

LGBTIQ+ DISCRIMINATION

Many people who identify as lesbian, gay, bisexual, transgender, queer or intersex ('LGBTQI') experience discrimination. In most situations, discrimination is against the law (unlawful).

Types of discrimination

There are different types of discrimination which may occur, such as:

- **Direct discrimination** occurs where a person is treated less favourably than another person in the same or a similar situation, on the basis of that person having a particular characteristic that is protected by law.
- **Indirect discrimination** occurs where a person imposes an unreasonable condition, requirement or practice that disadvantages, or is likely to disadvantage a person who has a particular characteristic that is protected by law.

What laws protect me?

There are laws against discrimination at both the state/territory and Commonwealth (national) level. In the Northern Territory, the law which sets out protection from discrimination is the Anti-Discrimination Act 1992 (NT). At the Commonwealth level, the Sex Discrimination Act 1984 (Cth) applies. Both of these laws apply to people living in the Northern Territory.

What does the law say?

Northern Territory

In the Northern Territory, it is unlawful to discriminate against someone on the basis of their sexuality. Sexuality is defined to include heterosexuality, homosexuality, bisexuality or transsexuality.

Commonwealth

Under Commonwealth law, it is unlawful to discriminate against someone on the basis of their sexual orientation, gender identity, or intersex status.

Sexual orientation means a person's sexual orientation towards:

- persons of the same sex; or
- persons of a different sex; or
- persons of the same sex and persons of a different sex.

Gender identity means the gender-related identity, appearance or mannerisms or other gender-related characteristics of a person, with or without regard to the person's designated sex at birth.

Intersex status means having physical, hormonal or genetic features that are:

- neither wholly female nor wholly male; or
- a combination of female and male; or
- neither female nor male.

Key features of the Northern Territory and Commonwealth anti-discrimination laws

Northern Territory - *Anti-Discrimination Act 1992* (NT).

Protected characteristics: Sexuality

It is unlawful to discriminate against others in the following areas of public life:

- Education
- Work
- Accommodation
- Provision of goods, services and facilities
- Membership and activities of licenced clubs
- Insurance and superannuation

Exemptions to the law: The *Anti-Discrimination Act* sets out some situations where discrimination is not unlawful. These are called exemptions and include:

- Discrimination in connection with services relating to artificial fertilisation procedures; and
- Discrimination by religious educational institutions in the area of work and accommodation.

Other exemptions apply.

Where to make a complaint: You can complain in writing to the Northern Territory Anti-Discrimination Commission using the online [NT Anti-Discrimination Complaint Form](#).

Time limit on making a complaint: A person wishing to make a complaint has 12 months from the time of the discrimination taking place to make a complaint.. The Commission can accept a complaint after that time if satisfied that it is appropriate to do so.

Process: The Commission must decide whether to accept or reject the complaint within 60 days of receiving it. If the Commission accepts the complaint, it must carry out an investigation.

After the investigation, the Commission can choose to:

- dismiss the complaint; or
- require you to attend conciliation where you and the respondent (the person you believe has discriminated against you) discuss the issue and try to reach an agreement; or
- refer the matter to a hearing.

The matter will go to hearing where:

- the Commission decides that conciliation will be unsuccessful;
- conciliation was unsuccessful; or
- the Commission believes the matter should be dealt with by a hearing.

Possible outcomes: If the Commission finds that unlawful discrimination has occurred, they may make a legally binding order that the respondent:

- stop discriminating against you;
- pay you compensation;
- do something to fix the loss or damage that happened as a result of the discrimination; or
- apologise

Appeal/Application: If you are unhappy with a decision made by the Commissioner at a hearing, you can appeal to the Local Court within 28 days of:

- the decision of the Commission; or
- the date you received the written reasons (if you requested written reasons).

The Local Court can make any order it feels is appropriate, including:

- agreeing with or changing the decision of the Commissioner;
- making a new decision; or

asking the Commissioner to rehear the matter or consider it further.

Commonwealth - Sex Discrimination Act 1984 (Cth)

Protected characteristics: Sexual orientation, gender identity and intersex status

It is unlawful to discriminate against others in the following areas of public life:

- Education
- Work
- Accommodation
- Provision of foods, services and facilities
- Membership activities of licenced clubs
- Administration of Commonwealth laws and programs
- Land
- Requests for information
- Superannuation

Exemptions to the law: The *Sex Discrimination Act* sets out some exemptions when discrimination is not unlawful in Division 4, including:

- By religious bodies in the appointment of members within the body, except where the discrimination is related to Commonwealth-funded aged care or the employment of people providing that care;
 - By educational institutions established for religious purposes on the basis of sexual orientation or gender identity in connection with employment; and
 - when making a request for information which does allow a person to identify as neither male nor female
- Other exemptions apply.

Where to make a complaint: You can complain in writing to the Australian Human Rights Commission.

Time limit on making a complaint: A person wishing to make a complaint has 12 months from the time of the discrimination taking place to make a complaint Within 12 months of the discrimination taking place. The Commission can choose to extend this timeframe

Process: After the Commission receives the complaint, it must investigate the complaint.

The Commission may require you and the respondent to attend conciliation.

The Commission can terminate your complaint at any time after receiving the complaint, including because the Commission believes that:

- the matter will not be settled by conciliation; or
- the complaint is trivial or vexatious.

Possible outcomes: The outcome of conciliation will depend on many things, including what you and the respondent are willing to agree on, but can include:

- an apology;
- compensation; or
- reinstatement of a job.

The Commission cannot decide whether unlawful discrimination has occurred. If you do not reach an agreement, the Commission will terminate your complaint in writing.

Appeal/Application: You can apply to the Federal Court or Federal Circuit Court within 60 days of receiving written notice that your complaint has been terminated. The Court can decide whether you have been unlawfully discriminated against and make any orders that it thinks are appropriate.

What can I do if I believe I have been unlawfully discriminated against?

- Keep records of what happened, when, who was involved, the names of anyone who witnessed the discrimination, and any other evidence
- Talk to the person who discriminated against you if you feel it is safe and appropriate to do so
- Make a complaint to an anti-discrimination body
- Contact a lawyer
- [Research your options](#)

A number of considerations will determine whether you should make a complaint under the Northern Territory law or the Commonwealth law. You should seek legal advice before making a complaint.

For help or further information

Darwin Community Legal Service

Phone: (08) 8982 1111

Freecall: 1800 812 953

Australian Human Rights Commission

Phone: 1300 656 419 or 02 9284 9888

Email: infoservice@humanrights.gov.au

TTY: 1800 620 241 (toll free)

Northern Territory Anti-Discrimination Commission

Phone:(08) 8999 1444

Freecall: 1800 813 846

Email: antidiscrimination@nt.gov.au

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Disclaimer: The information contained in this publication is a guide to the law in the Northern Territory. It is not a substitute for legal advice. You should talk to a lawyer about your particular legal issue. The information contained in this factsheet is current as of January 2022.