



JUSTICE BEHIND BARS

PRISONERS' LEGAL SERVICE INC

CHAINMAIL

INFORMATION BROADSHEET FOR PRISONERS OF QUEENSLAND
115th Edition January 2019

Discrimination complaints for prisoners

Many prisoners contact PLS seeking advice about discrimination complaints. 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.

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 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 Anti Discrimination Commission Queensland (ADCQ).



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How to make a discrimination complaint

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

You will need to write a blue letter to the General Manager (GM) explaining why you are being discriminated against. 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. The address for the OV is:

Office of Chief Inspector
GPO Box 1054
Brisbane Qld 4001

It's also a good idea to keep copies of the letters you wrote to the GM and OV.

Once you receive a response from the OV you can make a discrimination complaint to the ADCQ. Make sure to include the responses you received from the GM and OV in your complaint to the ADCQ. You can also include the letters you wrote to the GM and OV in your complaint to the ADCQ. You do not need to mention in your letter to the GM or the OV that you are considering making a complaint to the ADCQ about discrimination.

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. If the OV does not respond to you within 1 month you can make a complaint to the ADCQ without having to wait for a response. You need to provide the ADCQ the letters you have written to the GM and the OV.

The limitation period for making a complaint to the ADCQ is 12 months from the date you were discriminated against. If the discrimination is on-going, you have 12 months from the first time the discrimination happened. Complaints to the ADCQ can be sent to the following address:

City East Post Shop
PO Box 15565
City East QLD 4002

Legal Aid Queensland can provide specialist discrimination advice to prisoners. You can also apply for a grant of aid for requesting representation from Legal Aid Queensland for a discrimination complaint.

Prisoners' Legal Service Inc.
Postal Address: GPO Box 257, Brisbane QLD 4001

Justice Behind Bars
Free Advice Line: Tues, Wed, Thurs from 9am to 1pm

This broadsheet is intended to provide legal information only and is no substitute for legal advice. If you wish to take any action arising from matters raised in this publication you should consult a lawyer immediately.