

Human rights and discrimination

A guide for our mob



Queensland
**Human Rights
Commission**

This guide is for Aboriginal and Torres Strait Islander people and their advocates in Queensland.

If you think you or someone you know may need help protecting your human rights or dealing with discrimination, harassment or vilification, please have a look at the information in this guide and contact the Queensland Human Rights Commission if you would like assistance or more information.

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Queensland Human Rights Commission
Level 20, 53 Albert Street, Brisbane QLD 4000
GPO Box 15565, City East QLD 4002
Phone: 1300 130 670
Email: info@qhrc.qld.gov.au
Web: www.qhrc.qld.gov.au

Human rights

Queensland is one of three states and territories in Australia to protect human rights by law. The *Human Rights Act 2019* protects the rights of everyone in Queensland. You don't need to be a resident, or have a particular citizenship or visa status.

It means that the Queensland public sector has to properly consider your human rights when they make decisions about you, or take actions affecting you. The public sector includes:

- Queensland Government departments and agencies including
 - the police;
 - state schools;
 - public hospitals;
 - Child Safety;
 - prisons;
- local councils; and
- organisations providing services to the public on behalf of the state government including
 - social housing services; and
 - NDIS providers.

The Act calls these 'public entities'.

Private businesses, private schools and health services, and the federal government and its agencies (including Centrelink and Medicare) are not bound by it.

It applies to acts and decisions made after 1 January 2020. It is not retrospective, which means you can't make a complaint about things that happened before 1 January 2020.

Public entities are allowed to limit rights, but only to achieve an important purpose in the least restrictive way possible.



Your cultural rights are protected

The distinct cultural rights of Aboriginal and Torres Strait Islander peoples are protected by the *Human Rights Act 2019*. Section 28 of the Human Rights Act says you have the right to live life as an Aboriginal or Torres Strait Islander person and to practice your culture, including:

- Maintaining and using Indigenous languages;
- Maintaining kinship ties;
- Teaching cultural practices and educating children; and
- The right to maintain distinctive spiritual, material and economic relationships with land, water and other resources that there is a connection with under traditional laws and customs.

It also states you have the right not to be subjected to forced assimilation or the destruction of your culture.

For example: In Victoria, a Yorta Yorta man applied to the Magistrates' Court to transfer his criminal charges to the closest Koori Court. Although the Koori Court had jurisdiction to deal with the proceedings, the Magistrate refused the transfer. The Supreme Court found this was a breach of his cultural rights under the state's human rights laws, and overturned the ruling.

Recognition and equality before the law

This right means that as well as the cultural rights protected in section 28, you are entitled to the same rights as everyone else. It says you should be able to use a government service, even if you have different needs, can't read or write, speak another language, or have a disability. If you're not treated fairly it could be discrimination, and that is against the law.

For example: Under laws which claimed to 'protect' Aboriginal and Torres Strait Islander people, they were unable to move around freely, to marry without permission, to be paid fairly for their work, or to keep family or kinship groups together. These laws denied Aboriginal and Torres Strait Islander peoples their right to recognition as a person.

Protection of families and children

Families have rights and children have special protection to make sure they are looked after. This means that if Child Safety decide to remove children from a family, for example, they have to consider the rights of the family as well as the best interests of the child. This right can also help families stay connected if one of them is in prison.

For example: An Aboriginal child is taken into care by Child Safety but the department should prioritise finding a relative to take responsibility for him under kinship care arrangements, so he stays connected to family.



Right to health services

You have the right to access health services the same as everyone else, and the right to have emergency medical care to save your life or stop serious damage to your health. If you don't get the same access as everyone else because you are Aboriginal or Torres Strait Islander, it could be discrimination. This is against the law.

For example: A Torres Strait Islander man is taken to hospital after he collapses in the street with stroke symptoms, but is sent home without tests or examination because the staff assume he's been drinking.

Right to education

Children have a right to go to a school that meets their needs. Everyone has the right to access education and training that helps them get ready for work the same as everyone else. If you or your children don't get the same access as everyone else because you are Aboriginal or Torres Strait Islander, it could be discrimination. This is against the law.

For example: Two girls get in trouble for skipping class together. They've got similar academic records and haven't been in much trouble before, but the Aboriginal student is suspended while her non-Indigenous friend is let off with a warning.



Other rights

There are 18 more rights which are protect by the Act. A full explanation of all of them is available on the Queensland Human Rights Commission website at www.qhrc.qld.gov.au.

They are:

- Right to life;
- Protection from torture and cruel, inhuman or degrading treatment;
- Freedom from forced work;
- Freedom of movement;
- Freedom of thought, conscience, religion and belief;
- Freedom of expression;
- Peaceful assembly and freedom of association;
- Taking part in public life;
- Property rights;
- Privacy and reputation;
- Cultural rights — generally;
- Right to liberty and security of person;
- Humane treatment when deprived of liberty;
- Fair hearing;
- Rights in criminal proceedings;
- Rights of children in the criminal process;
- Right not to be tried or punished more than once; and
- Protection from retrospective criminal laws.



