



Explainer: Legal rights of trans and gender diverse people in Australia

What are the legal rights of trans people in Australia?

In Australia, transgender and gender diverse people have the same legal rights as everyone else.

The [Sex Discrimination Act 1984](#) protects people from discrimination based on their sex, sexual orientation, gender identity, intersex status and other grounds. Under the Act, you can't exclude or mistreat someone for these reasons in areas of public life, such as education, employment, buying something at a shop or accessing services, unless a relevant exemption applies.

These protections help ensure that trans people are treated with fairness and respect.

Discrimination on the grounds of gender identity

When the Sex Discrimination Act refers to 'gender identity discrimination' it includes discrimination against someone because they are trans or gender diverse. For example, if someone was refused a job, accommodation or goods and services because they are trans or gender diverse, this would be unlawful gender identity discrimination unless an exemption applied (see below for more information on exemptions).

Gender identity discrimination often happens to trans and gender diverse people based on their appearance. If a trans or gender diverse person is refused a job because of their gender-related appearance, this is likely to be unlawful gender identity discrimination unless an exemption applied.

Not all trans and gender diverse people have a gender identity that is male or female, but many do. For those people, gender identity discrimination can also occur where they are denied services that are ordinarily provided to people of the same gender.

Australian law recognises that genders are based on more than just biology. It considers how people live, how they feel about themselves and how they express themselves to the world.



Discrimination on the grounds of sex

The Sex Discrimination Act also protects people from discrimination on the grounds of sex. For example, if a trans woman is refused a job because she is a woman, this would be unlawful sex discrimination unless an exemption applied.

The protections against sex discrimination and gender identity discrimination overlap in the Sex Discrimination Act.

Tickle v Giggle for Girls Federal Court case

In the case [*Tickle v Giggle for Girls Pty Ltd \(No 2\) \[2024\] FCA 960*](#), the Federal Court ruled that excluding a trans woman from a women-only app was unlawful discrimination on the ground of her gender identity.

The Court's decision explained how the protections against gender identity discrimination and sex discrimination in the Sex Discrimination Act protect trans and gender diverse people.

While the case was about gender identity discrimination, the judge also clarified the law around sex discrimination. The Court said that sex in the Sex Discrimination Act is:

not confined to being a biological concept referring to whether a person at birth had male or female physical traits, nor confined to being a binary concept, limited to the male or female sex, but rather takes a broader ordinary meaning, informed by its use, including in State and Territory legislation.

In other words, sex is not binary and can be changed from the sex you were assigned at birth.

Across Australian states and territories, trans women are recognised as women under the law when their sex or gender marker is recorded as female on official documents, such as birth certificates. They can also be recognised as women based on how they have affirmed their identity. This can include legally changing their name and identifying documents, surgery or other physical changes (including hormone therapies) but medical procedures are not a requirement. The same applies to trans men and to nonbinary people.

The Court also said that the Sex Discrimination Act protects trans women from discrimination on the grounds of their sex, just as it protects other women. This



interpretation is consistent with how the term 'sex' is used in other laws, including State and Territory laws dealing with birth certificates.

How do we protect everyone's rights?

Human rights protect all of us. In Australia, everyone has the right to be safe and to live free from discrimination. Here are some examples of how human rights support everyone:

- **Safety:** everyone deserves to be safe and live a life free from violence and abuse. Ending gender-based violence and discrimination means ending it for everyone.
- **Fairness:** promoting the rights all women, including trans women, involves changing unfair systems. Many women's organisations advocate for the rights and equal participation of trans and gender diverse people because they see it as part of the bigger fight for gender justice and equality.
- **Respect:** respecting different identities and experiences does not make other identities and experiences less valuable or important. Human rights are about making sure everyone is treated with dignity and respect.

Exemptions and special measures

Under the Sex Discrimination Act, it is generally against the law to treat someone unfairly because of their sex or gender identity in particular areas of public life.

However, the Act has some exemptions which recognise that not all differential treatment is discriminatory, and that sometimes, treating people differently is necessary to achieve substantive equality. The exemptions are limited and must be justified under the law. In other words, any situation where different treatment is allowed must meet the specific legal criteria below.

Exemptions: The Sex Discrimination Act has certain exemptions where different treatment is permitted. One example is competitive sport, where distinctions based on gender identity are allowed if strength, stamina, or physique are relevant to the competition.

The Commission has [published guidelines](#) on including trans and gender diverse people in sport, which provide practical advice for sporting organisations on how this exemption works. The Australian Sports Commission has also published [guidelines for the inclusion of trans and gender diverse people in High Performance sport](#).



Special measures: If an action is taken to help achieve real equality between people of different genders, it may not be considered discrimination. For example, it could be lawful to exclude cis-gendered people (people whose gender identity is the same as the sex they were assigned at birth) from a program designed to support trans and gender diverse people to access services, where there have been barriers that stopped trans and gender diverse people from accessing those services equally in the past.

Temporary exemptions: The Commission can also grant temporary exemptions from parts of the Sex Discrimination Act for up to five years. These exemptions are only for specific situations and are dealt with under the guidelines currently being updated by the Commission.

When an exemption is requested, the Commission:

- Asks for public input, so individuals and organisations can share their views.
- Carefully looks at all the circumstances, and the submissions received.
- Assesses the request against the purposes of the Act, which include to eliminate discrimination as far as possible. You can read the items set out in the Act [here](#).

Every decision is made on a case-by-case basis to ensure fairness and consistency with the law.