

Western Australia

Gender Reassignment Act 2000

As at 12 Apr 2000

No. 2 of 2000

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Gender Reassignment Act 2000

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Western Australia

Gender Reassignment Act 2000

No. 2 of 2000

AN ACT to allow the reassignment of gender and establish a Gender Reassignment Board with power to issue recognition certificates; to make consequential amendments to the *Constitution Acts Amendment Act 1899* and the *Registration of Births, Deaths and Marriages Act 1961*; to amend the *Equal Opportunity Act 1984* to promote equality of opportunity, and provide remedies in respect of discrimination, on gender history grounds in certain cases; and for connected purposes.

[Assented to 12 April 2000.]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Gender Reassignment Act 2000*.

2. Commencement

The provisions of this Act come into operation on such day as is, or days as are respectively, fixed by proclamation.

3. Interpretation

In this Act, unless the contrary intention appears —

“**adult**” means a person of or above the age of 18 years;

“**Board**” means the Gender Reassignment Board of Western Australia established by section 5;

“**child**” means a person under the age of 18 years;

“**corresponding law**” means —

(a) a law of another State or of a Territory; or

(b) a law of another country,

declared by the regulations to be a corresponding law;

“**equivalent certificate**” means a certificate issued under a corresponding law that corresponds to a recognition certificate issued under this Act;

“**gender characteristics**” means the physical characteristics by virtue of which a person is identified as male or female;

“**medical practitioner**” has the meaning given by section 3 of the *Medical Act 1894*;

“**president**” means the president of the Board;

“**reassignment procedure**” means a medical or surgical procedure (or a combination of such procedures) to alter the genitals and other gender characteristics of a person, identified by a birth certificate as male or female, so that the person will be identified as a person of the opposite sex and

includes, in relation to a child, any such procedure (or combination of procedures) to correct or eliminate ambiguities in the child's gender characteristics;

“recognition certificate” means a certificate issued under this Act that identifies a person who has undergone a reassignment procedure as being of the sex to which the person has been reassigned;

“Registrar General” means the Registrar General appointed under the *Registration of Births, Deaths and Marriages Act 1961*.

4. Crown bound

This Act binds the Crown.

Part 2 — Gender Reassignment Board

5. Establishment and function of Board

- (1) A board called the Gender Reassignment Board of Western Australia is established.
- (2) The functions of the Board are —
 - (a) to receive and determine applications for recognition certificates; and
 - (b) to issue recognition certificates in suitable cases.
- (3) The Board is to have a seal.
- (4) Schedule 1 has effect with respect to the constitution and proceedings of the Board.

6. President of Board

- (1) The Governor is to appoint a person as president of the Board.
- (2) A person may be appointed as president only if he or she —
 - (a) is or has been a Judge of the Supreme Court, the District Court, or the Family Court of Western Australia, or is or has been a legal practitioner as defined in the *Legal Practitioners Act 1893* admitted for not less than 8 years; and
 - (b) in the case of a person who is a Judge of the Supreme Court, the District Court, or the Family Court of Western Australia, has been recommended for appointment by the Chief Justice of Western Australia.
- (3) The Minister may appoint a person qualified to be appointed as president, to be the acting president of the Board during the illness, unavailability, or absence of the president, and while so appointed that person is to perform the functions of the president.

- (4) A person who is a Judge of the Supreme Court, the District Court, or the Family Court of Western Australia may be appointed to be the acting president of the Board only if he or she has been recommended for appointment by the Chief Justice of Western Australia.

7. Other Board members

The Governor may appoint not more than 5 persons in addition to the president as members of the Board, and such persons are to include —

- (a) a medical practitioner;
- (b) a person who has undergone a reassignment procedure; and
- (c) a person with experience in equal opportunity matters.

8. Arrangement of business

- (1) The president —
- (a) is responsible for arranging the business of the Board; and
 - (b) subject to subsection (2), is to specify the members who are to perform the functions of the Board for the purpose of any particular matter.
- (2) The Board must be constituted by not less than 3 members.
- (3) The president may amend or revoke a specification made under subsection (1) (b).