Discrimination and vilification

The *Anti-Discrimination Act 1991* is the Queensland law that provides protection against discrimination, sexual harassment, vilification, victimisation and other offensive behaviour.

Have you ever:

- Had comments made about your race at a job interview?
- Been knocked back by a real estate agent or property owner because you are Aboriginal or Torres Strait Islander?
- Been subjected to racist comments, slogans or pictures in public places?

These types of behaviour are discrimination, and are against the law.

Discrimination

Discrimination on the basis of particular attributes, or characteristics, is against the law in Queensland. This means you cannot be treated worse because of you:

- Race;
- Sex;
- Relationship status;
- Pregnancy;
- Parental status;
- Breastfeeding;
- Age;
- Impairment;
- Religious belief or activity;
- Political belief or activity;
- Trade union activity;
- Lawful sexual activity;
- Gender identity;
- Sex characteristics*;
- Sexuality;
- Family responsibilities;
- Association with, or relation to, a person identified on the basis of any of these attributes.



Where is discrimination against the law?

The Act also determines where discrimination is against the law:

- Work – including applying for a job, volunteering, or doing work experience;
- Education – in applying or enrolling, and how students are treated once enrolled;
- Accessing goods and services – including buying things from a shop, finding a plumber, or going the doctor;
- Accommodation – including renting, short term accommodation like a hotel room, boarding houses and hostels, refuges and homeless shelters; and business premises;
- In superannuation or insurance;
- Disposition of land – leaving a property to someone in your will, or transferring ownership to them by a legal document;
- Club memberships and affairs – applying to become a member of a non-profit association, for example;
- Administration of state laws and programs – the laws, agencies and programs administered by the Queensland Government; and
- Local government, between members.

Is it discrimination?

For something to be discrimination under the Act, it has to be:

Be based on one of the attributes listed above;

AND

Take place in one of the areas listed above;

AND

Mean that you're treated less well than someone without the same attribute.

For example: A tribunal has found that comments by a woman referring to her Aboriginal co-worker as 'a blackfella', and refusing to work shifts with him, was discrimination at work.

*Discrimination and vilification on the basis of sex characteristics became unlawful on 29 April 2024. Complaints can only be made about conduct which happened on or after this date.

When it's not discrimination

The law includes exemptions to discrimination. This means that in some circumstances, discrimination is not unlawful. Some exemptions apply in all areas, some are only for a specific area – for example, work or accommodation.

Exemptions can be for things like:

- Something done to benefit a particular group of people who might need it;
- Something to promote equal opportunity for a group of people;
- Things done to protect the health and safety of the public, or people in a workplace;
- Things that someone has to have if they're applying for a job because there's a genuine requirement for them.

For example: Recruiting for land management positions to work with Traditional Owners would not be discriminatory to non-Indigenous people if they only allowed Aboriginal or Torres Strait Islander people to apply.

Vilification

Vilification is when someone does something publicly that incites hatred, severe ridicule, or serious contempt for a person or a group of people because of their race, religion, sexuality, sex characteristics* or gender identity. It's against the law in Queensland and is prohibited by the Anti-Discrimination Act. You can make a complaint about it to us at the Commission if you are being targeted at it. Support services for the group the vilification is targeting can also complain on that group's behalf.

For it to be considered vilification, it doesn't have to take place in a particular area (like discrimination does), but it has to be a public act. That includes any form of communication to the public, such as speaking, writing, printing, and displaying notices or messages, either online, in person, or in the media. It also includes any conduct which the public is able to observe, such as actions, gestures and wearing or displaying clothing, flags, emblems or insignia.

For example: A group having cards printed for their members which say "License to shoot Aborigines" would be vilification.

Where a threat of physical harm is included, it is called serious vilification, and is a criminal offence. It can be reported to the police.

For example: The fence of an Aboriginal housing service is graffitied with a swastika and the words "white power" and "we'll get you too". This could be serious vilification.

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Sexual harassment

Sexual harassment is an unwelcome behaviour of a sexual nature that is done either to offend, humiliate or intimidate someone, or where it is reasonable to expect the person might feel that way.

It includes uninvited physical intimacy such as touching in a sexual way, uninvited sexual propositions, and remarks with sexual connotations. More extreme types of sexual harassment like sexual assault can be criminal offences and can be reported to police.

For example: Getting unsolicited nude photos from a colleague at work via text message is sexual harassment.

Sexual harassment is against the law anywhere it happens. If you've been sexually harassed you can make a complaint to us at the Commission.



A guide to making complaints

If you or someone you know has potentially had their human rights limited, or been subject to discrimination, vilification, or sexual harassment, you may be able to make a complaint to the Queensland Human Rights Commission.

There are slightly different processes for human rights complaints than there are for discrimination, vilification, or sexual harassment complaints. For example, human rights complaints can only be made about public entities, but discrimination complaints can be made about a business, an individual, a government department, or group – or more than one of those. Also, a human rights complaint must first be made to the public entity which is responsible for limiting your rights, and you have to give them 45 business days to respond, before you can complain to us.

