

**FACT SHEET:**

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# Gender identity discrimination

The *Anti-Discrimination Act 1991* makes it unlawful to discriminate against a person because of their gender identity.

## What is gender identity discrimination?

Under the Act, gender identity means that a person identifies as a member of the opposite sex to which they were assigned at birth. It can also mean an intersex person who seeks to live as a member of a particular sex.

A person does not have to have undergone gender affirmation surgery, hormone therapy, or other medical treatment.

Gender identity has a broader meaning under the federal Sex Discrimination Act 1984, where there is also a separate broader definition of intersex status. Protections under the federal legislation may be greater for people whose gender is non-binary. Contact the Australian Human Rights Commission for further information.

Discrimination can be direct or indirect. Direct discrimination is treating a person less favourably because of their gender identity than someone in similar circumstances.

*For example, an employee losing their job after transitioning from male to female.*

Indirect discrimination may be less obvious. Sometimes a rule or policy seems to treat everyone the same, but in fact, some people end up being treated less favourably because of their attribute.

*For example, a workplace which doesn't allow any changes to an employee's personnel records may require a transgender person to continually disclose information about their gender identity, in order to explain discrepancies.*

It is also unlawful to discriminate against a person because of their association with or relation to a person identified on the basis of their gender identity - such as a friend, family member or co-worker.

*For example, a trans woman and her friend are told to leave a shop because they are "putting other customers off".*

Discrimination based on gender identity can include verbal insults, threats, intimidation and violence.

It doesn't matter if the person doesn't mean to discriminate, or whether they think they are being discriminatory or not. It also doesn't matter if their beliefs or assumptions about the person or people they are discriminating against are correct or not. Under the Act, someone's motive for discriminating is irrelevant.

If you have experienced any of these types of discrimination, you may be able to lodge a complaint with us at the Commission.

## Gender identity vilification

Gender identity vilification happens when someone incites hatred towards, serious contempt for, or severe ridicule of a person or group because of their gender identity.

Serious vilification is when this includes a threat of physical harm to the person or their property, or incites others to threaten physical harm to the person or their property. Serious vilification is a criminal offence.

## When and where is gender identity discrimination unlawful?

Gender identity discrimination is unlawful in all aspects of work, including recruitment, terms and conditions on which a job is offered, employment benefits, training, transfers, promotion and dismissal.

It is also unlawful when a person is:

- a customer in a shop or restaurant,
- a student at school or university (if it is by the educator),
- looking for accommodation,
- applying for credit, insurance or a loan, or
- when dealing with tradespeople, businesses or State or local government.

## Examples of gender identity discrimination

*A high school student transitioning from female to male changed his name with his parents' assistance and support. There were meetings with school staff, but one teacher insisted on calling the student by his former name and humiliating him in front of the class.*

*A trans woman was told by a publican not to use the female toilet.*

## When and where is different treatment okay?

Not all treatment that might seem unfair is against the law. The Act lists some exemptions allow conduct that would otherwise be discriminatory. Whether or not an exemption applies will depend on individual circumstances.

The following exemptions are relevant to gender identity.

**Competitive sport:** Participation in a competitive sporting activity may be restricted on the basis of gender identity if the restriction is reasonable considering the strength, stamina or physique requirements of the activity.

**Work in a person's own home:** It is lawful for a person to discriminate on the basis of gender identity, when employing someone to perform domestic services or to look after their children in the person's home.

**Work with children:** A person may discriminate on the basis of gender identity if the work involves the care or instruction of minors and the discrimination is reasonably necessary to protect the physical, psychological or emotional wellbeing of minors having regard to all the relevant circumstances of the case.