



Transgender discrimination

What does the law say about transgender discrimination?

It is generally against the law in NSW to treat you less favourably or harass you because you are transgender, or because you have a relative, friend, associate or work colleague who is transgender.

Indirect transgender discrimination is also against the law. This occurs when there is a rule or requirement that disadvantages people who are transgender more than people who are not transgender — unless it can be shown that the rule or requirement is 'reasonable in all the circumstances'.

Who is counted as transgender under anti-discrimination law?

You are counted as transgender under NSW anti-discrimination law if any of the following apply to you:

- you can show that you identify as the opposite gender to your birth gender by living as your identified gender
- you can show that you identify as the opposite gender to your birth gender because you lived as that gender in the past or plan to live as that gender in the future
- your gender is indeterminate but you identify as one gender or the other

This applies:

- whether or not you have had sex change or other surgery
- whether or not you are taking hormones or have taken them in the past

You are also covered by NSW anti-discrimination law if someone treats you less favourably because they think you are transgender, even if you are not, or because they think your relative, friend, work colleague or associate is transgender.

NSW anti-discrimination law does not cover you if your gender is indeterminate and you don't identify as one

gender or the other. There are protections for all people who are intersex under the Commonwealth *Sex Discrimination Act 1984*.

Transgender, indeterminate and intersex are the terms used in the law. However you are still covered if you use other words to describe yourself.

When does this law apply?

In general, people must not treat you less favourably in the following areas of public life:

- **at work** — when you apply for a job, a contract or a licence or registration to do a job, when you are at work, and when you leave a job;
- **when you receive goods or services** — for example, from shops, banks, lawyers, government departments, the police, public transport, local councils, doctors, hospitals and other medical services, hotels, sporting venues and entertainment venues;
- **when you apply to get into or study in any State educational institution**, which includes any government school, college or university;
- **when you rent accommodation** such as houses, units, flats, hotel or motel rooms and commercial premises; and
- **when you try to enter or join a registered club, or when you get services from one.** A registered club is a club that sells alcohol or has gambling machines.

For more detailed information about your rights in each of the circumstances listed above, see pages 3–7.

Recognised transgender people

If you have had gender reassignment surgery, you can become a 'recognised transgender person' under federal laws. You are a recognised transgender person if you have a new or amended birth certificate (or an equivalent document) from an Australian state or other Australian jurisdiction.

Recognised transgender people can become a member of the gender they identify with for most legal purposes. For example, if you are a male to female recognised transgender person, you generally have the right to be considered for a job that is for women only, and to receive a service that is for women only, for example to attend a women-only gym.

If you are not a recognised transgender person, you can't legally force people to treat you as your preferred gender. However, anyone who is counted as transgender as described on the previous page is protected from discrimination and harassment in employment, when getting goods or services, and so on under NSW law.

What are my work rights?

In general, all job advertisements, jobs, apprenticeships and traineeships must be open to you, and you have the right to apply for them and be fairly considered for them. This also applies to bodies which issue licences to perform particular jobs, for example taxi licences or registration to practice as a nurse.

The fact that you're transgender, or someone thinks you are, must not be used to prevent you from applying for or getting a job, apprenticeship or traineeship. You must be assessed on your merit against the criteria for the job in the same way as other applicants.

In general, you also have the same right to training, promotion and work benefits as other employees. For example, a manager must not refuse to promote you because he or she is worried that people might not

respect you as a supervisor.

Being treated as your preferred gender

In general, if you are a recognised transgender person you have the right to be treated as the gender with which you identify, and you can wear the clothes or uniform of your identified gender, use the toilets and change rooms of your identified gender and so on.

If you are not a recognised transgender person, the law is not quite so clear. You can insist that you wear the clothes and use the toilets and change rooms of the gender with which you identify, unless it is not "reasonable with regard to all the circumstances" to do so.

At the Anti-Discrimination Board we advise employers that it generally makes practical sense, and is probably safest legally, to allow you to wear the clothes and use the toilets and change rooms of your identified gender.

Harassment

You also have the right not to be harassed by managers, staff or clients at work because you are transgender. Employers must do their best to make sure that you are not harassed at any time, including when you are in the process of changing over to the gender with which you identify (transitioning), and when you are using the toilets or change rooms of your identified gender. For more information about harassment, refer to the Anti-Discrimination Board website and select "Anti-discrimination law"; or ask for our factsheet *Harassment*.