9. Remuneration and allowances of members

- (1) Subject to subsection (2), a member may be paid such remuneration and travelling and other allowances as the Minister from time to time determines, on the recommendation of the Minister for Public Sector Management.

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- (2) A president who holds office as a Judge or any other member who holds a full-time position that is remunerated out of moneys appropriated by Parliament or by virtue of a written law, is not entitled to remuneration under subsection (1) but may be paid travelling and other allowances with the approval of the Minister.

10. Practice directions

- (1) The president may give practice directions for or in relation to the practice and procedure of the Board.
- (2) Practice directions —
- (a) may apply either generally or in a particular matter; and
 - (b) must not be inconsistent with this Act.

11. Executive officer and other officers

- (1) The chief executive officer is to arrange for the Board to have the services of an executive officer and such other officers as are necessary for the proper functioning of the Board.
- (2) The executive officer and other officers may perform functions for the Board in conjunction with the functions of any other office in the Public Service.

12. Judicial notice of seal and signatures

All courts, judges and persons acting judicially shall take judicial notice of —

- (a) the seal of the Board;
- (b) the signature of any person who is or has been the president or another member of the Board or the executive officer; and
- (c) the fact that that person is or was the president, member, or executive officer, as the case may be.

13. Annual report

- (1) As soon as practicable in each year and not later than 30 September, the Board must prepare and deliver to the Minister a report on the performance of its functions during the year which ended on the preceding 30 June.
- (2) The Minister must cause the report received under subsection (1) to be laid before each House of Parliament within 14 sitting days of that House after the Minister receives it.
- (3) The Board may at any time report to the Minister on any matter relating to the operation of this Act.

Part 3 — Recognition Certificates

14. Applications for recognition certificates

- (1) Where a person has undergone a reassignment procedure (before or after the commencement of this Act and within the State or elsewhere), application may be made to the Board in accordance with this section for the issue of a recognition certificate.
- (2) An application may be made under this section —
 - (a) by the person to whom the application relates; or
 - (b) if that person is a child, by that child's guardian.
- (3) An application must be made in the prescribed form and accompanied by the prescribed fee.
- (4) A copy of the application must be served on —
 - (a) the Minister; and
 - (b) any other person who should, in the Board's opinion, be served with notice of the application.
- (5) A person referred to in subsection (4) is entitled to appear at the hearing of the application and to make submissions to the Board.
- (6) In proceedings on an application, the Board is not bound by the rules of evidence, but may inform itself on any matter in such manner as the Board thinks appropriate.
- (7) Proceedings under this section must be conducted in private.
- (8) The Board must determine every application by giving a written decision containing the reasons for that decision.
- (9) A decision of the Board not to issue a recognition certificate in a proceeding does not preclude a further application to the Board by the applicant based on additional or changed circumstances.

15. Issue of recognition certificates

- (1) Where an application under section 14 relates to an adult, the Board may issue a recognition certificate if —
- (a) one or more of the following applies —
 - (i) the reassignment procedure was carried out in the State;
 - (ii) the birth of the person to whom the application relates is registered in the State;
 - (iii) the person to whom the application relates is a resident of the State and has been so resident for not less than 12 months;and
 - (b) the Board is satisfied that the person —
 - (i) believes that his or her true gender is the gender to which the person has been reassigned;
 - (ii) has adopted the lifestyle and has the gender characteristics of a person of the gender to which the person has been reassigned; and
 - (iii) has received proper counselling in relation to his or her gender identity.
- (2) Where an application under section 14 relates to a child, the Board may issue a recognition certificate if —
- (a) one or more of the following applies
 - (i) the reassignment procedure was carried out in the State;
 - (ii) the birth of the child is registered in the State;
 - (iii) the child is a resident of the State and has been so resident for not less than 12 months;and
 - (b) the Board is satisfied that it is in the best interests of the child that the certificate be issued.

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- (3) A recognition certificate cannot be issued to a person who is married.

