universities must be in English (Higher Education Standard Framework (Threshold Standards) 2021 1.5 6(c)).

In Law & Justice many classes have assessable class participation. This must be in English. **Use of a translation device to assist with contributions to class discussion is not allowed.** Marks for class participation may be reduced where use of translation devices is detected. Similar prohibitions apply to use of any other generative text app that is not specifically permitted by the class teacher. However, use of translation software to assist a student to understand material outside of class, or to assist with preparation for assessment is generally permitted.

Further considerations apply to LLB and JD students. International lawyers who seek to be admitted in NSW must satisfy an English proficiency test. That test is expressed as equivalent to IELTS scores of 7.0 -8.0 across the tests. It is assumed that UNSW graduates are at or above those levels of English proficiency. Use of translation apps can impede the attainment of that level of proficiency. Students should avoid behaviours that put them at risk of breach of legal requirements which can have significant consequences, including potential consequences for your admission as a lawyer.

### **Submission of Assessment Tasks**

Before submitting assessment items all students must read and abide by the [UNSW Law & Justice Assessment Policy & Student Information](#).

### **Special consideration**

Special consideration is primarily intended to provide you with an extra opportunity to demonstrate the level of performance of which you are capable. To apply, and for further information, see Special Consideration on the UNSW [Current Students](#) page.

## Feedback

UNSW Law & Justice appreciates the need for students to have feedback on their progress prior to the last date for withdrawal without failure. All courses will therefore provide feedback to students prior to this date, as well as throughout the course. However, students should note that feedback does not take the form only of formal grades and written comments on written assessments. Rather, formative feedback, which helps students to self-assess, to identify misunderstandings, and to identify areas requiring further work, will occur during class and possibly online. For example, where a teacher asks the class a question, all students should think about how they might answer. Even though not all students will necessarily be able to respond orally, everyone can reflect on their tentative answer in light of the teacher's response and subsequent class discussion. If you are struggling to understand what is being asked in class, or if your tentative answers prove incorrect and subsequent discussion does not clear things up, then you should continue to ask questions (of yourself, your peers or your teacher). Similarly, you can get a sense of your ability in a course through peer feedback during group work, your teacher's responses to your in-class contributions, and your own response to in-class problems and examples (whether or not you are called on to relay your answer to the class) and also your online activities and responses by others to those activities. Students enrolled in this course may check their Moodle course page for details on the specific feedback used in this course.

## Faculty-specific Information

### Additional support for students

- Student support: <https://www.student.unsw.edu.au/support>
- Academic Skills and Support: <https://student.unsw.edu.au/academic-skills>
- Student Wellbeing, Health and Safety: <https://student.unsw.edu.au/wellbeing>
- Equitable Learning Services: <https://student.unsw.edu.au/els>
- UNSW IT Service Centre: <https://www.myit.unsw.edu.au>

### Course improvement

Student feedback is very important to continual course improvement. This is demonstrated within the Faculty of Law & Justice by the implementation of the UNSW online student survey myExperience, which allows students to evaluate their learning experiences in an anonymous way. myExperience survey reports are produced from each survey. They are released to staff after all student assessment results are finalised and released to students. Course convenors will use the feedback to make ongoing improvements to the course. Students enrolled in this

course may check their Moodle course page for details on the actions taken in response to evaluation feedback in Student Survey.

## **School Contact Information**

Please contact [Nucleus Student Hub](#) for all enquiries. The Nucleus acts as a central communications hub for UNSW and will distribute your enquiry to the best person to respond.