



Tracking Your Rights: Justice system

The *Universal Declaration of Human Rights* states:

All are equal before the law and are entitled without any discrimination to equal protection of the law. (Article 7)

The *International Covenant on Civil and Political Rights* states:

All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. (Article 10)

Warning: the following text contains the names of people who have passed away.

This rights sheet discusses issues of discrimination that may arise when a person or a member of their family is involved with the justice system.

What is the justice system?

A person may have dealings with the justice system as:

- a person accused of a wrongdoing
- a victim
- a witness
- a convicted person
- a person in a correctional facility
- a person supporting any of these people (such as a family member visiting a prisoner in jail or at a watch house).

Involvement in the 'justice system' includes dealings with police, transportation in police vehicles, treatment at a police station or a watch house, dealing with lawyers, court processes and hearings, and treatment in prisons and correctional facilities including parole arrangements.

Aboriginal and Torres Strait Islander peoples have not had good experiences in the justice system. The Royal Commission into Aboriginal Deaths in Custody, which examined parts of the justice system, made 339 recommendations, mainly concerned with procedures for persons in custody, liaison with Aboriginal groups, police education and improved accessibility to information. This rights sheet continues that education process.

What does the *Anti-Discrimination Act 1991* say about the justice system?

The Act protects people from discrimination by a person exercising a function, power or responsibility under Queensland laws or government programs. This includes actions of police, court officials and prison officers.

It also protects people from discrimination in the provision of services related to the justice system. Discrimination in the provision of services includes:

- failing to provide a service – such as not providing a language or hearing interpreter to an assault victim making a complaint to the police;
- supplying the service on different (less favourable) terms or in a different way – such as a person in a wheel chair not being able to access

a court registry to file documents for their court hearing;

- treating a person unfavourably in any way in connection with supplying the service.

A complaint can be made about the actions of police, lawyers, court officials and prison officers under the *Anti-Discrimination Act 1991*. However, when a judge or magistrate performs a judicial function, a complaint cannot be made about this under the Act.

What is discrimination?

Direct discrimination happens when a person is treated worse than someone else because of their: race, age, family responsibilities, parental status, relationship status, pregnancy, breastfeeding, impairment (a disability), religious belief or activity, sex (male/female), gender identity, sexuality, lawful sexual activity (as a sex worker), trade union activity, political belief or activity, or association with, or relation to, a person identified on the basis of any of the above attributes.

Race discrimination: Trudy, an Aboriginal woman tried to intervene in the arrest of some Aboriginal people outside a hotel, whom she thought were being wrongly arrested. As a result she herself was arrested and taken to the watch house where she was subjected to intimidating, insulting and degrading treatment. Her white companion who also intervened in a similar way, was not arrested.

Impairment discrimination: An older Aboriginal man, Uncle Albert was the victim of an assault in which he received injuries and his wallet was stolen. As the result of a stroke, Albert slurs his speech and his walk is unsteady. When he went to report the assault and theft at the local police station, he was told to 'Come back when you've sobered up.'

Race discrimination: Eddie, a young, Torres Strait Islander man who has done well in his chosen career, drives a late model, imported car. He is a careful driver with a good driving record, and yet he is frequently pulled over by the police for what they say is a 'random' check and is asked for proof of identity and ownership of the car. His young white friends, who drive similar cars are not selected for these 'random' checks.



Impairment discrimination: An HIV prisoner who was housed in a medical segregation unit, was not given the option to work in the kitchen at the prison as other prisoners were, and was not permitted to attend the oval for exercise at the same time as other prisoners.

Race discrimination: A group of Aboriginal teenagers hanging out at a shopping mall was directed to 'move on' by police. However a group of non-Aboriginal teenagers doing the same thing at the mall was not directed to 'move on'.

Note: If either group of teenagers was blocking the entry to a shop or interfering with trade, the move on direction may be lawful, but should be applied equally to all.

What is indirect discrimination?

Sometimes a rule or practice seems to be the same for all people. However if it disadvantages a particular group of people more than others, in a way that is not reasonable, it may be indirect discrimination.

Impairment discrimination: Clarence, a man with a hearing impairment was required to take part in a Supreme Court matter. He found out that courts had Assistive Listening Systems (such as an audio loop listening system or infra red listening system) and asked to have access to this technology so that he could hear the proceedings. However, the court failed to provide him with any such services and he was unable to follow most of what was happening in the court proceedings.

Religious discrimination: A correctional facility did not provide a practising Muslim prisoner with Halal meat while he was in prison. If he wanted to eat meat while he was in prison, he would have to eat non-Halal meat like everyone else. But because of his religious beliefs, he could not do that.

Breastfeeding discrimination: Kelly, a woman with a very young breastfed baby was arrested by the police under a warrant, and taken to the watch house. She was told that family members were not permitted to bring her baby to her for feeding, as this was not allowed under watch house rules. The baby had never been fed in any way other than through breastfeeding.