16. Effect of recognition certificate

- (1) A recognition certificate is conclusive evidence that the person to whom it refers —
 - (a) has undergone a reassignment procedure; and
 - (b) is of the sex stated in the certificate.
- (2) An equivalent certificate issued under a corresponding law has the same effect as a recognition certificate under this Act.

17. Registration of certificates

- (1) Subject to this section, if a recognition certificate, or an equivalent certificate issued under a corresponding law, relating to a person whose birth is registered in the State is produced to the Registrar General, the Registrar General must —
 - (a) register the reassignment of gender; and
 - (b) make such other entries and alterations on any register or index kept by the Registrar General as may be necessary in view of the reassignment.
- (2) A person must not produce a recognition certificate to the Registrar General —
 - (a) within one month after the day on which the certificate is issued; or
 - (b) if an appeal is commenced against the decision to issue the certificate, before the appeal is determined.

Penalty: \$2 000.

- (3) A certificate produced to the Registrar General under this section must be accompanied by an application in a form approved by the Registrar General and by the prescribed fee.

18. Issuing of new birth certificate

- (1) After the reassignment of gender is registered by the Registrar General and the register altered accordingly, a birth certificate issued by the Registrar General for the person must, unless otherwise requested by the person or permitted by the regulations, show the person's sex in accordance with the register as altered.
- (2) Any such birth certificate must not include a statement that the person has changed sex.

19. Cancellation of fraudulent recognition certificates

- (1) The Supreme Court may cancel a recognition certificate if it appears that the certificate was obtained by fraud or other improper means.
- (2) The Supreme Court may, on cancelling a recognition certificate, make any consequential orders that may be necessary or desirable in the circumstances of the case.

Part 4 — Miscellaneous

20. Issue of replacement qualification certificates

- (1) If —
- (a) a certificate of qualification refers to a gender reassigned person by a name that by common usage is not attributed to a person of the gender to which the person has been reassigned; and
 - (b) the person has adopted another name,

the issuing authority, on being satisfied of those matters, may issue to the person a replacement certificate showing the name referred to in paragraph (b).

- (2) Except for the name of the person, a replacement certificate may be identical to the original certificate in every respect including the date of issue.
- (3) A replacement certificate need not show that it is issued in place of the original but may do so if the issuing authority considers that it would not otherwise be practicable to issue the certificate.
- (4) An issuing authority is not to be taken to have issued a false document by issuing a replacement certificate in accordance with this section.

- (5) In this section —

“certificate of qualification” means a document that shows that a person has an authorization or qualification or experience that is needed for or facilitates —

- (a) the practice of a profession;
- (b) the carrying on of a trade or business; or
- (c) the engaging in of an occupation;

“gender reassigned person” means a person who has been issued with a recognition certificate or an equivalent certificate;

“issuing authority”, in relation to a certificate of qualification, means the authority that issued the certificate or a successor to that authority.

21. Appeals

- (1) An aggrieved person may appeal to the Supreme Court against a decision of the Board on an application for the issue of a recognition certificate.
- (2) An appeal must be commenced within 30 days after the day on which the appellant receives notice of the decision against which the appeal lies, but the Supreme Court may grant leave for an appeal to be commenced out of time if the Court is satisfied that there was a reasonable excuse for not commencing the appeal within the time allowed.
- (3) On an appeal, the Supreme Court may —
 - (a) confirm, reverse or annul the decision subject to appeal;
 - (b) if it considers that a recognition certificate should be issued, direct the Board to issue the certificate;
 - (c) if it considers that a recognition certificate should be cancelled, cancel the certificate; and
 - (d) make any consequential or ancillary orders.
- (4) On the determination of an appeal by the Supreme Court, the Board must take whatever action is necessary to give effect to that determination.

22. Confidentiality

- (1) A person who holds or formerly held a position involving duties related to the administration of this Act must not divulge confidential information obtained by virtue of that position except as may be required for the purposes of official duties, or as may be permitted in writing by the person to whom the information relates.