Dismissal

Transgender vilification is also against the law

Transgender vilification is also against the anti-discrimination law. Vilification is defined as any public act that could encourage hatred, serious contempt, or severe ridicule towards people who are transgender, or who are thought to be transgender.

Public acts could include remarks in a newspaper or journal, in other publications, on radio or television or on the internet, including social networking sites. They could also include graffiti, posters, verbal abuse, speeches or statements, gestures and badges or clothing with slogans on them, as long as these are displayed, made or worn in public. The vilification law does not cover acts that are not public, for example abuse over a back fence that no-one else can hear.

For more information, refer to our website and select "Anti-discrimination law", ask for our factsheet *Vilification* or contact our Enquiry Service.

In general, you must not be dismissed for being transgender, or because you are in the process of changing over to the gender with which you identify. An employer can only dismiss you for lawful reasons, in the same way as anyone else. For example, they may be able to dismiss you because of ongoing poor work performance, serious misconduct, medical reasons that mean you're no longer able to do your job or genuine redundancy.

Exception -superannuation schemes

There is an exception in the law for superannuation schemes. They are allowed to treat you as a member of your birth gender even if you are a recognised transgender person.

What are my rights to goods and services?

In general, you have the right to receive goods or services in the same way as people who are not transgender. People must not harass you for being transgender when you are seeking most goods or services.

Being treated as your preferred gender

In the same way as at work, if you are a recognised transgender person you generally have the right to be treated as the gender with which you identify. You can wear the clothes of your identified gender, use the toilets of your identified gender and so on.

If you are not a recognised transgender person, the legal situation is not quite so clear. However in most cases you should be able to use the toilets of your identified gender — see under “What are my work rights?” on page 3.

Exceptions — sport and superannuation

There is an exception in the law for playing sport. It is not unlawful to discriminate against you because you are transgender in some circumstances relating to single-sex sport.

However, the law does not require sports clubs to apply the exception, and the Anti-Discrimination Board encourages clubs to provide an inclusive environment wherever possible.

It would be unlawful for a sports club to make you have biological or chromosomal tests just because someone thinks you are transgender. You can only be required to have tests if the same conditions apply to all participants

For more information about how to get birth certificates amended, contact one of the following:

NSW

Registry of Births, Deaths and Marriages
1300 655 236
www.bdm.nsw.gov.au

ACT

Births, Deaths and Marriages Unit
(Office of Regulatory Services)
(02) 6207 0460
www.ors.act.gov.au/bdm

NT

NT Registry of Births, Deaths and Marriages
(08) 8999 6119
www.nt.gov.au/justice/bdm

QLD

Births, Deaths and Marriages
(Department of Justice and Attorney General)
1300 366 430
www.justice.qld.gov.au/justice-services/births-deaths-and-marriages

SA

Births, Deaths and Marriages Registration Office
(08) 8204 9599
www.ocba.sa.gov.au/bdm

TAS

Registry of Births, Deaths and Marriages
1300 135 513
www.justice.tas.gov.au/bdm

VIC

Registry of Births, Deaths and Marriages
1300 369 367
www.bdm.vic.gov.au

WA

Registry of Births, Deaths and Marriages
1300 308 021
www.bdm.dotag.wa.gov.au

For more information about your rights to documents in the gender with which you identify, and your rights under federal laws, see pages 7-8.

— for example everyone is tested, or the tests are random, or only the winners are tested.

You cannot be excluded from coaching sport or from sports administration because you are transgender.

There is also an exception for superannuation schemes — see “What are my work rights?”.

What are my rental accommodation rights?

In general, you have the right to rent accommodation in the same way as anyone else. A real estate agent or landlord can't refuse you accommodation because you are transgender. Generally, they can only refuse to rent to you if the accommodation is not large enough for your family or group, or you can't pay for it, or your references don't check out.

You also have the right to rent accommodation on the same terms as anyone else — for example, you should not have to pay a higher bond, and you should receive the same level of co-operation about repairs and maintenance work as other renters. You also have the right not to be harassed while renting accommodation because you are transgender.

