

ACC: Discrimination Update

Managing Gender Identity Issues

22 June 2026

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The plan for today

1. What language is used? What are the concepts?
2. Discrimination Law
3. Specific Issues



Please know that I cannot cover everything. Some things have been left out.

Remember this presentation is NOT legal advice.

General information is provided for educative purposes only.

**The situations which may arise in your church will be nuanced, contextual,
and will require careful consideration.**

If you are unsure of your legal obligations, please get legal advice.



1. Definitions and Concepts

Definitions – general



As a general guide ...

Gender refers to the way in which a person identifies or expresses their masculine or feminine characteristics. A person's gender identity or gender expression is not always exclusively male or female and may change over time.

Gender expression refers to the way in which a person externally expresses their gender or how they are perceived by others.

Gender identity refers to a person's deeply held internal and individual feeling of gender.

Cisgender The term 'cisgender' refers to people who identify their gender in the same way as was legally assigned to them at birth.

Sex characteristics refers to a person's primary and secondary sex characteristics, for example an individual's sex chromosomes, hormones, reproductive organs, genitals, and breast and hair development.

Sexual orientation refers to a person's romantic or sexual attraction to another person, including, amongst others, the following: heterosexual, gay, lesbian, bisexual, pansexual, asexual or same-sex attracted.

Definitions – general



As a general guide ...

Endosex refers to people whose sex characteristics meet medical and social norms for typically 'male' or 'female' bodies .

Intersex refers to people who are born with genetic, hormonal or physical sex characteristics that do not conform to medical norms for 'male' or 'female' bodies. Intersex people have a diversity of bodies and identities.

LGBTI An abbreviation which is used to describe lesbian, gay, bisexual, trans and intersex people collectively. Many sub-groups form part of the broader LGBTI movement.

Transition may involve social, medical, and/or legal processes to affirm a person's gender identity.

NOTE: It should be understood that terminology is constantly evolving.

Definitions - general



Transgender

The term 'transgender' or 'trans and gender diverse' is an umbrella term for people whose gender identity is different to that which was legally assigned to them at birth.

Note: in different cultural contexts transgender identities may have specific terms, for example, Brotherboys is a culturally specific term to describe Aboriginal and Torres Strait Islander transgender men.

<https://humanrights.gov.au/our-work/lgbtiq/terminology>



2. Understanding Discrimination Law

Understanding Discrimination Law

There are laws in each state as well as at the federal level which prohibit discriminating against a person on the basis of gender identity or sex (amongst other things).

For example, in Queensland, discrimination on the basis of gender identity, lawful sexual activity, sexuality and sex characteristics is prohibited by the *Anti-Discrimination Act 1991* (Qld).

As well, people living in Queensland are covered by the *Sex Discrimination Act 1984* (Cth) which prohibits discrimination on the basis of sex, sexual orientation, gender identity, intersex status.



Understanding Discrimination Law

Each state and territory has enacted anti-discrimination legislation.

This means individuals can lodge complaints about discrimination at the state/ territory level or at the commonwealth level depending upon the circumstances of the complaint.

You need to understand the discrimination laws in your state, as well as the federal laws, so that you do not engage in an act of discrimination.



Gender Identity



Queensland

Gender Identity of a person -

is the person's internal and individual experience of gender, whether or not it corresponds with the sex assigned to the person at birth; and, without limitation, includes—

- (i) the person's personal sense of the body; and
- (ii) if freely chosen—modification of the person's bodily appearance or functions by medical, surgical or other means; and
- (iii) other expressions of the person's gender, including name, dress, speech and behaviour.

Sch 1, Anti-Discrimination Act 1991 (Qld)

Australia

Gender Identity -

means the gender-related identity, appearance or mannerisms or other gender-related characteristics of a person (whether by way of medical intervention or not), with or without regard to the person's designated sex at birth.

s4, Sex Discrimination Act 1984 (Cth)

Discrimination



What is Discrimination?

