

**FACT SHEET:**

---

## Comments as discrimination

In Queensland, it is unlawful to treat someone less favourably because of an attribute protected by the Anti-Discrimination Act 1991 in various areas of public life.

The areas include work, providing goods or services, accommodation, and administering State laws or programs.

*Warning: This fact sheet contains language that may offend.*

### Derisive, belittling, or derogatory remarks that were discrimination

A supervisor called one of his workers a 'shirt lifter', and others referred to his sexuality in an offensive manner.

*Kelly v Moore & GJ & AM Moore Pty Ltd* [2009] QADT 20 (17 November 2009) (President Savage SC).

A tenant of a council business park had a bipolar disorder that was controlled with medication. After experiencing a manic episode, a council officer referred to the man as a 'nutcase', a 'psycho', a 'mental case' or other such phrases, and the man was banned from the park. The tribunal found that the remarks were evidence that the ban was imposed because of the man's impairment. Continuing the insulting and derogatory comments after the ban was lifted was continuing discrimination in connection with renting accommodation for the man's business.

*Bellamy v McTavish & Pine Rivers Shire Council* [2003] QADT 15 (7 October 2003) (Member Jean Dalton)

Saying the words 'black slut' and 'you're sober today' to a passenger was less favourable treatment of her, in the supply of taxi services, than another person who was not Aboriginal, in circumstances that were the same or not materially different. The woman's race was a substantial reason for that treatment. The words 'you're sober today' occurred in a separate incident and were not a direct racial epithet. They were, however, discrimination because the characteristic of drunkenness is often imputed to Aboriginal people, and that was imputed to the woman by the taxi driver.

*Sailor v Village Taxi Cabs Pty Ltd & Markwick* [2004] QADT 15 (20 May 2004) (Member Tracy Fantin)

A worker, who had a leg injury, was told he looked like a 'Bombay taxi driver', others laughed at the way he climbed stairs, and it was said that he walked up stairs 'like a monkey'.

*Qantas Airways Ltd v Gama* [2008] FCAFC 69 (2 May) (French, Branson & Jacobson JJ)

A team leader used abusive words to a worker who was a black male of African descent, such as 'black cunt', 'black bastard' and 'lazy black'.

*Rugema v Gadsten Pty Ltd & Derkes* [1997] HREOCA 34 (26 June 1997) (Commissioner Webster)

Racial abuse by a taxi driver included the words 'black bastard' and 'nigger'. The tribunal said that once it was satisfied that the racial epithets were used, there was an inescapable inference that the passenger was treated less favourably than other passengers because of her race.

*Chesson v Buxton* (1990) EOC 92-295

A prison officer called an Indigenous prisoner 'a little black cunt'.

*Viellaris v Pioch & Ors* [2008] QADT 9 (15 May 2008) (Member Savage SC)

## Comments can be unlawful even when they are not made to the person directly

Describing an Aboriginal colleague as a 'black fella' was of itself sufficient to amount to less favourable treatment, even though the comment was not made in the person's presence.

*Barney v State of Queensland* [2012] QCAT 695 (1 November 2012) (Member Suthers)

The tribunal said that it was no less of a breach of the Anti-Discrimination Act to denigrate a person to someone else, than to denigrate them to their face privately.

*Viellaris v Pioch & Ors* [2008] QADT 9 (15 May 2008) (Member Savage SC)

## Not discrimination to simply identify an attribute

Merely recording in a statement the fact that the complainant had a 'communicable disease' did not amount to less favourable treatment of the complainant, within the meaning of the *Anti-Discrimination Act*.

*Sullivan v Queensland Police Service & Harran* [2004] QADT 14 (17 May 2004) (Member Jean Dalton)

After examining a 20 month old child for head injury, a doctor enquired whether the child was Aboriginal, as part of his medical assessment.

*Moffat obo Saunders v Whittaker & Medihelp Services Pty Ltd* [1998] QADT 16 (3 September 1998) (Member Keim)

## Context

In an argument with a solicitor, a client, who was of Bosnian ethnic origin, used the word 'Nazi', and the solicitor retaliated saying, 'You are friends of Nazis'. The tribunal said that, in the context, the statement by the solicitor was a rebuke or retort in response to a malicious statement, and the solicitor would have responded in a similar fashion if someone not of Bosnian ethnic origin had implied he was a Nazi.

*Joldic v Adams & Luca* [2005] QADT 36 (1 December 2005) (Member Mullins)