Exception — shared households

There is an exception in the law for shared accommodation in a private household. If you share facilities with the owner of the accommodation or their close relative, and the shared accommodation is for six or less people, then they are allowed to choose who they want to live with them. It won't be against the law if they decide they don't want to live with you because you are transgender. This does not apply if the accommodation is self-contained and does not share facilities.

What are my State education rights?

State education includes education at any State university, State college, TAFE or State school. It does not include independent, private and religious-based educational institutions, which are not covered by the transgender discrimination law. They can discriminate against people who are transgender if they choose to.

You generally have the right to apply for and get education, and any related benefits, at any co-educational State institution (that is one for both sexes) in the same way as anyone else.

For example, they can't refuse you admission, or give you worse marks, or expel you just because you are transgender, or in the process of changing over to the gender with which you identify. They must do their best to make sure that you are not harassed for being transgender by teachers or other students.

Being treated as your preferred gender

In the same way as at work, if you are a recognised transgender person you generally have the right to be treated as the gender with which you identify. You can attend single-sex activities for your identified gender, wear the clothes of your identified gender, use the toilets of your identified gender and so on.

If you are not a recognised transgender person, the law is not quite so clear. However in most cases you should be able to attend single sex activities and use the toilets of your identified gender — see under “What are my work rights?” on page 3.

Single-sex schools

The situation is more complicated for government single-sex schools. If you are a recognised transgender person, you have the right to attend a single-sex school for people of the gender with which you identify, in the same way as any other person of that gender. It would be unlawful to refuse to enrol you just because you are transgender.

If you are not a recognised transgender person, the law is not quite so clear. Generally, it is against the law for any school to treat you unfairly for being transgender. However, whether you are able to insist on attending a single-sex school of either your birth gender or your identified gender is unclear. There have been no court cases on this part of the law yet that could provide interpretation. So, if you are having trouble enrolling in or staying on at a single sex school, please contact the Anti-Discrimination Board.

What are my registered club rights?

Registered clubs may include RSL clubs, workers clubs, most ethnic clubs and sporting clubs. Voluntary clubs such as Rotary and Lions are not registered clubs and are not covered by the transgender discrimination law.

In general, you have the right to become a member of a registered club and keep your membership in the

same way as anyone else. You must not be refused membership or have your membership taken away just because you are transgender, or in the process of changing over to your preferred gender.

You generally have the right to enjoy the same benefits as any other members. You also have the right not be harassed by club employees or by other members and guests because you are transgender.

Being treated as your preferred gender

In the same way as at work, if you are a recognised transgender person you generally have the right to be treated as the gender with which you identify. You can attend single-sex activities for your identified gender, wear the clothes of your identified gender, use the toilets of your identified gender and so on. There is an exception to this for single-sex sport — see page 4.

If you are not a recognised transgender person, the law is not quite so clear. However in most cases you should be able to attend single-sex activities (apart from playing single-sex sport) and use the toilets of your identified gender — see under “What are my work rights?” on page 3.

Single-sex clubs

The situation is more complicated for single-sex clubs. If you are a recognised transgender person you have the right to be a member of a single sex club for people of the gender with which you identify, in the same way as any other person of that gender. It would be transgender discrimination to refuse you membership because you are transgender.

If you are not a recognised transgender person the law is not quite so clear. Generally, it is against the law for any club to treat you unfairly for being transgender. The law says that a single-sex club can keep its status as single-sex if it admits a transgender person who identifies with the sex of that club.

However, whether you are able to insist on attending the single sex club of either your birth gender or your identified gender is unclear. There have been no court cases on this part of the law yet that could provide interpretation. So if you are having trouble getting or keeping your membership of a single sex club, please contact the Anti-Discrimination Board for advice.

What can I do if I am treated unfairly, harassed or vilified because I am

transgender?

First you need to work out if what has happened to you seems to be against the law. If you are not sure after reading this factsheet, phone our Enquiry Service for more information.

If what’s happened to you does seem to be against the law, you should try talking to the person or organisation involved. The organisation may have a policy on these issues or a process for dealing with grievances, and you may be able to address your problem through these channels. You can also get help from other sources such as trade unions.

If you don’t feel able to talk to the person or organisation, or you talk to them but it doesn’t solve the problem, you can make a complaint to the Anti-Discrimination Board. It won’t cost anything to make a complaint, and you don’t need a lawyer.

If what has happened to you is not against the law, there may be other ways you can solve the problem. Refer to our factsheet *How to deal with discrimination, unfair treatment or harassment* or phone our Enquiry Service for advice.

