



# LGBTIQA+INTERNATIONAL HUMAN RIGHTS

This factsheet may help you if you identify as LGBTIQA+ and want to know about international human rights.

## What are international human rights?

International human rights are the rights and freedoms of all human beings, regardless of their race, religion, nationality, gender, gender identity or sexual orientation.

The basis of all human rights is the *Universal Declaration of Human Rights*, which was adopted by the United Nations on 10 December 1948.

Some examples of international human rights include:

- the right to life,
- the right to a fair trial,
- the right to freedom from torture and cruel, inhuman and degrading treatment,
- the right to adequate housing,
- the right to education,
- the right to have a family, and many more.

## Where can you find international human rights?

Most international human rights are written down in 'treaties' and countries like Australia can agree to be bound by these human rights by "ratifying the treaty".

When a country ratifies a human rights treaty, they accept legal obligations under international law and must protect the rights for all people within their jurisdiction.

## What happens if a country breaches international human rights?

International human rights law is complex. Breaches can be dealt with in different ways and depend on many different factors, including:

- what the human rights breach is, and
  - whether the country has agreed to be bound by the relevant international human rights treaty.

For example, the United Nations Human Rights Committee (UNHRC) can hear complaints about human rights breaches. If the UNHRC finds a country has breached these rights, it can do many things including asking the country to prevent similar breaches from happening.

## Which international human rights treaties has Australia agreed to uphold and respect?

Australia has endorsed the *Universal Declaration of Human Rights* and has also ratified many human rights treaties, including the:

- *International Covenant on Civil and Political Rights*,
- *International Covenant on Economic, Social and Cultural Rights*,
- *Convention on the Elimination of All Forms of Racial Discrimination*,
- *Convention on the Elimination of All Forms of Discrimination against Women*,
- *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*,
- *Convention on the Rights of the Child*, and
- *Convention on the Rights of Persons with Disabilities*.

Australia has agreed to uphold and protect all rights stated in the above treaties and can be held accountable for any breaches under international law.

## How does Australia uphold and protect human rights?

Human rights are recognised and protected across Australia through:

- a range of state (e.g. WA) and federal (Australian) laws,
- the Australian Constitution, and
- the common law (e.g. cases that have been heard previously in England and Australia on human rights).

The Australian Human Rights Commission also protects

and

promotes human rights in Australia and internationally.

For more information on the Australian Human Rights Commission, see [www.humanrights.gov.au](http://www.humanrights.gov.au).

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**Under international law, you cannot be discriminated against because of your sex, sexual orientation, gender identity or gender expression.**

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## Which international human rights are relevant to LGBTIQ+ people?

While all international human rights are relevant, some rights are particularly relevant to the LGBTIQ+ community. For example, the right to privacy and the right to non-discrimination.

### The right to privacy

Under international law, everyone has the right to privacy and should be able to freely express their identity in their relationships with others or by themselves.

Specific examples of the right to privacy include:

- the right to legally engage in same-sex sexual activity, and
- the right to have legal recognition of your gender reassignment without having to undergo excessive restrictive requirements.

### The right to non-discrimination

Equality and freedom from discrimination are fundamental human rights that belong to all people.

Under international law, you cannot be discriminated against because of your sex, sexual orientation, gender identity or gender expression.

These international human rights are the basis for state (WA) and federal (Australian) discrimination laws.

Discrimination is a complex area of law. Not all unfair treatment is against the law and exemptions apply under state, federal and international discrimination law.

The law is also constantly changing and there have been a number of international cases on LGBTIQ+ discrimination in recent years.

You should get legal advice about your situation if you feel you have been discriminated against. There are many ways you can deal with discrimination and there are time limits for taking formal action.

For more information about discrimination, see our LGBTIQ+ Discrimination factsheet.



# FREQUENTLY ASKED QUESTIONS

If you believe your human rights have been breached, it is best to get legal advice before taking formal action and lodging a complaint.

## I want my gender identity to be legally recognized. Is this a human right under international law?

The right to have your gender identity recognised is linked to several international human rights, including the right to equal recognition before the law.

