

LGBTIQA+ Community

The WA Government has introduced a bill to modernise Western Australia's Equal Opportunity Act so more Western Australians are better protected from discrimination, harassment and vilification. The changes will create safer and more inclusive communities.

Overview

The Bill will strengthen protections for LGBTIQA+ people by expanding the attributes covered, clarifying rights in key areas of public life, and improving safeguards against discrimination, harassment and vilification.

New and expanded protections

Provides explicit protection in law

The Bill will expressly **provide protections for** people from discrimination on the basis of:

- Sexual orientation
- Gender identity (including transgender, gender-diverse and non-binary identities)
- Innate variations in sex characteristics (intersex status)
- Sex
- Marital or relationship status
- Lawful sexual activity
- Personal association with an LGBTIQA+ person

There is broader protection across everyday life

Discrimination against LGBTIQA+ people will be **unlawful across key areas of life**, including in:

- Employment (recruitment, conditions, promotion, dismissal)
- Education (admission, treatment of students, curriculum)
- Housing and accommodation (renting, eviction, access to housing)
- Goods, services and facilities (e.g. health, banking, hospitality, government services)
- Clubs, voluntary bodies and sporting organisations
- Access to public premises
- Administration of State laws and programs

There are stronger safeguards against harm

The Bill will make it **unlawful** to:

- Sexually **harass** a person, or engage in sex-based harassment in workplaces, schools, sports, housing, provision of goods, services and facilities.
- **Vilify** in public a person or group because of their sexual orientation, gender identity or sex characteristics
- **Victimise** someone for making or supporting a complaint

Creates a positive duty to prevent discrimination

- Employers, service providers, schools, clubs and sporting bodies **must** take **reasonable and proportionate steps** to eliminate discrimination, harassment and vilification.
- A shift from reactive to active prevention, improving everyday safety and inclusion for LGBTIQ+ communities.

Stronger enforcement and remedies

- **Removal of the compensation cap** - no statutory limit on compensation.
- **Longer complaint timeframe** - Lodged within 24 months (previously 12 months).
- The Equal Opportunity Commissioner- **Own-motion reviews and investigations**.

Limited exceptions and exemptions

Sports

- The Bill will generally prohibit discrimination in sport, including participation and coaching, administrative and refereeing roles.
- A limited exemption will allow discrimination on the basis of sex or gender identity in **competitive sport** for participants **aged 12+** where **strength, stamina or physique are relevant**, and only if it is **reasonable and proportionate** in the circumstances.
- The exemption reflects Law Reform Commission advice, aligns with Commonwealth law, and aims to balance **safety, fairness, inclusion and equality**.
- The exemption is more protective of transgender sportspersons than discrimination laws in Victoria and New South Wales, and under the Commonwealth.
- The new test replaces invasive assessments of a person's transition history, with decisions turning on whether any exclusion is reasonable and proportionate.

Religious Schools

- The Bill will allow religious schools to retain their religious character but **significantly narrows when discrimination is permitted**.
- Discrimination is only permitted on the basis of the person's **religious conviction**, not other attributes (such as gender identity or sexual orientation).

- **Hiring staff or admitting students:** discrimination is only allowed where a person's **religious conviction differs** from that of the school.
- **Ongoing employment:** discrimination is only permitted where adherence to the school's religious doctrines is an **inherent requirement** of the job, the requirement cannot be met because of the person's own religious convictions, and the action is reasonable and proportionate.
- **Existing students:** discrimination only permitted where the discrimination conforms with religious doctrine of the school, is **necessary to avoid injury** to the religious susceptibilities of adherents and is **reasonable and proportionate**.

Prisons

- Doing anything in respect of a person in a prison or youth detention facility will not be unlawful discrimination if it is reasonably necessary for the operation of the prison or youth detention facility, or the welfare or safety of prisoners or detainees.

Sex exemptions

- The Bill will allow **limited sex-based exemptions** in specific settings, including single-sex schools and boarding, single-sex clubs, sex-specific benefits, and services that can only be provided to one sex.
- **Sex is not defined in the Bill**, so the sex of a person continues to be determined using **common law principles**, assessed case by case.
- In practice, this means a single-sex institution may exclude someone of a different sex, but **may not lawfully exclude a transgender person** where, applying the common law test, they are of the sex for which the institution provides its services.

Birth certificate is not a definitive determination of sex or gender identity for purpose of the Bill

- The Bill will provide that certain provisions the *Births, Death and Marriages Registration Act 1998 (WA)* do not apply for the purpose of determining a person's sex or gender identity under the Bill.
- The practical effect of this is that, for the purpose of the Bill, the sex or **gender on a person's birth certificate is not determinative** of their sex or gender, though it will be taken into account.
- **Sex**, which is not defined in the Bill, is to be determined using common law principles on a case-by-case basis. This is consistent with the existing *Equal Opportunity Act 1984 (WA)*, and the equal opportunity or anti-discrimination law of all other jurisdictions in Australia. **Gender identity** is defined as a person's gender-related identity, whether or not it aligns with their sex recorded at birth, including a person's personal sense of their body (with or without medical intervention). It also includes gender expression (such as dress, speech, mannerisms, names) and expressly includes transgender, gender diverse and non-binary identities.

Special measures

- The Bill will include **special measures provisions** that permit services, facilities or activities to be provided **specifically for members of a defined target group**, even where this results in the exclusion of others, in certain circumstances.
- Conduct undertaken as a **special measure does not constitute discrimination** under the Act where the measure is:
 - undertaken **in good faith for the purpose of promoting equal opportunity** for members of a clearly identified target group; or
 - **reasonably necessary** to address the disadvantage, inequality or particular needs experienced by members of that group.
- These provisions recognise that achieving **substantive equality** may require differential treatment for particular groups, rather than identical treatment for all.

Complaints

Complaints will be made to the Equal Opportunities Commissioner who seeks to resolve matters by conciliation. Unresolved matters may be referred to the State Administrative Tribunal.

For more information visit: [WA.gov.au/equalopportunitybill2026](https://www.wa.gov.au/equalopportunitybill2026)