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- (2) An issuing authority under section 20, or any person acting on its behalf, must not divulge confidential information obtained for the purposes of that section except as may be required for those purposes, or as may be permitted in writing by the person to whom the information relates.

Penalty: \$2 000 or imprisonment for 6 months.

23. False or misleading statements

A person must not make a statement knowing it to be false or misleading in a material respect for the purposes of, or in connection with, an application under this Act.

Penalty: \$2 000 or imprisonment for 6 months.

24. Offences

- (1) A prosecution for an offence against this Act cannot be commenced without the consent of the Attorney General.
- (2) In proceedings for an offence against this Act a document apparently signed by the Attorney General stating that the Attorney General consents to a particular prosecution is sufficient evidence, in the absence of proof to the contrary, to prove that consent.

25. Age

If the age of a person is material to an application before the Board under this Act and there is no certain evidence of age, the Board may act on its own estimate of the age of that person.

26. Regulations

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for achieving the objects and giving effect to the purposes of this Act including —
- (a) the practices and procedures to be followed on applications to the Board under this Act;

- (b) the regulation of access to documents in the executive officer's possession or entries in registers or indexes kept by the executive officer relating to applications to the Board under this Act; and
 - (c) penalties not exceeding \$2 000 for a breach of, or non-compliance with, a regulation.
- (2) A regulation under subsection (1) (a) may be made only on the recommendation of or after consultation with the Board.

27. Transitional

Notwithstanding section 13, if this Act comes into force on a day before 1 July in any year, the first report on the performance of the Board's functions required to be prepared by that section is to be prepared in respect of the period from the day the Act comes into force until the end of June in the next following year.

28. Amendment of *Equal Opportunity Act 1984*

The *Equal Opportunity Act 1984* is amended as set out in Schedule 2.

29. Consequential amendments

- (1) Section 65 (1) of the *Registration of Births, Deaths and Marriages Act 1961** is amended by inserting after "Act" the following —

“ or the *Gender Reassignment Act 2000* ”.

[* Reprinted as at 15 April 1994.

For subsequent amendments see 1995 Index to Legislation of Western Australia, Table 1, p. 188.]

- (2) Part 3 of Schedule V to the *Constitution Acts Amendment Act 1899** is amended by inserting in the appropriate alphabetical position the following —

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“

The Gender Reassignment Board of Western Australia
established by the *Gender Reassignment Act 2000*.

”.

[* *Reprinted as at 22 January 1997.*]

Schedule 1 — Constitution and proceedings of the Board

[Section 5]

1. Term of office

- (1) Subject to clause 2, a member holds office for such term as is specified in the member's instrument of appointment, and in the case of the president that term is not to exceed 5 years and in the case of any other member is not to exceed 3 years.
- (2) A member may from time to time be reappointed.
- (3) Despite subclause (1) and clause 2, where the term of office of a member has expired or the member has resigned, the member may, with the approval of the Minister, continue in office for the purpose of completing any function.

2. Resignation and removal

- (1) A member may resign at any time by notice in writing delivered to the Governor.
- (2) The Governor may remove a member from office —
 - (a) if the member is an insolvent under administration as that expression is defined in the Corporations Law; or
 - (b) on the grounds of neglect of duty, misbehaviour, incompetence or mental or physical incapacity impairing the performance of the member's functions, proved to the satisfaction of the Governor.

3. Leave of absence

The Minister may grant leave of absence to a member on such terms and conditions as the Minister thinks fit.

4. Acts of acting president

No act or omission of a person acting as president under this Act shall be questioned on the ground that the occasion for that acting had not arisen or had ceased.

Schedule 1 Constitution and proceedings of the Board

5. President to preside

- (1) The president shall preside at every meeting or proceeding of the Board.
- (2) The president is to determine any question relating to the admissibility of evidence or any other question of law or procedure at any meeting or proceedings of the Board.

6. Use of seal

- (1) The seal of the Board is to be
 - (a) in a form determined by the Board;
 - (b) kept in such custody as the Board directs; and
 - (c) used only as authorized by the Board.
- (2) The seal of the Board is to be affixed to a document in the presence of the president and one other member of the Board and each of them must sign the document to attest that the seal was so affixed.