The United Nations has said it is important that a person's gender identity is recognised in official documents and has said the recognition process:

- should be based on self-identification by the applicant,
- should be a simple administrative process,
- should not require applicants to fulfil abusive requirements (such as surgery),
- should recognize non-binary identities, and
- should include people under 18.

## Do international human rights protect the LGBTIQ+ community from hate speech?

International human rights law is complex and sometimes individual rights clash with each other. For example, the right to be protected from discrimination often clashes with someone's right to freedom of speech. Sometimes there is no clear answer about which right prevails.

However, there has been recent international human rights cases that clearly say someone cannot engage in hate speech against LGBTIQ+ people on the basis of 'freedom of speech'.

There are also non-binding human rights principles that say countries must ensure that freedom of speech does not violate the rights and freedoms of people of diverse sexual orientations and gender identities.

## If there is a clash between LGBTIQ+ rights and the right to freedom of religion, which one prevails?

International human rights law is complex and sometimes individual rights clash with each other.

Unfortunately, the right to be protected from discrimination often clashes with the right to freedom of religion and there is not a clear answer about which right prevails.

If you believe your human rights have been breached, it is best to get legal advice before taking formal action and lodging a complaint.

Human rights is a complex area of law and you may have more than one option. There are also deadlines (called 'time limits') for taking legal action.

Who you should contact will depend on what happened to you and where it happened.

You may be able to take formal action under state (WA), federal (Australian) laws, or international (human rights) laws.

## I have come to Australia from a country where I have been persecuted because of my gender identity. Can Australia send me back?

Under international law, Australia cannot send you back to a country where you are at risk of being tortured or persecuted.

The United Nations High Commissioner for Refugees has said this applies to people who are persecuted because of their sexual orientation and/or gender identity.

## I think my human rights have been breached. What can I do?

### Get legal advice

It is best to get legal advice before taking formal action and lodging a complaint.

Human rights is a complex area of law and you may have more than one option. For example, you may be able to:

- take informal action, or
- take formal action under state (WA), federal (Australian), or international (human rights) laws.

For information about some informal ways you can deal with breaches to your human rights and how to take formal action under state and federal law, see our LGBTIQ+ Discrimination factsheet.

### Formal action under international law

To take action under international human rights laws you generally need to make a complaint to the United Nations Human Rights Committee (UNHRC).

There are strict rules about when you can make a complaint to the UNHRC. For example:

- you must have first exhausted all your options in Australia under state and federal law,
- your case must not be being considered by another international body at the same time,
  - the breach of your human rights must have affected you personally, and
- you must give the UNHRC enough details and evidence to show the breach of your human rights.

You may make a complaint yourself or for someone else with their consent. Final decisions are public but if you want your identity to be protected you should let them know as soon as possible.

### If a breach has occurred

If the UNHRC finds there has been a breach of your human rights it can do many things, including:

- remind Australia of its obligations under human rights law, and
- request Australia take steps to prevent similar breaches.

The UNHRC can also remind Australia to pay your legal costs and give you compensation.



## Where can I get more information, support or help?

### Western Australia

Youth Pride Network – [www.youthpridenetwork.net](http://www.youthpridenetwork.net)

Freedom Centre – (08) 92280354 [www.freedom.org.au](http://www.freedom.org.au)

Qlife – 1800 184 527 [www.qlife.org.au](http://www.qlife.org.au)

Legal Aid WA – 1300 650 579 [www.legalaid.wa.gov.au](http://www.legalaid.wa.gov.au)

Community Legal WA – [www.communitylegalwa.org.au](http://www.communitylegalwa.org.au)

Law Access – [www.lawaccess.org.au](http://www.lawaccess.org.au)

Equal Opportunity Commission – (08) 9216 3900  
[www.eoc.wa.gov.au](http://www.eoc.wa.gov.au)

### Australia

Australian Human Rights Commission – 1300 656 419 [www.hreoc.gov.au](http://www.hreoc.gov.au)

### International

OutRight Action International –  
[www.outrightinternational.org](http://www.outrightinternational.org)

ILGA World – the International Lesbian, Gay Bisexual,  
Trans and Intersex Association – [www.ilga.org](http://www.ilga.org)

United Nations – [www.un.org](http://www.un.org)

United Nations Human Rights Committee –  
[www.ohchr.org](http://www.ohchr.org)

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