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Discrimination complaints for prisoners

This fact sheet sets out what forms of discrimination are unlawful and the laws that must be followed if you want to make a discrimination complaint when you are in prison in Queensland.

Discrimination law in Queensland is set out in the *Anti-Discrimination Act 1991* (Qld) (**ADA**). Not all discrimination is against the law. Only certain characteristics, called protected attributes are covered by discrimination law.

What is a protected attribute?

The attributes protected under the ADA are:

- Sex, relationship status, pregnancy, parental status, breastfeeding, age, race, impairment, religious belief or religious activity, political belief or activity, trade union activity, lawful sexual activity, gender identity, sexuality, family responsibilities.

For discrimination to be unlawful the basis for the discrimination must be because of one or more of the attributes listed above. For example, it is unlawful to discriminate against a person because of their race or religious belief. Being a prisoner is not an attribute that is protected under the ADA. This means it is not unlawful to discriminate against a person because they are a prisoner.

Prisoners' Legal Service Inc.

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Justice Behind Bars

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A free service providing assistance to prisoners with parole applications, prison law matters and financial counselling



PLS respectfully acknowledges the Aboriginal and Torres Strait Islander peoples as the traditional owners and custodians of this land and acknowledges their Elders, past, present and emerging



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What is discrimination?

There are two types of unlawful discrimination under the ADA:

1. Direct discrimination

- To have a claim for direct discrimination you need to show that because of your attribute you are treated less favourably than a person without the attribute is treated, in circumstances that are the same or not materially different.
- This can be difficult to prove as there is often little evidence to show why a person is being treated less favourably.

2. Indirect discrimination

- Discrimination can also take place where a policy or term which applies to everyone equally, applies to you in an unfair way because you are unable or less able to comply with the policy or term because of your attribute.
- However, indirect discrimination may not be unlawful if it can be shown the treatment is reasonable.

Queensland Corrective Services and Queensland Health can rely on special defences in discrimination complaints made by prisoners. You should seek legal advice before making a complaint to the Queensland Human Rights Commission (QHRC).



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How to make a discrimination complaint

The QHRC receives discrimination complaints in Queensland. However, if you want to make a complaint against Queensland Corrective Services or Queensland Health and you are in prison, you must take the following action before you can lodge a complaint to the QHRC.

1. Write to the General Manager

- You will need to write a blue letter to the General Manager (GM) explaining why you are being discriminated against.
- You do not need to mention in your letter to the GM that you are considering making a complaint to the QHRC about discrimination.
- It is a good idea to keep a copy of the letter you write to the GM.

2. Write to the Official Visitor

- Once the GM responds to your letter you will then need to write to the Official Visitor (OV) about why you are being discriminated against.
- If the GM does not respond to your letter within 4 months you can make a complaint to the OV without waiting for a response.
- You do not need to mention in your letter to the OV that you are considering making a complaint to the QHRC about discrimination.
- It is a good idea to keep a copy of the letter you write to the OV.

Complaints to the OV can be sent to the following address:

Office of Chief Inspector
GPO Box 1054
Brisbane QLD 4001



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3. Make a complaint to the QHRC

- Once the OV responds to your letter you can make a discrimination complaint to the QHRC.
- If the OV does not respond to your letter within 1 month you can make a complaint to the QHRC without waiting for a response.
- Make sure to include the responses you received from the GM and OV in your complaint to the QHRC.
- The limitation period for making a complaint to the QHRC is 12 months from the date you were discriminated against. If the discrimination is ongoing, you have 12 months from the first time the discrimination happened.
- If you are outside the limitation period for making a complaint to the QHRC, you can request that the QHRC grant you an extension of time.

Complaints to the QHRC can be sent to the following address:

Queensland Human Rights Commission
City East Post Shop
PO Box 15565
City East QLD 4002

Need advice?

- Legal Aid Queensland (LAQ) can provide specialist discrimination advice to prisoners. You can also apply for a grant of aid from LAQ requesting representation for a discrimination complaint.
- You can contact LAQ on number 4 on the prison Arunta telephone system.