Your complaint could be covered by the Anti-Discrimination Act, the Human Rights Act, or both. You don't need to know if it's a discrimination or human rights complaint in order to lodge it – we will contact you to discuss it after lodgement, to help figure out the best way of moving forward with it. You can also talk to us before you lodge it if you're unsure or need any more information.

Complaints must be made in writing. They can be made by the person affected, or by someone on their behalf if they can't write it themselves, like a trusted friend, relative, or advocate.

No matter whether it is a human rights or discrimination complaint or both, we will usually try and resolve it through a process called conciliation.

We are an impartial body, which means we are not on one side or the other. The Commission staff who deal with complaints are not advocates for the person making the complaint (the complainant) or the person or organisation the complaint is about (the respondent). They are there to help the parties involved in the complaint reach an agreement about how to resolve it. Usually this means all the parties coming together around a table or on a group phone call to figure out a way to resolve it that is satisfactory for everyone. It might include things like an apology, a change in policy, training for staff, or even compensation.



FAQ

Q: I need help making a complaint, is there anyone who can assist?

A: You can get help from your mob. A family member, a friend, a carer or another support person can help you make a complaint or make a complaint on your behalf. More than two people can make joint complaints. If you require more information you can call the Aboriginal and Torres Strait Islander Unit at the Commission.

Q: How do I know if the organisation I work at or the organisation I am dealing with is a public entity and therefore has obligations under the Human Rights Act?

A: The Human Rights Act states that a public entity includes all Queensland Government agencies and other organisations performing public functions on behalf of government (e.g. Social Housing provider, registered NDIS provider, Community Centre operator). It also includes local governments.

Q: If someone is visiting Queensland from another state or territory are they covered under the Queensland Human Rights Act?

A: Yes they are covered. All people while in the state of Queensland are protected in their interactions with Queensland public entities.



Need more help?

For further information and assistance you can contact the Queensland Human Rights Commission's First Nations Unit:

Phone 1300 130 670 (toll free) or 07 4037 2100

Email firstnations@qhrc.qld.gov.au

Other organisations that may be able to help include:

Aboriginal and Torres Strait Islander Legal Service

1800 012 255 or www.atsils.org.au

Legal Aid Queensland

1300 651 188 or www.legalaid.qld.gov.au

Queensland Indigenous Family Violence Legal Service

1800 887 700 or www.qifvls.com.au

Community Legal Centres Queensland

communitylegalqld.org.au/find-legal-help

Caxton Legal Centre

07 3214 6333 or www.caxton.org.au

Queensland Advocacy Incorporated

1300 130 582 or www.qai.org.au



Human rights case examples

Human rights laws have existed in other areas of Australia for a number of years. As a result of this there are a number of historical cases that show how Aboriginal and Torres Strait Islander people in Australia have used similar laws to protect themselves and their families against unfair action by governments. Some of these cases are listed below.

Child protection

Four Aboriginal siblings were placed in protective care because of concerns for their safety. At first, the children were placed in a non-Aboriginal home and separated from one another. Their mother then successfully applied to have the siblings reunited and returned to the care of their maternal grandmother.

The court considered (among other things) how this decision would impact on the human rights of the children, and, in particular, their cultural and spiritual identity and connection with their Aboriginal family and the wider community. The court decided to uphold the decision to return the children to their grandmother.

Youth justice

The ACT government formally apologised to an Aboriginal girl who complained that she had been unlawfully segregated for two months at the Bimberi Youth Detention Centre.

The girl began legal action against the Government claiming her human rights were breached.

This included her cultural rights being limited by the removal of items from her room including Indigenous artwork and an Indigenous newspaper.

The government apologised to the girl for her experience in custody, including youth detention centre staff removing the girl's Indigenous artwork and copies of the Koori Mail from her cell. The government also acknowledged the particular distress removing the items caused the girl, as she had used painting as a form of therapy.

The government committed to using the girl's experiences to inform the treatment of future detainees.

The girl's lawyer said that the girl's primary concern was ensuring that no other young detainee would have to experience what she went through and that her experience would bring about change.

Housing

Lorna lived in transitional housing owned and leased by a non-Aboriginal community organisation after escaping family violence.

She lived with and cared for her grandson and brother who had an intellectual disability. A condition of her tenancy was that she engage with community services.

In January her nephew died of a drug overdose in her presence at the property. Lorna went back to her country for a couple of weeks of 'sorry business' to grieve for his death. When she returned she started receiving warnings to engage with services, however she was overwhelmed with family responsibilities, trauma and grief. Her engagement decreased and she stopped answering the door for fear of eviction. A possession order was made and the police came to her door with a warrant.

She got in touch with the Victorian Aboriginal Legal Services (VALS). VALS made an application for an urgent review and stay. VALS then successfully made arguments to the housing provider that they had failed to engage with Lorna's cultural rights and the rights of her grandchild and family members in their eviction process, by failing to support her to recover from her grief. These arguments significantly turned around the organisation's approach to Lorna. The organisation allowed the review, and withdrew the possession application, engaged an Aboriginal support service and started again.

(Source: VALS submission to 2015 review of the Victorian Charter of Human Rights and Responsibilities)



Contact us

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