



UNDERSTANDING THE WA DISCRIMINATION BILL FOR LGBTIQA+ COMMUNITIES



rainbow
futures wa

THIS IS WELL OVERDUE

The Equal Opportunity Bill 2026 represents a once-in-a-generation opportunity to improve responses to discrimination, vilification and other harms experienced by people in Western Australia.

Western Australia's discrimination laws are over 40 years old and are some of the weakest in Australia. They have not kept pace with changes to other Australian laws, or the lived realities of people in our communities.

This is a culmination of years of work by local and national advocates from all communities, including LGBTIQA+ people.

Current laws do not provide any protection against vilification, provide less protection to LGBTIQA+ people from discrimination when compared with other Australian jurisdictions, and rely on outdated definitions of discrimination and sexual harassment. Broad and outdated religious exemptions also leave people in Western Australia with nowhere to turn.

The new Bill is an important opportunity to change that.

TIMELINE AND PROCESS

1984–1985: Western Australia's Equal Opportunity Act was passed and came into effect.

2020–2022: The WA Law Reform Commission reviewed the Act, heard from the community and made 163 recommendations for reform.

21 October 2026: The new Equal Opportunity Bill was introduced.

WHO WILL BE PROTECTED?

The Bill would update the law to better recognise the diversity of our communities.

For LGBTIQA+ people, important changes include

updated protections relating to:

Sexual orientation: who you are attracted to, and who you are in a relationship with, such as whether you are lesbian, gay, bisexual, straight or another sexual orientation. It also creates the first protections for asexual and aromantic identities.

Gender identity: your gender, including whether you are trans, non-binary, cisgender or another gender.

This represents a significant step forward for trans recognition and protections. Under WA's current limited protection for trans people, discrimination is tied to formal requirements involving the registration of a person's sex or gender through Births, Deaths and Marriages registry. The Bill's definition of gender identity is based on the federal *Sex Discrimination Act*. This is important because the Full Federal Court's decision in *Giggle v Tickle* has helped clarify what the definition means in ways that are positive for trans people.

Whether or not a person has changed their birth certificate does not determine a person's sex or gender identity under the Act – this recognises that sometimes what's on a person's birth certificate will not accurately reflect their gender identity.

Innate variation of sex characteristics: being intersex will be recognised explicitly under WA law for the first time. It is defined to mean a person's features relating to sex; and includes the person's genes, chromosomes and hormones; and physical features, such as genitalia, other sexual and reproductive parts of the person's anatomy and secondary physical features emerging as a result of puberty.

These changes matter because people should not face unfair treatment because of who they are, how they identify, who they love, or the bodies they were born with.

People associated with us: being associated with an LGBTIQA+ person will also be protected, for example a child with two dads who experiences discrimination



because of who their family is.

The Bill would also update protections for other groups and modernise the law more broadly. This includes ensuring for protections for people experiencing domestic and family violence or homelessness.

WHERE DISCRIMINATION HAPPENS

The Bill recognises that discrimination can happen at work, at school, when accessing services, when renting a home and in many other parts of everyday life.

The Bill would update the areas covered by the law, including new protections when state laws or government programs treat people unfairly.

This matters because government decisions and programs can also discriminate and the government, including police and justice agencies should also be accountable.

RELIGIOUS EXEMPTIONS

Religious schools – students and staff

The Bill proposes changes to significantly limit the exemptions that allow religious schools to discriminate against staff and students.

Under the current law religious schools in WA have broad exemptions that allow:

- Discrimination against staff on *any protected ground* (e.g. LGBTQA+¹ people, pregnant, single people, divorced people etc), as long as they act in ‘good faith’ to avoid offending the religious beliefs of people in their religious community. This allows a school to refuse to employ, discipline or sack a person because of who they are, who they love, or who they are in a relationship with.
- Discrimination against students on *most protected grounds* (including LGBTQA+ people) when providing education. This can allow a school to refuse to enrol a student, or treat a student less favourably, because they

are LGBTQA+, pregnant or in a relationship that conflicts with the school’s religious beliefs.

These exemptions go well beyond allowing religious schools to maintain their religious ethos, or to give preference to staff of the same faith when hiring for the school. They can allow discrimination against people because of who they are, their relationships or their family circumstances.

Under the Bill, schools can no longer discriminate against students based on being on LGBTQA+, being pregnant or on their relationship. Schools can still discriminate by preferring students based on their religious conviction on enrolment, or in certain activities of the institution.

In relation to staff, it will also be no longer be possible to discriminate based on LGBTQA+ attributes, pregnancy, relationship status etc. Schools can discriminate by preferring recruitment of staff of the same religious conviction. Once employed at the school, it is only possible to discriminate on the basis of religious conviction where the employee can’t meet the inherent requirements of the role by not sharing that religious conviction, and where it’s reasonable and proportionate to do so.

Faith-based service providers

Religious organisations provide vital mainstream services to the community, including health care, housing, aged care, disability support and family services. LGBTQA+ people shouldn’t have to face discrimination to get the services and support they need.

Currently, faith-based service providers may be able to rely on a broad exemption from discrimination when providing services. Under the Bill, for most services, this broad exemption would no longer apply. Religious organisations would no longer be able to discriminate against LGBTQA+ people when providing goods, services or facilities that are *government-funded* or provided on a *commercial basis*.

This means LGBTQA+ people accessing services will have stronger protections against discrimination.

¹ Note: In relation to religious exemptions, we use the term LGBTQA+, acknowledging that, historically, intersex people have not generally been targets of religiously motivated discrimination in the same way as lesbian, gay, bisexual and transgender people.

