



Transgender discrimination

Are transgender discrimination and transgender harassment against the law?

Yes. It is against New South Wales anti-discrimination law for someone to treat you unfairly or harass you because of any of the following:

- you are transgender;
- someone thinks you are transgender; or
- you have a relative, friend or associate who is transgender, or who someone thinks is transgender.

It is against the law to do this in many areas of NSW public life. However, please remember that the NSW anti-discrimination law can't help you with things that happen outside NSW.

Who is counted as transgender under anti-discrimination law?

If you live, have lived, or want to live as a member of the opposite gender (sex) to your birth gender, the NSW anti-discrimination law counts you as transgender.

This means you are legally counted as transgender if:

- you want to live as a member of your preferred gender (the opposite gender to your birth gender);
- you are in the process of changing over to your preferred gender;
- you live as a member of your preferred gender;
- you have lived as a member of your preferred gender in the past; or
- you are intersexual (born with indeterminate sex, for example, with sexual parts of both sexes) and you live as a member of your preferred gender.

You do not have to have had any sex change or other surgery. You do not have to have taken any hormones in the past or be taking them now. It does not matter what your gender was at birth.

It does not matter which gender is your preferred gender. It does not matter 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 one of the 'rules' listed 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.

When must people treat me fairly in NSW?

In general, people must treat you fairly in the following places or circumstances:

- **in most types of employment** — when you apply for a job, at work, or when you leave a job;
- **when you get, or try to get, most types of goods or services** — for example, from shops, hotels and other entertainment places, banks, lawyers, government departments, local councils, public transport, doctors, hospitals and other medical services or the police;
- **when you apply to get into, or study in, any State educational institution** — that is, any government school, college or university;
- **when you rent accommodation** — for example, a unit, house, commercial premises, mobile home, hotel or motel room; 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.

It can also be against the law if employers, State educational institutions, providers of goods and services, accommodation providers or registered clubs have rules or policies that disadvantage more people who are transgender than people who are not transgender, and the rules or policies are 'not reasonable with regards to all the circumstances'.

For more detailed information about your rights at work, in State education institutions and so on, please read pages 3–7.

Public vilification is against the law

It is also against the anti-discrimination law for anyone to do anything publicly that could encourage other people to hate, be seriously contemptuous of, or severely ridicule people who are transgender, or people who are thought to be transgender. The law calls this type of behaviour 'transgender vilification'.

The following types of behaviour could be transgender vilification and against the law:

- graffiti that vilifies people who are transgender;
- speeches or statements made in public that vilify people who are transgender;
- abuse that occurs in public that vilifies people who are transgender;
- statements or remarks in a newspaper or journal, in other publications, or on the radio or television that vilify people who are transgender;
- people wearing in public symbols such as badges, or clothing with slogans that vilify people who are transgender;
- gestures made in public that vilify people who are transgender; or
- posters in a public place that vilify people who are transgender.

For more information about this part of the law please contact the Anti-Discrimination Board.

'Recognised transgender' people are legally counted as their preferred gender, other people who are transgender are not.

All people who are transgender must be treated fairly — in employment, when getting goods or services, and so on, as listed above.

However, under NSW law, only some people who are transgender are legally counted as being their preferred gender rather than their birth gender. You are legally your preferred gender if you are what the law calls a 'recognised transgender' person.

Who is counted as a recognised transgender person?

Under NSW anti-discrimination law you can only be a recognised transgender person if:

- 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 jurisdiction.

You can only get a new NSW birth certificate issued if ALL of the following are the case:

- your birth was originally registered in NSW;
- you are over 18 (or, if you are under 18, your parent or guardian agrees to you doing this);
- you have had sex reassignment (gender affirmation) surgery - this includes any surgical alteration to your

For further information about how to get your NSW birth certificate changed, contact the NSW Registry of Births, Deaths and Marriages on 1300 655 236 or www.bdm.nsw.gov.au.

For further information about how to get a SA recognition certificate, contact the SA Registry of Births, Deaths and Marriages on (08) 8204 9599 or www.ocba.sa.gov.au/births.htm.

For further information about how to get your ACT birth certificate changed, contact the ACT Registry of Births, Deaths and Marriages on (02) 6207 0460 or www.rgo.act.gov.au.

For further information about how to get your NT birth certificate changed, contact the NT Registry of Births, Deaths and Marriages on (08) 8999 6119 or www.nt.gov.au/justice/graphpages/bdm/index.shtml.