Making a complaint

Your complaint must be in writing. You can make a complaint by completing our discrimination complaint form, which is available on our website or from our Enquiry Service. Another option is to write to the President of the Anti-Discrimination Board, explaining what happened and why you think you have been discriminated against because you are transgender, or someone thinks you are transgender. Our addresses and phone numbers are at the end of this factsheet.

You can write to us in any language, or in Braille, and we will have your complaint translated free of charge. If you need assistance to write your complaint down, phone us and we will help you or refer you somewhere else for help.

We also accept complaints made on your behalf by organisations such as trade unions and representative community groups (for example a transgender support organisation or an ethnic community association). In this case you must be named in the complaint and it must be clear in the complaint that you agree with it being made. You may also be asked to show that you consent to the complaint being made on your behalf.

If you want to make a complaint on behalf of a child or a person with a disability who cannot make their own complaint, contact us for more information.

The Board can only accept a complaint if the discrimination, harassment or vilification occurred in the twelve months before we receive the complaint. If you make a complaint about events that occurred more than twelve months before we receive it, we may not investigate the complaint.

If your problem is urgent (for example you are about to lose your job or housing), make this clear in your complaint and we will try to help you quickly.

What happens after you make a complaint?

We will generally investigate your complaint to make sure that what has happened to you is against the law. If this is the case, we will try to conciliate your complaint. This means we will try to help you and the person or organisation you are complaining about to reach a private settlement that you both agree on. The Board is impartial in this process and does not take sides.

The settlement will depend on the circumstances of your case, on what the other parties are willing to offer and what you are willing to accept. It could be an apology, financial compensation, getting your job back, changes to your working arrangements, getting the service you were denied, and so on.

We treat all complaints confidentially, but we have to inform the organisation or person you are complaining about of the complaint. This is so we can give them a fair

chance to respond to your complaint. We will not release information about your complaint to anyone else except with your permission or if we are required to by law.

Most complaints are conciliated. If yours isn't, you may go to the Equal Opportunity Division of the Administrative Decisions Tribunal, which is like a court. It provides a legal judgment that must be followed. Very few cases need to go to the Tribunal and in some circumstances you can ask for your details to be kept confidential.

Can I have my name and gender reflected on records (eg employment, medical, etc)?

You may want to reflect your chosen name and preferred gender on records such as employment, educational, medical and bank records. Some of these may relate to areas covered by the Anti-Discrimination Act, such as employment, State education and goods and services (see page 1).

Rights of recognised transgender people

If you are a recognised transgender person (see page 2), and the records relate to the areas covered by the Act, you are legally entitled to have your records reflect both your chosen name and reassigned gender. Generally, a refusal to do so would be unlawful discrimination by treating you as a member of your former sex.

Rights of non-recognised transgender people

If you are not a recognised transgender person, it may still be unlawful discrimination to refuse to reflect your chosen name and preferred gender in your records, if these relate to an area covered by the Act. This is because it may be

Victimisation is also against the law

It is against the law for anyone to hassle or victimise you or treat you unfairly because:

- you have complained to your employer or another person about transgender discrimination;
- you have complained to the Anti-Discrimination Board; or
- you have supported someone with a transgender discrimination complaint or been a witness in a transgender discrimination case.

You can lodge a separate complaint of victimisation with the Anti-Discrimination Board if you have been victimised because of a transgender discrimination complaint.

indirect discrimination (see page 1) to have a rule or requirement that records must be in your birth gender, if this disadvantages more people who are transgender than other people; and the rule or requirement is not “reasonable with regard to all the circumstances”.

What are my rights under other laws?

Rights of recognised transgender people

If you are a recognised transgender person, you are legally counted as the gender with which you identify under all NSW laws, including the anti-discrimination law. For example, you are counted as your preferred gender under NSW industrial relations law, under the NSW Crimes Act, when you make a statutory declaration, and so on.

Under federal law, some agencies will legally count you as a member of your identified gender. These include Centrelink, Medicare, the Australian Taxation Office and the Department of Immigration and Multicultural Affairs (for passport purposes). However, you won't always be counted as a member of your identified gender under federal laws.

