



# ANTI-DISCRIMINATION AND HUMAN RIGHTS

This sheet is intended to provide **general legal information** about the law in Queensland. It is not legal advice. If you have a particular legal problem you should contact a solicitor for legal advice. At the end is a list of agencies that might be able to assist you, including legal agencies.

The Queensland Human Rights Commission performs functions in relation to the *Human Rights Act* and the *Anti-Discrimination Act*. Their website provides extensive and valuable resources including information specific to LGBTIQAP+ people:

<https://www.qhrc.qld.gov.au/resources>

## Human Rights

The Queensland *Human Rights Act* became law in 2019 commencing full operation on 1 January 2020. It provides for specific human rights which are to be protected in Queensland. These include:

- every person has the right to enjoy the person's human rights without discrimination
- rights to privacy and reputation
- every child (under 18) has the right, without discrimination, to the protection that is needed by the child, and is in the child's best interests, because of being a child.

The Act provides that it is unlawful for a public entity:

- to act or make a decision in a way that is not compatible with human rights; or
- in making a decision, to fail to give proper consideration to a human right relevant to the decision.

Your service provider may be a public entity. If you are not sure, you should enquire with the Queensland Human Rights Commission as to whether the *Human Rights Act* applies to decisions made by your service.

An individual can make a complain to the Human Rights Commissioner if they believe a public entity has acted in a way, or made a decision that is incompatible with human rights. If a complaint is accepted, the commissioner may investigate.

Alternatively, the *Human Rights Act* provides that where a person is undertaking proceedings against a public entity, for example in relation to discrimination or negligence, they can also argue there has been a breach of their human rights.

## Discrimination

Discrimination on the basis of sex, age, impairment, gender identity, sexuality or association with an identified person (amongst

other attributes) is prohibited in work and work-related areas, education, provision of goods and services, accommodation areas, and administration of State laws and programs. The *Anti-Discrimination Act 1991* (the Act) defines **gender identity** to mean that the person: – (a) identifies, or has identified, as a member of the opposite sex by living or seeking to live as a member of that sex; or (b) is of indeterminate sex and seeks to live as a member of a particular sex. This contrasts with the definition in the federal legislation (see below).

Legal definitions may not always reflect the cultural understanding of various terms and may reinforce damaging attitudes. Be aware that for LGBTIQAP+ Sistergirl and Brotherboy people, engaging with the legal system can result in experiences of isolation and alienation, and compound existing trauma.

Discrimination can be direct or indirect; either treating someone less favourably or imposing a rule that disadvantages people with specific attributes over others. The person's motivation for discriminating does not matter - for example if you deny services to someone who is gender non-conforming because you are concerned other people who access the service may be prejudiced, that still amounts to discrimination.

The Act states that in supplying services (whether or not for reward or profit), a person must not discriminate against another person:

- by failing to supply the goods or services; or
- in the terms on which goods or services are supplied; or
- in the way in which goods or services are supplied; or
- by treating the other person unfavourably in any way in connection with the supply of goods and services.

In relation to accommodation services, a person must not discriminate against another person:

- by failing to accept an application for accommodation; or
- by failing to renew or extend the supply of accommodation; or
- in the way in which an application is processed; or
- in the terms on which accommodation is offered, renewed or extended; and

- in any variation of the terms on which accommodation is supplied; or
- in denying or limiting access to any benefit associated with the accommodation; or
- in evicting the other person from the accommodation; or
- by treating the other person unfavourably in any way in connection with the accommodation.

There are exceptions for services which are designed for a specific group, such as gendered services. Services seeking to rely upon an exception must ensure they are acting within the scope of any specific exemption. For example, denying a trans woman access to a service specific to women may still amount to discrimination.

The Act also provides that you cannot ask someone to supply information on which unlawful discrimination might be based. This might mean for example in conducting a job interview or providing accommodation you could not ask the person's sexuality or gender identity for the purposes of making your decision. This section would generally not present an issue, provided you can demonstrate "that the information was reasonably required for a

purpose that did not involve discrimination." e.g. to provide a more responsive service or for data purposes.

### Complaints of discrimination are made through the Human Rights Commission.

The Qld Human Rights Commission provides a number of case studies of outcomes on its website:

<https://www.qhrc.qld.gov.au/resources/case-studies>

In addition, to state mechanisms responding to discrimination the Federal *Sex Discrimination Act 1984* provides protection from discrimination on the grounds of sexual orientation, gender identity, intersex status and more. This Act applies in a range of circumstances relating to workplaces, education, goods, services and facilities, and accommodation.

The Act describes **gender identity** as "the gender-related identity, appearance or mannerisms or other gender-related characteristics of a person (whether by way of medical intervention or not), with or without regard to the person's designated sex at birth."

Complaints can be referred to the Australian Human Rights Commission.

### Who can help?

Queensland Human Rights Commission <a href="http://www.qhrc.qld.gov.au">www.qhrc.qld.gov.au</a> .....	1300 130 670
Australian Human Rights Commission <a href="http://www.humanrights.gov.au">www.humanrights.gov.au</a> .....	General Enquiries 1300 369 711 Complaints 1300 656 419
Youth Legal Advice Hotline .....	1800 527 527
Youth Advocacy Centre (YAC) <a href="http://www.yac.net.au">www.yac.net.au</a> .....	3356 1002
Hub Community Legal <a href="http://www.communitylegal.org.au">www.communitylegal.org.au</a> .....	3372 7677
YFS Legal <a href="http://www.yfs.org.au">www.yfs.org.au</a> .....	3826 1500
Legal Aid Queensland <a href="http://www.legalaid.qld.gov.au">www.legalaid.qld.gov.au</a> .....	1300 651 188
Aboriginal & Torres Strait Islander Legal Service <a href="http://www.atsils.org.au">www.atsils.org.au</a> .....	3025 3888 or (free call) 1800 012 255 (24hrs 7 days a week)
Translating & Interpreting Services (24hrs) .....	131 450
Kids Help Line .....	1800 551 800
Refugee and Immigration Legal Service <a href="http://www.rails.org.au">www.rails.org.au</a> .....	3846 9300
Community Legal Centres (CLCs) see <a href="http://www.naclc.org.au">www.naclc.org.au</a> for your nearest CLC	

This information was last reviewed and updated in February 2020. The Youth Advocacy Centre does not accept responsibility for any action or outcome as a result of anyone relying on the information provided.