What is vilification?

Vilification is publicly inciting others to hate, have serious contempt for, or severely ridicule people because of their race, religion, sexuality or gender identity. Vilification is unlawful.

If the incitement involves threats of physical harm to people or their property, it is a criminal offence.

Race discrimination and racial vilification

In the New South Wales case of *Russell v Commissioner of Police* [2001] NSWADT 32, the Anti-Discrimination Tribunal found that six police constables, one sergeant and a detective, unlawfully discriminated against and unlawfully racially vilified Mr Edward Russell on the basis of his Aboriginality.

Mr Russell was driving a stolen utility vehicle and was pursued by a number of police vehicles. There was a collision between a police vehicle and the utility, and Mr Russell was arrested and taken into custody.

During the course of this he was hit on the arm with a police baton, dragged out of the utility and forced to the ground by four police officers. His hands were handcuffed behind his back, and he was carried or dragged by his arms up a steep embankment onto the road by his arms. Police officers deliberately trod on Mr Russell while he was on the ground. He was punched several times by at least one of the police officers. A number of the police officers bashed his head against the back of the police vehicle. Mr Russell was subjected to abusive, foul and racist language.

The Tribunal found that there was **excessive** force and abusive language, which was because of the man's Aboriginality. It was held to be unlawful discrimination on the grounds of race. The Tribunal further found that the conduct was racial vilification because it incited hatred towards, serious contempt for and severe ridicule of Mr Russell, because of his Aboriginality.

Sexual Harassment

Sexual harassment is unwelcome sexual behaviour directed at you, which makes you feel offended, humiliated or intimidated, and in the circumstances, it is reasonable to feel that way. Both men and women can sexually harass and be harassed. It has nothing to do with mutual attraction and friendship between people.

Mandie sought the help from a lawyer in relation to a domestic violence matter. The lawyer suggested that he would get her a good result if she had sex with him.

Jarryd, a young man in jail for the first time complained that a male correctional officer always found an excuse to come into his cell when he was in the shower and stare at his private parts.

Victimisation

People have a right to make a complaint to the ADCQ if they believe they have been discriminated against, sexual harassed or vilified. If the person making a complaint, or someone else involved in the complaint is treated badly (victimised) because of exercising this right, a separate complaint can also be made to the ADCQ about the victimisation.



A prisoner who lodged a discrimination complaint about racist comments by staff was told that his access to the gym and oval was suspended. When he asked why he was told that he could have access again if he withdrew the complaint.

Police use of 'move on' powers

Police have a number of powers which allow them to direct people to move on from public places, and from other places known as 'prescribed places'. Such directions are commonly called 'move on' directions, and are most often used in streets, parks, malls and railway stations. Prescribed places include shops, childcare centres, schools, licensed premises (such as pubs, restaurants and racing venues), railway stations, malls, automatic teller machines and war memorials.

A move on direction may be given where a police officer reasonably suspects that a person's presence is causing anxiety to people entering or leaving a public place or a prescribed place, or is interfering with trade or business, or is disrupting the peaceful and orderly conduct of an event, entertainment or gathering. Police can also issue a move on direction if a person's behaviour is disorderly, indecent, offensive or threatening.

Police can move people on and can stop a person from re-entering a place for up to 24 hours, but must tell the person the reason why they are directing them to move on.

Directions to 'move on' for the reasons outlined above are about keeping the peace and a complaint of discrimination cannot be made about a lawful direction to move on.

The Courts

Court proceedings

Many Aboriginal and Torres Strait Islander people involved in court proceedings experience language difficulties, an intimidating atmosphere and courtroom practices at odds with their culture and style of communication. It is important that witnesses as well as defendants understand proceedings because misunderstandings may have a significant impact on the outcome of court proceedings.

The High Court recognised that in a trial for a criminal offence, the defendant should be able to understand the proceedings and the nature of the evidence against him or her. If the defendant does not speak the language in which the proceedings are conducted, the absence of an interpreter will result in an unfair trial.

Ebatarinja v Deland [1998] HCA 62

In criminal court proceedings, an interpreter should be provided for defendants and witnesses with

hearing problems or difficulties with understanding standard English language.

In a Queensland Court of Appeal case it was acknowledged that there had been a miscarriage of justice in a trial because of the defendant's difficulties communicating with her solicitor and legal counsel. The Aboriginal woman was convicted of murdering her de facto husband, but she had felt unable to disclose the circumstances of the offence, which included a history of sexual violence against her by the victim. A new trial was ordered.

R v Kina [1993] QCA 480

Complaints about court decisions

A complaint cannot be made to the ADCQ about a sentence or other judgment handed down by a court of law. Each court has a process for making appeals against decisions of the court.