In most circumstances, you can get a new passport stating your identified gender. By showing your new birth certificate and/or your new passport, you will be able to do things like open a bank account, take out a loan, get a new Medicare card, and get a new driver's licence, all in your identified gender.

Rights of other people who are transgender

If you are not a recognised transgender person, you are not legally counted as a member of the gender with which you identify anywhere in Australia. However, it may still be possible to have certain records reflect your chosen name and your identified gender (see the previous column).

The law allows you to change your name by deed poll or statutory declaration in all Australian States. In NSW, any adult who ordinarily resides in NSW or whose birth is registered in NSW can apply to the NSW Registry of Births, Deaths and Marriages for registration of a change of name.

If you are unsure what your legal situation is in any particular area, please obtain legal advice from the Legal Aid Commission, a community legal centre, or a private lawyer. You can also call LawAccess on 1300 888 529.

Examples of transgender complaints we have handled

A transgender man who worked as a casual youth worker alleged that he was treated less favourably when his various applications for a permanent position were unsuccessful. He alleged that prior to his change of gender orientation, he was considered to be an excellent employee. The employer denied the allegations and provided documentary evidence that in each case the job had gone to the most suitable applicant. The matter was resolved when the complainant agreed to accept a statement of service and a statement of regret for his feelings.

A woman who worked at a retail company alleged she was made redundant because her supervisor knew she was transgender (male to female) and did not want to employ “a weirdo”. She was the only person made redundant and she alleged her position was later advertised. At conciliation, the company agreed to review its anti-discrimination policies with the assistance of the Board. It also agreed to pay the complainant \$4,000.

A transgender woman lodged several complaints on behalf of herself and her children against an organisation providing services to her children. She alleged that the organisation failed to correctly recognize her parenting status, kept records with her former name against her express wishes, and failed to intervene appropriately when she and her children were harassed by others in the organisation. She alleged that the problems only arose since the temporary appointment of a new staff member.

The Board contacted the organisation and encouraged both parties to meet and discuss the complaints. After a meeting and further discussion, both reported that all matters raised by the complainant had been resolved. Both parties thanked the Board for its assistance in helping to resolve the complaint.

Examples of transgender complaints we have handled

A transgender man who worked as a casual youth worker alleged that he was treated less favourably when his various applications for a permanent position were unsuccessful. He alleged that prior to his change of gender orientation, he was considered to be an excellent employee. The employer denied the allegations and provided documentary evidence that in each case the job had gone to the most suitable applicant. The matter was resolved when the complainant agreed to accept a statement of service and a statement of regret for his feelings.

A woman who worked at a retail company alleged she was made redundant because her supervisor knew she was transgender (male to female) and did not want to employ "a weirdo". She was the only person made redundant and she alleged her position was later advertised. At conciliation, the company agreed to review its anti-discrimination policies with the assistance of the Board. It also agreed to pay the complainant \$4,000.

A transgender woman lodged several complaints on behalf of herself and her children against an organisation providing services to her children. She alleged that the organisation failed to correctly recognize her parenting status, kept records with her former name against her express wishes, and failed to intervene appropriately when she and her children were harassed by others in the organisation. She alleged that the problems only arose since the temporary appointment of a new staff member.

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The Anti-Discrimination Board of NSW

Enquiries

Phone (02) 9268 5544
Toll free number 1800 670 812
(if you are calling from rural or regional NSW)
Email: adbcontact@agd.nsw.gov.au

Complaints

Phone (02) 9268 5544
Toll free number 1800 670 812
(if you are calling from rural or regional NSW)
Email: complaintsadb@agd.nsw.gov.au

Website

www.antidiscriminationboard.nsw.gov.au

Parramatta

Level 7/10 Valentine Avenue, Parramatta NSW
PO Box W213, Parramatta Westfield NSW 2150
Phone (02) 9268 5555
Fax (02) 9268 5500

Wollongong

84 Crown Street, Wollongong NSW 2500
PO Box 67, Wollongong NSW 2520
Phone (02) 4224 9960
Fax (02) 4224 9961

Newcastle

Suite 5, Level 5, 400 Hunter Street,
Newcastle NSW 2300
PO Box 1077, Newcastle NSW 2300
Phone (02) 4926 4300
Fax (02) 4926 1376

For more detailed information on making a complaint

refer to our website and select "Making a complaint", or ask for our factsheet *Complaining to the Anti-Discrimination Board*.