7. Register of applications

The executive officer is to keep a register in a form approved by the Board containing particulars of all applications for recognition certificates and the determination of those applications.

Schedule 2 — Amendment of *Equal Opportunity Act 1984*

[Section 28]

1. Interpretation

In this Schedule, the *Equal Opportunity Act 1984** is referred to as the principal Act.

[* Reprinted as at 16 April 1996.
For subsequent amendments see Acts Nos. 14,42 and 43 of 1996.]

2. Long title amended

The long title to the principal Act is amended by inserting after “harassment” the following —

“ or, in certain cases, on gender history grounds ”.

3. Section 3 amended

Section 3 (a) of the principal Act is amended by deleting “or age” and substituting the following —

“ , age or, in certain cases, gender history ”.

4. Section 4 amended

Section 4 (1) of the principal Act is amended by inserting in the appropriate alphabetical position the following definition —

“

“**gender reassigned person**” means a person who has been issued with a recognition certificate under the *Gender Reassignment Act 2000* or a certificate which is an equivalent certificate for the purposes of that Act;

”.

5. Part IIAA inserted

After Part II of the principal Act, the following Part is inserted —

“

**Part IIAA — Discrimination On Gender History
Grounds In Certain Cases**

Division 1 — General

35AA. Interpretation

- (1) For the purposes of this Part, a person has a gender history if the person identifies as a member of the opposite sex by living, or seeking to live, as a member of the opposite sex.
- (2) In subsection (1) —

“**opposite sex**” means a sex of which the person was not a member at birth.

35AB. Discrimination on gender history grounds

- (1) For the purposes of this Act, a person (in this subsection referred to as the “discriminator”) discriminates against a gender reassigned person on gender history grounds if, on the ground of the gender reassigned person having a gender history, the discriminator treats the gender reassigned person less favourably than, in circumstances that are the same or are not materially different, the discriminator treats or would treat a person not thought by the discriminator to have a gender history.
- (2) A reference in subsection (1) to something done on the ground of a person having a gender history includes a reference to something done on the ground of —
 - (a) a characteristic that appertains generally to persons who have a gender history; or

- (b) a characteristic that is generally imputed to persons who have a gender history.
- (3) For the purposes of this Act, a person (in this subsection referred to as the “**discriminator**”) discriminates against a gender reassigned person on gender history grounds if on the ground of the person having a gender history the discriminator —
 - (a) treats the person as being of the person's former sex; or
 - (b) requires the person to comply with a requirement or condition —
 - (i) with which a substantially higher proportion of persons who do not have a gender history comply or are able to comply;
 - (ii) which is not reasonable having regard to the circumstances of the case; and
 - (iii) with which the gender reassigned person does not or is not able to comply.

Division 2 — Discrimination in work

35AC. Discrimination against applicants and employees

- (1) It is unlawful for an employer to discriminate against a gender reassigned person on gender history grounds —
 - (a) in the arrangements made for the purpose of determining who should be offered employment;
 - (b) in determining who should be offered employment; or
 - (c) in the terms or conditions on which employment is offered.

Schedule 2 Amendment of Equal Opportunity Act 1984

- (2) It is unlawful for an employer to discriminate on gender history grounds against an employee who is a gender reassigned person —
- (a) in the terms or conditions of employment that the employer affords the employee;
 - (b) by denying the employee access, or limiting the employee's access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment;
 - (c) by dismissing the employee; or
 - (d) by subjecting the employee to any other detriment.
- (3) Nothing in subsection (1) or (2) renders it unlawful for a person to discriminate against a gender reassigned person on gender history grounds in connection with employment to perform domestic duties within a private household in which the employer resides.

