



Fact sheet

Complaints under the Sex Discrimination Act: Gender Identity

What is the Sex Discrimination Act?

The *Sex Discrimination Act 1984* (Cth) (the SDA) makes it against the law to treat you unfairly because of your: sex; marital status; family responsibilities; because you are pregnant or might become pregnant or because you are breastfeeding. The SDA also makes sexual harassment against the law.

As of 1 August 2013 the SDA also makes it against the law to treat you unfairly because of your **gender identity**, intersex status; sexual orientation and marital or relationship status (including same-sex de facto relationships).

The Australian Human Rights Commission will be able to accept complaints of discrimination on the ground of **gender identity** about things that have happened on or after the commencement date.

What is gender identity?

Gender identity means the gender-related identity, appearance or mannerisms or other gender-related characteristics of a person. This includes the way people express or present their gender and recognises that a person's gender identity may be an identity other than male or female.

Terms commonly used to describe a person's gender identity include trans, transgender and gender diverse. The SDA provides protection from discrimination to people with a range of gender identities including, but not limited to, trans, transgender and gender diverse. It does not matter what sex a person was assigned at birth or whether the person has undergone any medical intervention.

What is gender identity discrimination?

Direct gender identity discrimination happens when a person is treated less favourably than a person with a different gender identity would be treated in the same or similar circumstances. For example, it may be direct gender identity discrimination if a shop-assistant refused to serve a person who identifies and presents as a woman but has a deep masculine sounding voice because she felt uncomfortable about that person's gender identity.

Indirect gender identity discrimination occurs when there is a requirement or practice that is the same for everyone but has an unfair effect on people of a particular gender identity. For example, it may be indirect discrimination if an organisation's human resources policies do not permit changes to an employee's records. Such a policy may require a transgender woman to continually disclose information about her gender identity in order to explain discrepancies in personal details.

When can this law be used?

You can use the SDA to get fair treatment in:

- **Employment** – getting a job, terms and conditions of a job, training, promotion, being dismissed.
- **Education** – enrolling or studying in a course at a private or public school, college or university.
- **Accommodation** – renting or buying a house or unit.
- **Getting or using services** – such as services provided by restaurants, shops or entertainment venues, banking and insurance services, services provided by government departments, transport services, professional services like those provided by lawyers, doctors or tradespeople.

What can I do if I experience discrimination?

You may want to deal with the situation yourself by raising it directly with the person or people involved.

If this does not resolve the situation, or you do not feel comfortable doing this, you can make a complaint to the Australian Human Rights Commission. You can also have someone such as a solicitor, advocate or trade union make a complaint on your behalf.

It does not cost anything to make a complaint to the Commission.

Your complaint needs to be put in writing. The Commission has a complaint form that you can fill in and post or fax to us or you can lodge a complaint online at our website. If you are not able to put your complaint in writing, we can help you with this.

The complaint should say what happened, when and where it happened and who was involved.

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

What will happen with my complaint?

When the Commission receives a complaint about something that is covered by the SDA, the President of the Commission can investigate the complaint and try to resolve it by conciliation. The Commission is not a court and cannot determine that discrimination has happened. The Commission's role is to get both sides of the story and help those involved resolve the complaint.

Commission staff may contact you to get further information about your complaint.

Generally, the Commission will tell the person or organisation the complaint is against (the respondent) about your complaint and give them a copy of the complaint. The Commission may ask the respondent for specific information or a detailed response to your complaint.

When appropriate, the Commission will invite you to participate in conciliation. Conciliation is an informal process that allows you and the respondent to talk about the issues and try to find a way to resolve the complaint.

If your complaint is not resolved or it is discontinued for another reason, you can take your complaint to the Federal Court of Australia or the Federal Circuit Court of Australia.

Where can I get more information?

Call us

Complaint Info Line: 1300 656 419 or (02) 9284 9888
TTY: 1800 620 241

If you need an interpreter you can call the Translating and Interpreting Service (TIS) on **131 450** and ask to be connected to the Australian Human Rights Commission.

If you are deaf or have a hearing or speech impairment you can contact the National Relay Service (NRS) on **133 677** (TTY/Voice) or **1300 555 727** (Speak & Listen) and ask to be connected to the Australian Human Rights Commission.

Write to us

Postal Address: GPO Box 5218, Sydney NSW 2001
Email: complaintsinfo@humanrights.gov.au
Fax: (02) 9284 9611

Go online

Website: www.humanrights.gov.au
Make a complaint: www.humanrights.gov.au/complaints/lodging-your-complaint

The Australian Human Rights Commission can make reasonable adjustments for people with disability to aid participation in the complaint process.

You do not need a lawyer or advocate to make a complaint about discrimination. If you are seeking advice or advocacy you can contact your trade union, an advocacy organisation or a community legal centre. Contact details for your closest community legal centre can be found at www.naccl.org.au/directory.

Disclaimer: The information on this fact sheet is only intended as a guide. It is not a substitute for legal advice.