Aboriginal and Islander people going to court

To address justice issues and work towards reducing the over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system, Community Justice Groups (CJGs) are located throughout Queensland. They assist victims and offenders at all stages of the legal process. Most CJG members are respected Elders, traditional owners and community members of 'good standing'.

Information about how to contact a CJG or find out more about the court system is provided in the contacts section at the end of this rights sheet.

Complaints by prisoners or persons subject to community based orders

A person detained in a Queensland prison or subject to a community based order should not be subjected to discrimination, sexual harassment or public vilification as outlined above. However, before a complaint can be made to the ADCQ, all internal complaints procedures at the prison, correctional centre, probation or parole office must be pursued.

If a prisoner is not satisfied with the result of the prison's internal process, he or she may then make a complaint to the ADCQ but they must show the ADCQ that they have completed the internal procedure.

The *Corrective Services Act 2006* outlines the process for discrimination, sexual harassment and vilification complaints by prisoners. The procedure requires the prisoner to make a written complaint to the Chief Executive at the correctional facility, or probation and parole office.

If the CEO notifies the prisoner in writing that the complaint has been dealt with, or if the CEO has not dealt with the complaint within 4 months, the prisoner can then complain to the official visitor. If the official visitor has not dealt with the complaint within 1 month, the prisoner can then complain to the ADCQ.



In dealing with a discrimination complaint by a prisoner or person subject to a community based order, consideration must be given to whether the treatment of the prisoner was 'reasonable' in the circumstances. 'Reasonableness' takes account of such things as the need for security and good order, and any costs, disruption or administrative burden associated with providing alternative treatment to avoid discrimination.

Complaints that are not about discrimination, sexual harassment or vilification

Police: If you wish to make a complaint about the conduct of a police or prison officer (other than complaints about discrimination, sexual harassment or vilification) contact the Crime and Misconduct Commission.

Lawyers: If you wish to make a complaint about the conduct of a lawyer (other than complaints about discrimination, sexual harassment or vilification) contact the Legal Services Commission.

Contact the ADCQ for more information

- Phone on 1300 130 670 (or TTY 1300 130 680) from anywhere in Queensland for the price of a local call.
- ADCQ has Aboriginal and Torres Strait Islander staff and you can ask to speak with one of these officers.
- Send an email to info@adcq.qld.gov.au
- Visit the website www.adcq.qld.gov.au

ADCQ offices are located at:
Brisbane – level 17, 53 Albert St, Brisbane City.
Rockhampton – level 1 James Larcombe Place, 209 Bolsover Street
Townsville – 155 to 157 Denham Street
Cairns – McLeod Chambers, 78 Spence Street

Other agencies - Legal

Aboriginal and Torres Strait Islander Legal Service
<http://www.atsils.com.au/>
(07) 3025 3888 or 1800 012 255 (24 hrs, 7 days)
Note: there are offices in most regional centres

Aboriginal & Torres Strait Islander Women's Legal and Advocacy Service
<http://www.atsiwas.com.au/default.aspx>
(07) 3720 9089

Aboriginal & Torres Strait Islander Women's Legal Service NQ (Townsville)
(07)4721 6007 or 1800 082 600

Legal Aid Queensland
<http://www.legalaid.qld.gov.au>
1300 65 01 43 (Indigenous information line)

Prisoners Legal Service
http://www.plsqld.com/Prisoners_Legal_Service/Home.html

Legal Advice: 07 3846 3384 or 1800 813 940
(Queensland prisoners use the internal Arunta phone System at their correctional centre.)

Other agencies - Support

Murri Watch – has programs in Brisbane, Townsville, Palm Island and Mackay.

<http://www.pronch.com/index.html>
Phone: (07) 3844 1540 (Head office)

Sisters Inside
<http://www.sistersinside.com.au/>
(07) 3844 5066

Catholic Prison Ministry
<http://www.catholicprisonministry.org.au/>
(07) 3846 7577

Other agencies - Complaints

Crime and Misconduct Commission
<http://www.cmc.qld.gov.au/>
(07) 3360 6060 or 1800 061 611 outside Brisbane

Legal Services Commission
<http://www.lsc.qld.gov.au/>
(07)3406 7737 or 1300 655 754 outside Brisbane

Other information

Brisbane Indigenous Media Association – Knowing Your Rights (audio files on legal topics)
http://www.bimaprojects.org.au/index.php?option=com_content&task=view&id=113&Itemid=155

Caxton Legal Centre Self Help Kits, including *Police powers: your rights*
http://www.caxton.org.au/self_help_kits.html

Community Justice Groups - Factsheet
http://www.justice.qld.gov.au/_data/assets/pdf_file/0006/18528/Community_justice_groups.pdf

Qld Courts – Factsheet
www.courts.qld.gov.au/about/fact-sheet