35AD. Discrimination against commission agents

- (1) It is unlawful for a principal to discriminate against a gender reassigned person on gender history grounds —
- (a) in the arrangements the principal makes for the purpose of determining who should be engaged as a commission agent;
 - (b) in determining who should be engaged as a commission agent; or
 - (c) in the terms or conditions on which the person is engaged as a commission agent.
- (2) It is unlawful for a principal to discriminate on gender history grounds against a commission agent who is a gender reassigned person —

- (a) in the terms or conditions that the principal affords the commission agent as a commission agent;
- (b) by denying the commission agent access, or limiting the commission agent's access, to opportunities for promotion, transfer or training, or to any other benefits associated with the position as a commission agent;
- (c) by terminating the engagement; or
- (d) by subjecting the commission agent to any other detriment.

35AE. Discrimination against contract workers

It is unlawful for a principal to discriminate on gender history grounds against a contract worker who is a gender reassigned person —

- (a) in the terms or conditions on which the principal allows the contract worker to work;
- (b) by not allowing the contract worker to work or continue to work;
- (c) by denying the contract worker access, or limiting the contract worker's access, to any benefit associated with the work in respect of which the contract with the employer is made; or
- (d) by subjecting the contract worker to any other detriment.

35AF. Partnerships

- (1) It is unlawful for 6 or more persons being persons who are proposing to form themselves into a partnership to discriminate against a gender reassigned person on gender history grounds —

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- (a) in determining who should be invited to become a partner in the partnership; or
 - (b) in the terms or conditions on which the person is invited to become a partner in the partnership.
- (2) It is unlawful for any one or more of the partners in a partnership consisting of 6 or more partners to discriminate against a gender reassigned person on gender history grounds —
 - (a) in determining who should be invited to become a partner in the partnership; or
 - (b) in the terms or conditions on which the gender reassigned person is invited to become a partner in the partnership.
- (3) It is unlawful for any one or more of the partners in a partnership consisting of 6 or more partners to discriminate on gender history grounds against a partner in the partnership who is a gender reassigned person —
 - (a) by denying the partner access, or limiting the partner's access, to any benefit arising from being a partner in the partnership;
 - (b) by expelling the partner from the partnership; or
 - (c) by subjecting the partner to any other detriment.

35AG. Professional or trade organizations etc.

- (1) This section applies to an organization of employees and to an organization of employers.
- (2) It is unlawful for an organization to which this section applies, or for the committee of management of such an organization, or for a member of such a committee of management, to discriminate on gender history grounds against a gender reassigned person who is not a member of the organization —

- (a) by refusing or failing to accept the gender reassigned person's application for membership;
or
 - (b) in the terms or conditions on which the organization is prepared to admit the gender reassigned person to membership.
- (3) It is unlawful for an organization to which this section applies or for the committee of management of such an organization or for a member of such a committee of management to discriminate on gender history grounds against a gender reassigned person who is a member of the organization —
- (a) by denying the gender reassigned person access, or limiting the gender reassigned person's access, to any benefit provided by the organization;
 - (b) by depriving the gender reassigned person of membership or varying the terms of the gender reassigned person's membership; or
 - (c) by subjecting the gender reassigned person to any other detriment.

35AH. Qualifying bodies

It is unlawful for an authority or body that is empowered to confer, renew, extend, revoke, or withdraw an authorization or qualification that is needed for, or facilitates the practice of, a profession, the carrying on of a trade or business or the engaging in of an occupation to discriminate against a gender reassigned person on gender history grounds —

- (a) by refusing or failing to confer, renew or extend the authorization or qualification;
- (b) in the terms or conditions on which it is prepared to confer the authorization or

Schedule 2 Amendment of Equal Opportunity Act 1984

qualification or to renew or extend the authorization or qualification; or

- (c) by revoking or withdrawing the authorization or qualification or varying the terms or conditions upon which it is held.

35AI. Employment agencies

It is unlawful for an employment agency to discriminate against a gender reassigned person on gender history grounds —

- (a) by refusing to provide the gender reassigned person with any of its services;
- (b) in the terms or conditions on which it offers to provide the gender reassigned person with any of its services; or
- (c) in the manner in which it provides the gender reassigned person with any of its services.

