



RESPONDING TO A COMPLAINT

Do I have the right to respond to a complaint?

Yes, you have the right to respond if someone has made a complaint against you or your business about unfair treatment.

What does the law say?

The *Anti-Discrimination Act 1991* says it is against the law in Queensland to discriminate against, sexually harass, publicly vilify or victimise people in certain circumstances. It can also be unlawful to ask unnecessary questions. However, not all discrimination is unlawful.

How do I know if the treatment stated in the complaint is unlawful discrimination?

The treatment may be unlawful if it fits in BOTH categories 1 and 2:

Category 1

There must be 'grounds' to make a complaint. In other words, the treatment must have happened because of the other person's actual or presumed:

- sex
- sexuality
- gender identity
- lawful sexual activity as a sex worker
- relationship status
- parental status
- family responsibilities
- pregnancy
- breastfeeding
- age
- race
- impairment
- religious belief, non-belief or activity
- trade union activity
- political belief or activity or
- association with a person identified by one of the above grounds

Category 2

The Act covers people while they are:

- working, applying for a job, doing work experience or volunteer work
- obtaining goods or services - at a shop, café, pub, bank, doctor, taxi or car yard
- accessing premises or facilities
- obtaining state government or local council services
- going to school, TAFE college, university or other place of education
- renting or getting other accommodation
- applying for insurance or superannuation
- buying real estate
- joining or as a member of a club (non-profit clubs like bowls clubs are not covered but night clubs are)
- being a member of a local council.

Which questions are unlawful to ask?

The Act says that asking a person for unnecessary information, which could be used to discriminate against them, is unlawful, unless it is genuinely required for a non-discriminatory purpose.

Example: Applicants are asked, at a job interview, about their age or whether they have children.

What does the law say about sexual harassment?

Sexual harassment is unwelcome conduct of a sexual nature in relation to you. It happens when a reasonable person would expect that you'd feel harassed, offended, humiliated or intimidated by the conduct. It has nothing to do with mutual attraction or friendship between people. Sexual

harassment is unlawful no matter where it happens.

Example: *A work colleague makes unwelcome sexual remarks about you and touches you in a sexual way.*

What does the law say about vilification?

Vilification is a public act or statement that incites others to hate a person or their group because of their race, religion, sexuality or gender identity.

Example: *A leaflet is put in letterboxes in your neighbourhood about how to get rid of people of a certain race.*

NOTE: It is a criminal offence, if someone or their property is threatened with physical harm.

What does the law say about victimisation?

Victimisation happens if a person is treated badly because they refused to discriminate or were a witness, complainant or provided information about a complaint of discrimination, sexual harassment, public vilification or being asked unnecessary questions.

Example: *An employer threatens to sack a worker because they've lodged a complaint with the Commission.*

Who is responsible?

The individual who discriminated, asked unnecessary questions, sexually harassed, publicly vilified, or victimised the person, is responsible for their own behaviour.

If this happened in the workplace, their employer is also responsible, unless they took reasonable steps to prevent the behaviour. This is called vicarious liability.

Anyone who encouraged or requested the behaviour is also responsible.

How will I know when a complaint has been made against me?

You will only hear about a complaint to the Commission if we accept it and a copy is sent to you.

If a complaint is assessed as coming under the Act, it means that the allegations made against you may involve unlawful conduct. It does not mean we have decided that you have discriminated, asked unnecessary questions, sexually harassed, vilified or victimised someone.

What happens when I get a complaint?

1. When you get a complaint, you (the respondent) have 28 days to respond in writing.
2. If you respond, you must send a copy to us and to the person making the complaint (the complainant) to see if they are satisfied with your response.
3. We may call a compulsory meeting (conciliation conference) to talk about the complaint and help everyone reach an agreement. You must attend this conference.
4. If there is an agreement, we will write it down and have everyone sign it so that it is binding.
5. If there is no agreement, we will ask the complainant if they want to have their complaint decided by the Anti-Discrimination Tribunal.

Should I respond in writing to the complaint?

You don't have to respond in writing but it might be helpful to give the complainant some time to think about what you have to say. They may be satisfied with your response and the complaint will go no further.

If you want to respond in writing, your response should:

- give your side of the story especially if there is a reasonable explanation for what happened, within 28 days of you receiving the complaint, to both the complainant at their address for service, and to the Commission including confirmation that you also sent it to the complainant
- keep in mind that the complainant will be reading your response
- suggest how you want to resolve the complaint
- give your phone number and address for service where you can be easily reached. This address for service will be given to all the complainants and any other respondents. If you want to keep your home address private, use a PO Box, the address of an organisation, lawyer or other reliable person
- tell us if you would prefer contact by email or fax and give your details

- tell us if you want to try to have a conference earlier than the date already set
- sign and date your response.

What else do I need to know?

- Complaints must be made within one year unless there are good reasons for any delay.
- There are no fees for our services.
- If you need legal or other advice about your case, we can suggest where to go for help. We cannot give you advice or write your response for you.
- We may investigate the complaint but we will not take sides.
- We will try to help everyone reach an agreement but will not decide for you.
- You should keep this complaint confidential and only tell your legal advisers and those who are helping with your response.
- The complainant can withdraw their complaint at any time.