Discrimination is prohibited on the basis of these attributes:

sex, relationship status, pregnancy, parental status, breastfeeding, age, race, impairment, religious belief or religious activity, political belief or activity, trade union activity, sex work activity, gender identity, sexuality, sex characteristics, family responsibilities, association with (or relation to) a person identified on the basis of any of the above attributes.

s7 Anti-Discrimination Act 1991 (Qld)

Discrimination on the basis of an attribute can be direct or indirect discrimination and includes discrimination on the basis of—

- (a) a characteristic that [i.e., something that is typical of] a person with any of the attributes generally has; or
- (b) a characteristic that is often imputed to a person with any of the attributes; or
- (c) an attribute that a person is presumed to have, or to have had at any time, by the person discriminating; or
- (d) an attribute that a person had, even if the person did not have it at the time of the discrimination.

s8 Anti-Discrimination Act 1991 (Qld)

Discrimination



Direct Discrimination

Direct discrimination on the basis of an attribute happens if –

a person treats, or proposes to treat, a person with an attribute less favourably than another person without the attribute is or would be treated in circumstances that are the same or not materially different.

It is not necessary that the person who discriminates considers the treatment is less favourable.

The person's motive for discriminating is irrelevant.

If there are 2 or more reasons why a person treats, or proposes to treat, another person with an attribute less favourably, then it will be discrimination if the attribute is a substantial reason for the less favourable treatment.

S10 Anti-Discrimination Act 1991 (Qld)

Discrimination



Indirect Discrimination

Indirect discrimination on the basis of an attribute happens if –

a person imposes, or proposes to impose, a term –

(a) with which a person with an attribute does not, or is not able to, comply; and

(b) with which a higher proportion of people without the attribute can (or are able to) comply; and

(c) that is not reasonable.

Whether a term is reasonable depends on all the relevant circumstances, including –

- the consequences of a failure to comply with the term
- the cost of alternative terms
- the financial circumstances of the person imposing the term

Note* “*term*” includes condition, requirement or practice, whether or not written.

It is not necessary that the person imposing, or proposing to impose, the term is aware of the indirect discrimination.

Exceptions



There are certain exemptions from the prohibition on discrimination. For example, under the *Anti-Discrimination Act 1991* (Qld), the Act does not apply to a religious body in the following areas –

- the ordination or appointment of priests, ministers of religion or members of a religious order
- the training or education of people seeking ordination or appointment as priests, ministers of religion or members of a religious order
- the selection or appointment of people to perform functions in relation to, or otherwise participate in, any religious observance or practice
- unless section 90 (Accommodation with religious purposes) applies—an act by a body established for religious purposes if the act is—
 - (i) in accordance with the doctrine of the religion concerned; and
 - (ii) necessary to avoid offending the religious sensitivities of people of the religion.

*but there is no exemption in the work or work-related area, or in the education area.

Exceptions



What is a religious body? It is not defined in the Qld Act. But it may be defined in other states, for example –

A 'religious body' is defined in section 81 Equal Opportunity Act 2010 (Vic) to mean –

- (a) a body established for a religious purpose; or
- (b) an entity that establishes, or directs, controls or administers, an educational or other charitable entity that is intended to be, and is, conducted in accordance with religious doctrines, beliefs or principles.

What is a religious activity? Means engaging in, not engaging in, or refusing to engage in, a lawful religious activity (Sch.1, ADA)

What is a religious belief? Means holding or not holding a religious belief. (Sch.1 ADA)

Exceptions



Whether the exemption applies to a particular activity may depend on which state the church is located in, even where the domination is national and has a national statement of faith. *For example -*

In Queensland, any discriminatory action taken by a religious body will be exempt if the act is –

- in accordance with the church's doctrine, and
- is necessary to avoid offending the religious sensitivities of people of the religion.

Contrast this to the position in Victoria where any discriminatory action taken by a religious body will only be exempt if the act is –

- reasonable, and
- proportionate, and
- conforms with the doctrines, beliefs or principles of the religious body's religion; OR is reasonably necessary to avoid injury to the religious sensitivities of adherents of the religious body's religion.

Exceptions



But don't assume the act is –

- in accordance with the church's doctrine, just because it is an act in connection with the church

And don't assume that this is a simple assessment or matter of simple opinion -

- to avoid offending the religious sensitivities of people of the religion.