Division 3 — Discrimination in other areas

35AJ. Education

- (1) It is unlawful for an educational authority to discriminate against a gender reassigned person on gender history grounds —
 - (a) by refusing or failing to accept the gender reassigned person's application for admission as a student; or
 - (b) in the terms or conditions on which it is prepared to admit the gender reassigned person as a student.
- (2) It is unlawful for an educational authority to discriminate on gender history grounds against a student who is a gender reassigned person —

- (a) by denying the student access, or limiting the student's access, to any benefit provided by the educational authority;
- (b) by expelling the student; or
- (c) by subjecting the student to any other detriment.

35AK. Access to places and vehicles

It is unlawful for a person (in this section referred to as the "discriminator") to discriminate against a gender reassigned person on gender history grounds —

- (a) by refusing to allow the gender reassigned person access to or the use of any place or vehicle that the public or a section of the public is entitled or allowed to enter or use, for payment or not;
- (b) in the terms on which the discriminator is prepared to allow the gender reassigned person access to or the use of any such place or vehicle;
- (c) by refusing to allow the gender reassigned person the use of any facilities in any such place or vehicle that the public or a section of the public is entitled or allowed to use, for payment or not;
- (d) in the terms on which the discriminator is prepared to allow the gender reassigned person the use of any such facilities; or
- (e) by requiring the gender reassigned person to leave or cease to use any such place or vehicle or any such facilities.

35AL. Goods, services and facilities

It is unlawful for a person who, whether for payment or not, provides goods or services, or makes facilities

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available, to discriminate against a gender reassigned person on gender history grounds —

- (a) by refusing to provide the gender reassigned person with those goods or services or to make those facilities available to the gender reassigned person;
- (b) in the terms or conditions on which the first-mentioned person provides the gender reassigned person with those goods or services or makes those facilities available to the gender reassigned person; or
- (c) in the manner in which the first-mentioned person provides the gender reassigned person with those goods or services or makes those facilities available to the gender reassigned person.

35AM. Accommodation

- (1) It is unlawful for a person, whether as principal or agent, to discriminate against a gender reassigned person on gender history grounds —
 - (a) by refusing the gender reassigned person's application for accommodation;
 - (b) in the terms or conditions on which accommodation is offered to the gender reassigned person; or
 - (c) by deferring the gender reassigned person's application for accommodation, or according to the gender reassigned person a lower order of precedence in any list of applicants for that accommodation.
- (2) It is unlawful for a person, whether as principal or agent, to discriminate against a gender reassigned person on gender history grounds —

- (a) by denying the gender reassigned person access, or limiting the gender reassigned person's access, to any benefit associated with accommodation occupied by the gender reassigned person;
 - (b) by evicting the gender reassigned person from accommodation occupied by the gender reassigned person; or
 - (c) by subjecting the gender reassigned person to any other detriment in relation to accommodation occupied by the gender reassigned person.
- (3) Nothing in this section applies to or in respect of —
- (a) the provision of accommodation in premises if —
 - (i) the person who provides or proposes to provide the accommodation or a near relative of that person resides, and intends to continue to reside, on those premises; and
 - (ii) the accommodation provided in those premises is for no more than 3 persons other than a person referred to in paragraph (a) or near relatives of such a person;
 - or
 - (b) accommodation provided by a religious body.

35AN. Land

- (1) It is unlawful for a person, whether as principal or agent, to discriminate against a gender reassigned person on gender history grounds —

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- (a) by refusing or failing to dispose of an estate or interest in land to the gender reassigned person;
or
 - (b) in the terms or conditions on which an estate or interest in land is offered to the gender reassigned person.
- (2) Without limiting the generality of section 70 (1), this section does not apply in relation to a disposal of an estate or interest in land by will or by way of gift.