We recognise that intersex people may also identify as LGBTQA+ and may be affected by these issues.



However, there is still an exemption for discrimination based on religious conviction in these settings.

Staff working in religious bodies other than schools

The Bill would make it harder for religious organisations to discriminate against LGBTQA+ staff, but it would not prevent all discrimination.

Under the current law, a religious organisation can rely on either of two grounds to justify discrimination: that it follows the religion's doctrines or beliefs, or that the discrimination is necessary to avoid offending the religious susceptibilities of its followers.

Under the Bill, the organisation would have to meet all three of these elements:

- The discrimination is consistent with the religion's doctrines or beliefs.
- It is reasonably necessary to avoid offending the religious of its followers.
- It is reasonable and proportionate in the circumstances.

This would make it harder for religious organisations to justify discrimination against their staff.

The exemption is not limited to discrimination because of a person's religious convictions. It could still allow religious organisations to discriminate against LGBTQA+ staff, including in jobs that do not involve religious teaching or practice.

SINGLE-SEX SCHOOLS, SERVICES AND FACILITIES

Single-sex schools can continue under the Bill. But it doesn't mean that they can refuse to enrol trans students. 'Sex' is not defined in the Bill and may take account of factors including a person's physical characteristics, legal recognition and how they present and are recognised socially. So, for example, if a young person identifies as lives as male, he should be allowed enrolment to a boy's school.

Once students are enrolled in a single-sex school, they can't be unfairly treated or expelled if they affirm their gender differently later on. That's because the exemption only applies to enrolment.

The same applies to single-sex services and facilities, where they can 'only be provided solely or mainly provided' to people of a particular sex. This is not

grounds to refuse or otherwise discriminate against people who are trans and identify as that sex.

PROTECTIONS FROM HATE

For the first time, Western Australia would introduce specific protections against vilification based on attributes including sexual orientation, gender identity and innate variations in sex characteristics.

This is important at a time when LGBTIQ+ people and other communities are facing escalating hostility and hate in WA.

Vilification will be unlawful if a person expresses, and incites (meaning to: *promote, create, or increase*) hatred, serious contempt for or severe ridicule of the individual or community based on the protected attribute. Vilification in the Bill also includes concepts like threatening and seriously abusing people based on their attributes.

The provision is worded differently from all other state and territory laws, and we have concerns about some aspects of the way it is phrased.

This framing is new, but we think 'create' probably means to initiate hate, 'promotes' means advancing, supporting or spreading existing hate, and 'increasing' means making the spread of hate worse.

MAKING DISCRIMINATION LAW WORK BETTER

Fairer tests for discrimination

The Bill would update the legal tests used to decide whether discrimination has happened.

It would improve the way the law deals with direct and indirect discrimination. A person would no longer need to compare their treatment with that of someone else to prove discrimination, making it easier to establish that discrimination has occurred.

A balanced burden of proof

The Bill proposes changes that mean the person making a complaint would not necessarily have to prove every part of their case alone. Once the required facts are established, the other party may need to explain or prove why discrimination *did not* occur.

This can help address the imbalance between an individual making a complaint and an employer or organisation with greater access to information.



More time to make a complaint

The Bill increases the time limit for making a complaint from one year to two years, with discretion to accept some late complaints.

This is important because people may need additional time to understand what happened, seek support or feel safe enough to speak up.

PREVENTING HARM

Positive duty

Discrimination laws should do more than provide a remedy after someone has been harmed. They should also encourage organisations to prevent harm in the first place.

The Bill proposes a **positive duty**. This means certain organisations (called ‘duty holders’ in the Bill) would have to take reasonable steps to prevent discrimination, sexual harassment, vilification and other prohibited conduct, rather than simply waiting for someone to complain.

This is an important step towards making workplaces, schools, services and other institutions safer – modelling a prevention approach we see in workplace health and safety law.

Investigating systemic discrimination

The Equal Opportunity Commissioner should be able to investigate things they become aware of without having to wait for complaints by individual people – particularly because we know about the many barriers to LGBTIQ+ and other communities to making complaints of discrimination, vilification and other conduct.

The Bill does this by providing powers for the Commissioner to investigate serious matters involving broader or repeated (‘systemic’) problems.

This matters because discrimination is not always a one-off incident between two people. It can be built into policies, practices and systems that affect many people – sometimes this is called ‘structural’ discrimination.

New powers for the equal opportunity commissioner

The Equal Opportunity Commissioner won’t have as

strong a set of powers as we would have liked to ensure organisations comply with the positive duty or to address systemic discrimination.

However, the Commissioner will be able to conduct voluntary reviews, enter into agreements with organisations responsible for meeting the duty, and publish reports. These are important steps forward, even if stronger enforcement powers are still needed.

WHAT’S NEXT?

The Bill is an important opportunity to modernise Western Australia’s discrimination laws and improve protections for LGBTIQ+ people and the wider community.

But introducing a Bill is only the beginning. The final law needs to provide meaningful protection, make it easier for people to seek justice and give the Equal Opportunity Commission the tools it needs to prevent discrimination.

The Bill is expected to pass the Lower House, where the government has the numbers, but it will need the help of other parties to get it through the Upper House.

There will be opponents of this Bill who want to retain the existing law which gives them broad licence to discriminate. That’s why we need to be clear with politicians about how much this matters to our communities.

Everyone deserves to live, work, learn and access services without discrimination or hate. It is time for Western Australia’s laws to catch up.