***Get legal advice**

Similarly, there is legal opinion on what constitutes –

- reasonable, and
- proportionate, and
- conforms with the doctrines, beliefs or principles of the religious body's religion; OR is reasonably necessary to avoid injury to the religious sensitivities of adherents of the religious body's religion.

It is not a matter for the church to decide on their own.

***Get legal advice**

Update – Qld



Previous amendments to the ADA were extensive and due to commence mid-2025.
This did not eventuate.

Very recently the *Strengthening Protections for Queensland Workers Amendment Bill 2026* was introduced:

- Focus not just on equality of opportunity, but on equitable outcomes
- Introduces new attributes and updating definitions of some existing attributes
- Amend definition of discrimination to remove the need for a comparator
- Amendments to vilification provisions

Discrimination



At the federal level -

Sex Discrimination Act 1984 (Cth)

5A Discrimination on the ground of sexual orientation

- 1) For the purposes of this Act, a person (*the discriminator*) discriminates against another person (*the aggrieved person*) on the ground of the aggrieved person's sexual orientation if, by reason of:
 - a) the aggrieved person's sexual orientation; or
 - b) a characteristic that appertains generally to persons who have the same sexual orientation as the aggrieved person; or
 - c) a characteristic that is generally imputed to persons who have the same sexual orientation as the aggrieved person;the discriminator treats the aggrieved person less favourably than, in circumstances that are the same or are not materially different, the discriminator treats or would treat a person who has a different sexual orientation. (

Discrimination



At the federal level -

Sex Discrimination Act 1984 (Cth)

5A Discrimination on the ground of sexual orientation

2) For the purposes of this Act, a person (*the discriminator*) discriminates against another person (the *aggrieved person*) on the ground of the aggrieved person's sexual orientation if the discriminator imposes, or proposes to impose, a condition, requirement or practice that has, or is likely to have, the effect of disadvantaging persons who have the same sexual orientation as the aggrieved person.

3) This section has effect subject to sections 7B and 7D – i.e., the condition/requirement/practice is reasonable in the circumstances, or are special measures taken for the purpose of achieving equality.

Discrimination



At the federal level -

Sex Discrimination Act 1984 (Cth)

37 Religious Bodies

Religious bodies will not breach the discrimination provisions in –

- a) ordination or appointment of priests, ministers of religion or members of any religious order
- b) the training or education of persons seeking ordination or appointment as priests, ministers of religion or members of a religious order
- c) the selection or appointment of persons to perform duties or functions for the purposes of or in connection with, or otherwise to participate in, any religious observance or practice
- d) any other act or practice of a body established for religious purposes, being an act or practice that conforms to the doctrines, tenets or beliefs of that religion or is necessary to avoid injury to the religious susceptibilities of adherents of that religion. But (d) does not apply to an act or practice of a body established for religious purposes if: (a) the act or practice is connected with the provision, by the body, of Commonwealth-funded aged care; and (b) the act or practice is not connected with the employment of persons to provide that aged care

Update – *Sex Discrimination Act 1984 (Cth)*

Tickle v Giggle for Girls Pty Ltd (No 2) [2024] FCA 960
Giggle for Girls Pty Ltd v Tickle [2026] FCAFC 6

The Full Court of the Federal Court (Perry, Abraham and Kennett JJ) found that Giggle for Girls and its CEO, Sally Grover, directly discriminated against Roxanne Tickle, a transgender woman, when it removed and subsequently did not re-admit her to using the app 'Giggle for Girls'.

The Full Federal Court ultimately made orders that Giggle and its CEO had directly discriminated against Ms Tickle (within the meaning of section 5B of the SD Act) in the provision of goods and services by:

- excluding Ms Tickle from accessing the app on the basis of gender-related appearance
- refusing to restore her access on the basis of gender-related appearance
- treating Ms Tickle (as a transgender woman) less favourably than a person designated as female at birth in seeking access to the app.

The Full Federal Court also increased the damages payable to Ms Tickle to \$20,000, and ordered Giggle and its CEO pay Ms Tickle's legal costs up to \$100,000.