For further information about how to get your WA birth certificate changed, contact the WA Registry of Births, Deaths and Marriages on (08) 9264 1555 or www.justice.wa.gov.au.

reproductive organs, for example, to your womb or genital area); and

- you are not currently married.

If you are a recognised transgender person, the NSW law counts you as being legally your preferred gender.

If you have altered the record of your sex on your NSW birth certificate or you have an amended birth certificate or an interstate recognition certificate issued by another Australian State or other jurisdiction, 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, in general, if you are a male to female recognised transgender person you have the legal right to be considered for a job that is legally allowed to be for women only. Similarly, in general, you have the legal right to receive a service targeted at women only (for example to attend a women-only gym).

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

If you are not counted as 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 preferred gender is female, in general you can't force an employer to give you a job that is legally allowed to be for women only, as you aren't legally considered to be female. And you may not be able to legally insist on receiving a service aimed at women only (for example, attending a women's refuge or a women-only gym), if they don't want to give it to you.

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.

It can also be against the law if employers, State educational institutions, providers of goods and services, accommodation providers or registered clubs have rules or policies that disadvantage more people who are

For more information about your rights to documents in your preferred gender and your rights under federal laws, see pages 7-8. For more information about your rights under anti-discrimination law, see pages 3-6.

transgender than people who are not transgender, and the rules or policies are not reasonable with regards to all the circumstances.

What are my work rights?

In general, you have the right to apply for and be considered fairly for most jobs, apprenticeships or traineeships. In general, all job advertisements, jobs, apprenticeships and traineeships must be open to you.

The fact that you're transgender, or someone thinks you are, must not be used as a reason to prevent you from either 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 non-transgender applicants.

In general, you also have the legal right to be trained, promoted, and get the same work benefits as everyone else. For example, a manager must not refuse to promote you because he or she is worried that the people you would supervise won't respect a person who is transgender.

In general, if you are a recognised transgender person you must be treated as your preferred gender. If you are not a recognised transgender person, the law is not quite so clear. You can insist that you use the toilets and change rooms of your preferred gender, and that you wear the dress or uniform of your preferred gender, unless it is not reasonable with regards to all the circumstances to insist on this.

At the Anti-Discrimination Board we advise employers that in most cases, it will make practical sense (and is probably safest legally) to allow you to use the toilets and change rooms and to wear the dress or uniform of your preferred gender, if this is what you want to do.

However, there is an exception for superannuation schemes. The law says that superannuation schemes are allowed to treat you as a member of your birth gender, even if you are a recognised transgender person.

You also have the legal right not to be harassed at work because you are transgender. Employers must do their best to make sure that you are not harassed. This includes making sure you're not harassed by other employees while you are in the process of changing over to your preferred gender (transitioning). It also includes making sure you're not harassed for using the toilets or change rooms of your preferred gender. For more information about harassment, refer to our website at www.lawlink.nsw.gov.au/adb or ask for our factsheet on harassment.

In general, you must not be dismissed for being transgender. An employer can only dismiss you for lawful reasons — in the same way as anyone else. For example, an employer may be able to dismiss you for ongoing poor work performance, serious misconduct, medical reasons that mean you're no longer fit enough to do the job or redundancy. In general, they must not use the fact that you're transgender, or are in the process of changing over to your preferred gender, as a reason to dismiss you.

What are my rights to goods and services?

Goods and services include goods or services that you get from shops, banks, lawyers, government departments, public transport, local councils, doctors, hospitals, hotels and entertainment places and so on.

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 or trying to get most goods or services.

In the same way as at work, if you are a recognised transgender person you must generally be treated as your preferred gender. For example, you must be allowed to use the toilets or change rooms provided for public use (for example, those in parks, shops or restaurants) of your preferred gender.

If you are not a recognised transgender person the legal situation is not quite so clear, but in general, in most cases, you should be able to use the toilets of your

preferred gender — see under 'What are my work rights?' above.

There is an exception for playing sport. This means that whether or not you are a recognised transgender person, you do not have the legal right to play single sex sporting activities as your preferred gender. You only have the legal right to play single sex sport with people of your birth gender. For example, a female to male transgender person can still participate in all-female sports.

Of course, it may be that people won't mind you playing single sex sport as your preferred gender. Or it may be that they won't know that you're transgender. However, once they do know, or they decide that they don't want to play with a person who is transgender, they can legally stop you playing single sex sport as a member of your preferred gender.

