



# Transgender discrimination

## What does the law say about transgender discrimination?

It is generally against the law in NSW to treat you unfairly 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 identify as the opposite gender to your birth gender and live as your identified gender;
- you identify as the opposite gender to your birth gender and are seeking to live as your identified gender;
- you are intersexual (born with indeterminate sex, for example with sexual parts of both sexes), and you live as your identified gender;
- you are thought of as a transgender person.

You do not have to have had any sex change or other surgery to be counted as transgender under NSW anti-discrimination law. You do not have to have taken any hormones in the past or be taking them now. It does not matter what gender you were at birth.

It does not matter which gender is your identified gender, or why you are transgender. It does not matter how you describe or label yourself (for example as transgender, trans, transsexual or something else).

What matters is how you live and behave, or how you want to live and behave. If you fit any of the definitions given above, then the anti-discrimination law counts you as transgender.

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

## When does this law apply?

In general, people must treat you fairly in the following areas of public life:

- **in employment** – when you apply for a job, when you are at work and when you leave a job. This also covers bodies which issue licences to perform particular jobs;
- **when you get or try to get most types of 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, caravans or 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

All people who are counted as transgender under NSW anti-discrimination law must be treated fairly in employment, when getting goods or services, and so on, as described on the previous page.

However under NSW law only some people who are transgender are legally regarded as being the gender they identify with rather than their birth gender. You are legally your identified gender if you are what the law calls a ‘recognised transgender person’.

### Who is a recognised transgender person?

Under NSW anti-discrimination law, you are a recognised transgender person if ONE of the following applies to you:

- you have a new birth certificate issued by the NSW Births, Deaths and Marriages Registry that states the gender you identify with; or
- you have an amended birth certificate or an equivalent document known as an 'interstate recognition certificate' issued by another Australian State or other Australian jurisdiction.

You can only get a new birth certificate in NSW if ALL of the following apply to you:

- your birth was originally registered in NSW;
- you are over 18 (or your parent or guardian agrees if you are under 18);
- you have had sex reassignment (gender affirmation) surgery – any surgical alteration to your reproductive organs such as your womb or genital area; and
- you are not currently married.

### What my rights as a recognised transgender person?

If you are a recognised transgender person, you are legally recognised as your reassigned sex under NSW laws. If you are a female to male transgender person, people must treat you as man. If you are a male to female transgender person, people must treat you as a woman.

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 for women only, for example to attend a women-only gym. (Women-only jobs and services may be allowed in specific circumstances under anti-discrimination law.)

You also have the right to be treated in the same way that all other women are treated. You must not be treated differently or unfairly just because you are transgender.

What are my rights if I am not a recognised transgender person?

If you are not a recognised transgender person, you can't legally force people to treat you as your preferred gender, but they must still treat you fairly.

For example, if you were born male but your identified gender is female, you generally can't force an employer to give you a job that is for women only. And you may not be able to insist on receiving a service aimed at women only (for example a women's refuge or a women-only gym).

However, in general, where services and jobs are open to both genders, you must not be treated differently or unfairly just because you're transgender.

### 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.

### 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

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.

**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](http://www.bdm.nsw.gov.au)

#### ACT

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

#### NT

NT Registry of Births, Deaths and Marriages  
(08) 8999 6119  
[www.nt.gov.au/justice/bdm](http://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](http://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](http://www.ocba.sa.gov.au/bdm)

#### TAS

Registry of Births, Deaths and Marriages  
1300 135 513  
[www.justice.tas.gov.au/bdm](http://www.justice.tas.gov.au/bdm)

#### VIC

Registry of Births, Deaths and Marriages  
1300 369 367  
[www.bdm.vic.gov.au](http://www.bdm.vic.gov.au)

#### WA

Registry of Births, Deaths and Marriages  
1300 308 021  
[www.bdm.dotag.wa.gov.au](http://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.**

## **What are my rights to goods and services?**

In general, you have the right to apply for and get goods or services in the same way as people who are not transgender. People must not harass you for being transgender when you are getting 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**

This information is currently being updated, please contact the ADB's enquiry service on 02 9268-5555 or 1800 670 812 if you require further information.

## **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 transgender discrimination to refuse to consider 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. They can discriminate against people who are transgender if they choose to.

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 get registered club benefits on the same basis as 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.

### **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.

### **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 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.

## **The Anti-Discrimination Board of NSW**

### **Enquiries**

Phone (02) 9268 5544  
Toll free number 1800 670 812  
(if you are calling from outside Sydney)  
TTY (02) 9268 5522  
Email: adbcontact@agd.nsw.gov.au

### **Complaints**

Phone (02) 9268 5544  
Toll free number 1800 670 812  
(if you are calling from outside Sydney)  
TTY (02) 9268 5522  
Email: complaintsadb@agd.nsw.gov.au

### **Telephone interpreter service**

Phone 13 14 50

### **Website**

[antidiscrimination.justice.nsw.gov.au](http://antidiscrimination.justice.nsw.gov.au)

### **Sydney**

Level 4, 175 Castlereagh Street, Sydney NSW 2000  
PO Box A2122, Sydney South NSW 1235  
Phone (02) 9268 5555 Fax (02) 9268 5500  
TTY (02) 9268 5522

### **Wollongong**

84 Crown Street, Wollongong NSW 2500  
PO Box 67, Wollongong NSW 2520  
Phone (02) 4267 6200 Fax (02) 4267 6261  
TTY (02) 4267 6267

### **Newcastle**

Level 3, 97 Scott Street, Newcastle NSW 2300  
PO Box 1077, Newcastle NSW 2300  
Phone (02) 4903 5300 Fax (02) 4903 5376  
TTY (02) 4903 5389

**For more detailed information on making a complaint and the complaint process refer to our website and select 'Making a complaint', or ask for our factsheet on *Complaining to the Anti-Discrimination Board*.**