

Are you experiencing discrimination on the basis of being trans and gender diverse?

A resource for trans and gender diverse young people and their families in SA

Fact Sheet

This fact sheet answers some common questions trans and gender diverse young people, and their families, have about discrimination and their rights.

If you are experiencing discrimination because of your gender, you can get help. By reading this resource you will get a better understanding of the different approaches you can take in South Australia to making a complaint or taking legal action.

What is discrimination?

Generally speaking, discrimination means treating (or proposing to treat) someone unfairly or less favourably than others because of one or more of their personal characteristics.

Discrimination is only against the law when it happens in an area of public life, such as in schools, shops and workplaces. This doesn't mean discrimination experienced in private settings isn't just as hurtful or dangerous.

There are two recognised forms of discrimination under the law in Australia:

- Direct discrimination: this occurs when you are treated less favourably than another person would be treated in the same or similar circumstances.
- Indirect discrimination: this occurs when there is a rule, requirement or practice that is the same for everyone but disadvantages a certain person or group of people.

What is transphobia?

Transphobia is a term that describes a range of irrational fears, negative attitudes and unreasonable feelings that a person may feel towards another person or a group of people due to their transgender, gender questioning or gender diverse status, identity and/or expression.

Unfortunately, this phobia can lead people to discriminate against, stereotype, ostracise, harass or even act with violence towards others, simply because they are different to them. This is wrong.

All people deserve to be treated equally and with respect. All people have the same human rights regardless of their sexual orientation or gender identity.

What can you do about it?

There are different things you can do, depending on the type of discrimination and where it occurs.

Talk to someone you trust

If you are being discriminated against in your or someone else's home, or in another private setting, talk to someone you trust (like a family member, friend, teacher or counsellor) about how you can get help to manage the situation and make it stop.

Talk to the organisation or person who has discriminated against you

Sometimes when you ask someone to stop treating you badly, they will stop. You might want to do this with the help and support of a parent or another trusted person in your life.

Take action under the law

You can take action by making a complaint to one of the national or state/territory anti-discrimination bodies.

You can only make a complaint at a federal OR state level – **not both**. You will need to decide on one approach or the other. It might help to get advice from a lawyer about what is most appropriate in your circumstances. See *how you can get help below*.

Federal level

Under the *Sex Discrimination Act 1984* (Cth), discrimination on the basis of a person's sexual orientation, gender identity and intersex status is against the law.

If you want to take action under federal law, you can make a complaint to the Australian Human Rights Commission (**AHRC**). If the discrimination occurred at work, you can also make a complaint to the Australian Fair Work Commission.

Where does the discrimination need to have occurred?

You are protected by law from discrimination you may experience due to your gender identity across every state and territory in Australia in many areas of public life, including:

- Workplaces
- Schools and other educational institutions
- Accommodation
- Places where you access or use services

Making a complaint to the AHRC

You will need to submit a complaint in writing to the AHRC, or get help from a lawyer or advocate to make the written complaint for you.

What happens next?

- The Commission will look into the complaint and try and resolve the issue by conciliation. Conciliation involves a meeting where you and the person you believe has discriminated against you try to resolve the complaint with the help of a third party.

- If the complaint is not resolved by conciliation, the President of the AHRC will make a final decision.
- If the President decides that the complaint should be terminated, then an application to the Federal Circuit Court or the Federal Court of Australia can be made within 60 days of the date of termination.

Making a complaint to the Australian Fair Work Commission

If you believe you have experienced discrimination at your place of employment, or in the process of seeking employment, it may also be possible for you to submit a workplace discrimination complaint to the Australian Fair Work Commission under the *Fair Work Act 2009* (Cth).

What happens next?

The Fair Work Ombudsman will investigate your complaint and decide whether it is necessary to take disciplinary action against the person or organisation who is the subject of the complaint.

State level

Each state and territory in Australia has equal opportunity and anti-discrimination laws. Complaints in relation to gender identity discrimination can be made to state and territory anti-discrimination agencies and commissions, which must investigate discrimination claims under these laws.

In South Australia, you can make a complaint if you have been discriminated against on the basis of chosen gender or sexuality under the *Equal Opportunity Act 1984* (SA) to the Equal Opportunity Commission (**Commission**).

Where does the discrimination need to have occurred?

You are protected by law from discrimination you may experience due to your gender identity across South Australia in:

- Workplaces
- Schools and other educational institutions
- Accommodation
- Places where you access or use services (for example, shops, clubs)

Making a complaint to the Commission

You will need to submit a complaint in writing to the Commission, or get help from a lawyer or advocate to make the written complaint for you. This should be lodged within 12 months of the incident of discrimination. The complaint can be no longer than five pages.

What happens next?

- The Commission will check if the complaint is covered by the Act
- If it is the Commission will write to the individual who has been complained about to seek a response from them about the incident and reserve a date for a possible conciliation meeting.

- The person or organisation who is the subject of the complaint will be sent a copy of the complaint form and any paperwork along with a cover letter from the Commission explaining the law
- They will then have a chance to provide a response. If this does not solve the issue, the Commission will hold a conciliation conference. Conciliation involves a meeting where you and the person that has discriminated against you try to resolve the complaint with the help of a third party. This is a free service provided by the Commission
- If conciliation does not resolve the complaint, the person can ask for it to be sent to the South Australian Employment Tribunal for a legal decision

Where to get help and more information

- Australian Human Rights Commission provides information on making a complaint: <https://www.humanrights.gov.au/complaint-information>.
- For information on making a complaint to the Equal Opportunity Commission, visit <https://eoc.sa.gov.au/what-discrimination/complaint-process>
- For information on how the Fair Work Commission can help resolve disputes in the workplace, visit <https://www.fwc.gov.au/disputes-at-work>
- Qlife provides counselling and referral service for LGBTI people: <https://qlife.org.au/> for more information
- Parents of Gender Diverse Children provides peer support nationally to parents and those parenting trans and gender diverse children. To access their resources or make an enquiry, visit their website at <https://www.pgdc.org.au>
- Shine SA provides primary care services and education for sexual and relationship wellbeing: <https://www.shinesa.org.au/>
- Trans Health SA offer the South Australian gender diverse community a resource operated, and influenced, by the community: <http://www.transhealthsa.com/>
- Uniting Communities provides mental health support & counselling to the LGTIQA+ community: <https://www.unitingcommunities.org/services/mental-health-counselling/lgbtqiq-services-bfriend/>