But note that they can't make you take biological or chromosomal tests unless they are doing the same for everyone. In other words, the tests must be truly random, or everyone must be tested, or all the (medal) winners/place getters must be tested. They can't just test you because they suspect you're transgender.

Note that you cannot be excluded from coaching sport and the administration of sport because you are a transgender person.

There is also an exception for superannuation schemes — see page 3.

What are my rental accommodation rights?

Rental accommodation includes houses, units or flats, hotel or motel rooms, mobile homes and commercial premises.

In general, you have the right to rent accommodation in the same way as anyone else. For example, a real estate agent or property owner can't do any of the following because you are (or one of you is) transgender:

- refuse you self-contained accommodation;
- charge you a higher bond or rent; or
- refuse or delay repairs or maintenance work.

However, if the accommodation is share accommodation for less than six people, where you are living in the same premises as the main owner or tenant, or their near

relative, they can choose who they want to live with them. It won't be against the anti-discrimination law if they decide they don't want to live with a person who is transgender.

What are my State education rights?

State education includes education at any State university, State college, TAFE or State school. It does not include education at private schools, colleges or universities. The law says that private and/or religious-based educational institutions are allowed to discriminate against people who are transgender.

In general, you have the right to apply for and get education, and/or any educational benefits, at any State co-educational 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're transgender or in the process of changing over to your preferred gender. They must do their best to make sure that you're not harassed by teachers or students for being transgender.

If you are a recognised transgender person, you must be treated at all times as a member of your preferred gender. If you are not a recognised transgender person, the law is not quite so clear. You can insist that you use the toilets and change rooms of your preferred gender, that you wear the dress or uniform of your preferred gender, and that you attend any single sex activities according to your preferred gender, unless it is not reasonable with regard to all the circumstances to insist on this.

At the Anti-Discrimination Board, we advise educational institutions that in most cases it will make practical sense (and is probably safest legally) to treat you as a member of your preferred gender if this is how you want to be treated.

However, the situation is more complicated for government single sex schools. If you are a recognised transgender person you have the legal right to attend a single sex school for people of your preferred gender, in the same way as any other person born to 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 the single sex school of either the gender of your birth or your preferred gender is unclear. There have been no court interpretations of this part of the law yet. So, if you are having trouble staying on at or changing to a single sex school, please contact the Anti-Discrimination Board.

What are my registered club rights?

Registered clubs include any clubs that sell alcohol or have gambling machines, for example, RSL clubs, workers clubs, some ethnic clubs and sporting clubs. Voluntary clubs such as Rotary and Lions are not registered clubs. This means that you can't use the law to stop them discriminating against you in relation to membership.

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. The fact that you are transgender must not be used as a reason to refuse you membership or to take away your membership.

In general, you have a right to get registered club benefits on the same basis as all other members. You should not be treated differently because you are transgender. For example, you must not be harassed by other members, guests or club employees because you are transgender.

If you are a recognised transgender person, in general, you must be treated as your preferred gender. If you are not a recognised transgender person, the law is not quite so clear. You should be able to insist that you use the toilets and change rooms of your preferred gender, that you follow the dress rules of your preferred gender, and that you attend any single sex functions according to your preferred gender —unless you can show that it is not reasonable with regard to all the circumstances to insist on this.

At the Anti-Discrimination Board, we advise clubs that in most cases it will make practical sense (and is probably safest legally) to treat you as a member of your preferred gender if this is how you want to be treated. Note that there is an exception for single sex sport — see pages 4.

However, if the club is legally a single sex club the law is more complicated. If you are a recognised transgender

person you have the legal right to be a member of a single sex club for people of your preferred gender, in the same way as any other person born to 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 still keep its status as a single sex club if it admits a person who is transgender who identifies with the sex of that club.

However, whether you are able to insist on attending the single sex club of either the gender of your birth or your preferred gender is unclear. There have been no court interpretations of this part of the law yet. 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 acted as 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 or harassed because of my transgender status?

Read through this factsheet to check that what's happened seems to be against the law. If you aren't sure if it's against the law, phone us to check on your rights.

If what's happened seems to be against the law, try talking to the person or organisation that you think is discriminating against or harassing you. The organisation may have a policy on these issues and/or a process in place to deal 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 this doesn't work, or isn't appropriate, you may decide to make a complaint to the Anti-Discrimination Board. It won't cost you any money to lodge a complaint, and you don't need a lawyer.

