

Disability Discrimination



What is discriminatory treatment?

Discriminatory treatment can happen in two ways.

The first is known as 'direct discrimination' and will occur when you are treated less favourably than other people because of your disability. The treatment is different to the treatment of other people without your disability. This can include failing to make reasonable adjustments, however, an adjustment may not be required if it would impose an unjustifiable hardship.

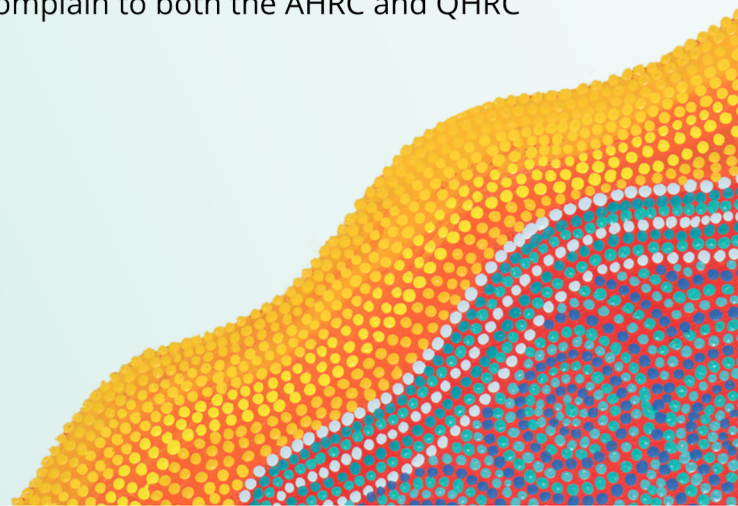
There must be a causal connection between the discriminatory treatment and your disability. Depending on where you make your complaint, the discriminatory reason needs to be the substantial or dominant reason or at least one of the reasons for the less favourable treatment.

The other form of discriminatory treatment is known as 'indirect discrimination', which is when you are treated the same as everyone else, but that same treatment results in an unfair impact because of your disability. This treatment can be less obvious and occurs when there is an unreasonable requirement that you have difficulty complying with while others without your disability can comply.

Can I make a complaint about disability discrimination?

You may be able to make a complaint about unlawful disability discrimination to either the Australian Human Rights Commission (**AHRC**) or the Queensland Human Rights Commission (**QHRC**) if you were treated in a discriminatory way because of your disability, within a prescribed activity. There must also be no exemptions that apply to the treatment.

There are time limitations on making a complaint. You must make a complaint to the AHRC within **24 months** from the discriminatory act and you have **12 months** to complain to the QHRC. You may not be able to complain to both the AHRC and QHRC and should get legal advice first.



Am I protected by anti-discrimination law?

Queensland's Anti-Discrimination Act 1991 protects people with "impairment", while the federal Disability Discrimination Act 1992 protects people with disability. You may be protected by anti-discrimination law if you are a person with:

- total or partial loss of bodily or mental functions;
- a condition, disorder, illness, or disease that impairs your thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour;
- malfunction, malformation or disfigurement of part of your body;
- the presence in your body of organisms capable of causing illness or disease; or
- a condition or malfunction that results in you learning more slowly than others;
- rely on a guide, hearing or assistance dog, wheelchair or other remedial device.

What activities are protected by anti-discrimination law?

Generally, prescribed activities fall within the following categories:

- Employment.
- Education.
- Goods and services.
- Sporting activities.
- Accommodation.
- Administration of laws.
- Clubs and incorporated associations.
- Superannuation and insurance.

What are the exemptions to discrimination?

There are a number of exemptions within both state and federal anti-discrimination law in which conduct that would otherwise be discriminatory is deemed not to be unlawful in certain circumstances. A common exemption relied on is unjustifiable hardship. Whether something would cause an unjustifiable hardship will depend on a number of factors, including:

- the nature of the adjustment;
- the financial circumstances of the person;
- the disruption that supplying the adjustment might cause;
- the nature of any benefit or detriment to all people concerned; and
- the cost of providing the adjustment and the number of people it would benefit or disadvantage.

Other exemptions include compliance with other laws, as well as workplace health and safety and public health requirements.

What can be achieved by making a disability discrimination complaint?

If your complaint is accepted, it will go to a confidential conciliation with the other party where you will be able to discuss your complaint and try to resolve it. If it is resolved, you will enter a settlement agreement, which may include any terms as agreed by the parties. Remedies can include a public or private apology, an order to stop or to do a specific thing, and compensation. If your complaint does not resolve at conciliation, you can ask for it to be referred to a court or tribunal for a hearing.

This factsheet has been prepared by Queensland Advocacy for Inclusion (QAI), an independent, community-based advocacy organisation for people with disability in Queensland (www.qai.org.au). This publication is for general information only. It must not be relied on as legal advice. You must seek legal advice about your own particular circumstances.