Update – *Sex Discrimination Act 1984 (Cth)*

Tickle v Giggle for Girls Pty Ltd (No 2) [2024] FCA 960
[Giggle for Girls Pty Ltd v Tickle \[2026\] FCAFC 6](#)

Key takeaways –

Employers should now be aware that the relevant 'comparator' for a transgender woman in a gender identity discrimination claim under the SD Act is to a cisgender female.

Note: s 37 Exemption for religious bodies was not considered in the case.





3. Specific Issues



Case Study

Charles has grown up in the E.G.Church and has been very involved in different ministries for years. His father is a deacon. At age 19, Charles has come to the realization that his gender identity is female, and he now wishes to express himself that way. He does not want to engage in a medical transition but intends to present as female in the way he dresses and speaks, and to go by the name of Sarah. She would also like to use the female bathrooms at church and maintain involvement in leading worship on Sundays. How does the church respond?

Tenets of the faith
Beliefs & Doctrines
Religious Practices
Premises

Discrimination
Exemption
Religious Sensitivities
Vilification



Case Study

- Does the Statement of Faith adequately address church beliefs in relation to all the different concepts identified at law, such as: gender identity, gender expression, sex characteristics (including intersex persons), sexual orientation?
- Are the doctrines, tenets and beliefs of the church clearly identified and consistently adhered to?
- Is it a requirement for volunteers to be church members or otherwise sign a volunteer agreement which requires agreement with the statement of faith and sets out codes of conduct which align with the doctrines and beliefs of the church?
- Does the church rely on volunteers to do activities that involve (i) the spread or strengthening of spiritual teaching, (ii) the maintenance of the doctrines of the Church or (iii) the observances that promote or manifest the doctrines?
- Where do the church activities occur? Would it make a difference if the church activity was conducted at a camp?
- What else needs to be considered – privacy, duty of care, *etc*



But even if an exemption applies ...

...the church generally cannot engage in vilification of gender fluid persons.

Queensland - Even if the exemption to discrimination applies, a church based in Queensland still must not engage in unlawful vilification nor serious vilification of transgender persons in their churches.

Unlawful vilification means a public act that incites hatred towards, severe ridicule of, or serious contempt for a person or group because of their race, religion, gender identity or sexuality. For an act to be unlawful vilification under the Act it has to be all of the following: (a) A public act; (b) Capable of inciting; (c) Hatred towards, serious contempt for, or severe ridicule of; (d) A person, or a group of people; (e) Because of their race, religion, sexuality or gender identity.

Serious vilification occurs if the unlawful vilification includes a threat of harm to a person or their property, or inciting others to threaten physical harm to a person or their property. This is a criminal offence..



But even if an exemption applies ...

...the church generally cannot engage in any gender change or suppression practices.

Legislation banning “conversion practices” has been passed in Victoria, the ACT, NSW.

In Qld there is a ban on conversion practices in health settings.

Tas and WA have committed to reforms.



But even if an exemption applies ...

In QUEENSLAND, the church may have obligations towards transgender individuals pursuant to the *Public Health Act 2005* (Qld) ("PHA"), as amended to prohibit any practice that attempts to change or suppress a person's sexual orientation or gender identity.

This would include, for example, attempting to change a person's sexual orientation or gender identity by using shame or coercion to –

- give the person an aversion to same-sex attractions, or
- to encourage gender-conforming behaviour, or

It likely also includes using any other techniques to encourage them to believe being transgender is a defect or disorder. Fundamentally, conversion practices include any techniques or interventions that are based in ideology that being LGBTQIA+ is a disorder that needs 'fixing'.

The PHA will apply in circumstances where the Church offers a service which is captured by the meaning of health service provider. Health service provider is defined in section 8 of the Health Ombudsman Act 2013 (Qld) and includes psychologists, counsellors, and social workers. If any of the branch churches in Queensland offer ministries which provide counselling by registered counsellors, the counsellors will be caught by this provision.

Care should be taken to ensure that sermons, prayers, and pastoral care cannot be perceived to be counselling or conversion practices 'in disguise'.



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Questions?

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