Making a complaint

If you want to make a complaint, it must be in writing and it is best if it is signed by you. You can either send us a completed discrimination complaints form, or write a letter to the President of the Anti-Discrimination Board, explaining what happened and why you think you have been discriminated against because of your transgender status. Our contact details are at the end of this factsheet.

You can write to us in any language, or in Braille. If you need assistance to make a written complaint, phone the Board and we can help you or refer you to an organisation that can help you.

We also accept complaints on your behalf from your lawyer, or organisations such as unions and other representative bodies. However the complaint must make it clear that you agree with the complaint being made and you must be named in the complaint. In some circumstances you may also be required to show 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 the Board for more information.

For us to be able to accept a complaint, the events involving transgender discrimination must have occurred in the twelve months before the complaint is received by the Board. If you make a complaint about events that occurred more than twelve months before you lodge your complaint, the Board may refuse to investigate your complaint.

If your problem is urgent (for example, you think you are about to lose your job), tell us this in your letter and we will get back to you in time to do what we can to help.

What happens after you make a complaint?

We have the legal power to investigate your complaint, and if it's against the law, to try to conciliate it. This

means that we will try to help you and the person or organisation you are complaining about reach a private settlement that you both agree on. The Board is impartial in this process and does not take sides.

Any settlement will depend on the circumstances of your case, and on what you and the other parties are willing to offer and accept. It could be an apology, financial compensation, your job back, and so on.

We treat all complaints confidentially, but we will need to inform the organisation or person you are complaining about of the 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 be able to 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. However, very few cases need to go to the Tribunal and in some circumstances it's possible to ask the Tribunal to keep your details confidential.

Can I have my name and gender reflected on records (eg employment, medical, etc)?

There are a wide variety of records and documents that you may want to reflect your chosen name and the gender with which you identify or your reassigned gender, such as employment, medical, educational institutions and bank records. These types of records may relate to the areas of public life covered by the Anti-Discrimination Act, such as employment, education and goods and services.

Rights of recognised transgender persons

If you are a recognised transgender person and the records relate to the areas of public life 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 amount to unlawful discrimination by treating you as a member of your former sex.

Rights of non-recognised transgender persons

If you are not a recognised transgender person, although you are not legally recognised as the gender with which

you identify, it may be unlawful discrimination to refuse to reflect your chosen name and the gender with which you identify in your records.

This may be the case where an employer, State educational institution, provider of goods and services, accommodation provider or registered club has a rule or policy that records or documents must be in your birth gender, and this rule or policy disadvantages many more people who are transgender than others; and the rule or policy is not reasonable with regard to all the circumstances.

What are my rights under other laws?

Recognised transgender persons and other transgender persons have different rights — as explained below. Pages 2–3 explain who is and isn't a recognised transgender person.

Rights of recognised transgender people

If you are a recognised transgender person, you are counted legally as your preferred gender under all NSW laws — including the NSW anti-discrimination law. For example, you are counted legally 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 count you as a member of your preferred gender, including Centrelink, Medicare, the Australian Taxation Office and the Department of Immigration and Multicultural Affairs (for passport purposes). However, you won't always be counted legally as a member of your preferred gender under federal laws.

In most circumstances you can also get a new passport stating your preferred gender. By showing your new birth certificate and/or your new passport you will be able legally to do such things as open a bank account, take out a loan, get a new Medicare card, and get a new driver's licence, all in your preferred gender.

Rights of all other people who are transgender

If you are not a recognised transgender person, you are not counted legally as a member of your preferred gender

anywhere in Australia. However, as previously outlined, it may be possible to have certain records reflect your chosen name and the gender with which you identify.

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 get legal advice from the Legal Aid Commission, a community legal centre, or a private lawyer. You can also call LawAccess on 1300 888 529.

The Anti-Discrimination Board of NSW

(open weekdays 9am-4.30pm)

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 St, Wollongong NSW 2500
PO Box 67, Wollongong East NSW 2520
Phone (02)4224 9960; Fax (02) 4224 9961
TTY (02) 4224 9967

Newcastle

Level 1, 414 Hunter St, Newcastle West 2302
Phone (02) 4926 4300; Fax (02) 4926 1376
TTY (02) 4929 1489

Enquiries

(02) 9268 5544

Employers Advisory Service

(02) 9268 5544

Toll free number

1800 670 812
(if you are calling from rural or regional NSW)

Website

www.lawlink.nsw.gov.au/adb

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.