35AO. Clubs

- (1) It is unlawful for a club, the committee of management of a club, or a member of the committee of management of a club, to discriminate on gender history grounds against a gender reassigned person who is not a member of the club —
- (a) by refusing or failing to accept the gender reassigned person's application for membership;
or
 - (b) in the terms or conditions on which the club is prepared to admit the gender reassigned person to membership.
- (2) It is unlawful for a club, the committee of management of a club, or a member of the committee of management of a club, to discriminate on gender history grounds against a gender reassigned person who is a member of the club —
- (a) in the terms or conditions of membership that are afforded to the member;
 - (b) by refusing or failing to accept the member's application for a particular class or type of membership;

- (c) by denying the member access, or limiting the member's access, to any benefit provided by the club;
- (d) by depriving the member of membership or varying the terms of membership; or
- (e) by subjecting the member to any other detriment.

35AP. Discrimination in sport on gender history grounds

- (1) It is unlawful for a person to discriminate against a gender reassigned person on gender history grounds by excluding that person from —
 - (a) a sporting activity; or
 - (b) an administrative, coaching, refereeing or umpiring activity in relation to any sport.
- (2) Subsection (1) (a) does not apply to discrimination against a gender reassigned person if —
 - (a) the relevant sporting activity is a competitive sporting activity for members of the sex with which the person identifies; and
 - (b) the person would have a significant performance advantage as a result of his or her medical history.

35AQ. Application forms etc.

Where, by virtue of a provision of Division 2 or this Division, it would be unlawful, in particular circumstances, for a person to discriminate against a gender reassigned person on gender history grounds in doing a particular act, it is unlawful for the first-mentioned person to request or require the gender reassigned person to provide, in connection with or for the purposes of the doing of the act, information

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(whether by way of completing a form or otherwise) that persons who do not have a gender history would not, in circumstances that are the same or not materially different, be requested or required to provide.

35AR. Superannuation schemes and provident funds

It is unlawful for a person who provides a superannuation scheme or provident fund to discriminate against a gender reassigned person on gender history grounds —

- (a) by providing a scheme or fund that discriminates, or requires or authorizes discrimination, against that other person or that would, if the person were to become a member of the scheme or fund, discriminate, or require or authorize discrimination, against that person; or
- (b) in the manner in which the first-mentioned person administers the scheme or fund,

except to the extent that —

- (aa) the discrimination —
 - (i) is based upon actuarial or statistical data from a source upon which it is reasonable to rely or where there is no such data, on such other data as may be available; and
 - (ii) is reasonable having regard to the data, if any, and other relevant factors;
- or
- (bb) where no such actuarial or statistical data is available, the discrimination is reasonable having regard to any other relevant factors.

”.

6. Section 74 amended

After section 74 (3) of the principal Act the following subsection is inserted —

“

- (3a) Gender reassigned persons shall not be regarded as constituting a class or type of applicant for the purposes of subsection (2).

”.

7. Section 80 amended

Section 80 of the principal Act is amended —

- (a) by inserting after “age” where it first occurs the following —

“

eliminating discrimination against gender reassigned persons on gender history grounds,

”;

- (b) in paragraph (b) (i), by inserting after “age” the following —

“

and elimination of discrimination against gender reassigned persons on gender history grounds

”;

and

- (c) in paragraph (e), by inserting after “age” the following —

“

or who being a gender reassigned person or persons are subject to discrimination on gender history grounds

”.

8. Section 140 amended

Section 140 of the principal Act is amended after paragraph (a) by deleting “and” and inserting the following —

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“

- (aa) to eliminate and ensure the absence of discrimination in employment against gender reassigned persons on gender history grounds; and

”.

9. Section 146 amended

Section 146 (2) (a) of the principal Act is amended after subparagraph (i) by deleting “and” and inserting the following —

“

- (ia) to eliminate and ensure the absence of discrimination in employment against gender reassigned persons on gender history grounds; and

”.

10. Consequential amendments

(1) Each of the following provisions of the principal Act —

- (a) section 5;
- (b) section 67 (1) (f);
- (c) section 135 (1);
- (d) section 135 (2); and
- (e) section 137,

is amended by inserting after “II,” the following —

“ IIAA, ”.

(2) Section 156 of the principal Act is amended by inserting after “34 (4),” the following —

“ 35AR (aa), ”.