

WESTERN AUSTRALIA

LEGISLATIVE COUNCIL

(Introduced by Hon. H. Hodgson MLC)

ACTS AMENDMENT (SEXUALITY DISCRIMINATION) BILL 1997

A BILL FOR

AN ACT to amend the *Equal Opportunity Act 1984*, *The Criminal Code and Law Reform (Decriminalisation of Sodomy) Act 1989* and for related purposes.

The Parliament of Western Australia enacts as follows:

PART 1 — PRELIMINARY

Short Title

- 5 **1.** This Act may be cited as the *Acts Amendment (Sexuality Discrimination) Act 1997*.

Commencement

- 2.** This Act comes into operation on the day on which it receives the Royal Assent.

cl. 3

PART 2 — EQUAL OPPORTUNITY ACT 1984 AMENDED

Principal Act

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

5 [* *Reprinted as at 16 April 1996*]. For subsequent amendments, see 1996 *Index to Legislation of Western Australia*, p.75.

Long title amended

4. The long title to the principal Act is amended -

10 (a) by inserting after “**grounds of**” the following —

“ **transgender,** ”; and

(b) by inserting after “**family responsibility or family status,**” the following —

“ **sexuality,** ”.

15 **Section 3 amended**

5. Section 3 of the principal Act is amended —

(a) in paragraph (a) —

(i) by inserting after “ground of” the following -

“ transgender, ”; and

20 (ii) by inserting after “family responsibility or family status”, the following —

“ sexuality ”; and

- (b) in paragraph (d) by inserting after “ages” the following —

“ or transgender identity or different sexualities ”.

Section 4 amended

- 5 **6.** Section 4 of the principal Act is amended in subsection (1) —

- (a) by inserting, in the appropriate alphabetical position, the following definitions —

“

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

“**sexuality**” means the quality of being self-identified as bisexual, heterosexual, homosexual or lesbian;

15 “**transgender**” means a person of one sex who —

- (a) assumes any of the characteristics of the opposite sex, whether by medical intervention (including a reassignment procedure) or otherwise;
- 20 (b) identifies himself or herself as a member of the opposite sex;
- (c) lives or seeks to live as a member of the opposite sex; or
- 25 (d) attempts to be, or identifies himself or herself as, a transsexual;

”; and

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cl. 7

- (b) by deleting the definition of “**de facto spouse**” and substituting the following —

“

5 “**de facto spouse**” in relation to a person,
 means —

- 10 (a) a person of the opposite sex to the
 first-mentioned person, who lives with
 the first-mentioned person as a
 husband or wife of that person on a
 bona fide domestic basis, although not
 legally married to that person; or
- 15 (b) a person of the same sex to the first-
 mentioned person, who lives with the
 first-mentioned person on a bona fide
 domestic basis;

”

Section 5 amended

7. Section 5 of the principal Act is amended by inserting after “Part IIA”, the following —

20 “ IIB, ”

Part IIB inserted

8. After Part IIA of the principal Act the following Part is inserted —

“

5 **PART IIB — DISCRIMINATION ON THE GROUND
 OF SEXUALITY OR TRANSGENDER IDENTITY**

Division 1 — General

Discrimination on the ground of sexuality

10 **350.** (1) For the purposes of this Act, a person (in this
 subsection referred to as the “discriminator”) discriminates
 against another person (in this subsection referred to as the
 “aggrieved person”) on the ground of sexuality if, on the
 ground of —

- 15 (a) the sexuality or presumed sexuality of the
 aggrieved person;
- (b) a characteristic that appertains generally to
 persons of that sexuality; or
- (c) a characteristic that is generally imputed to
 persons of that sexuality,

20 the discriminator treats the aggrieved person less
 favourably than in the same circumstances, or in
 circumstances that are not materially different, the
 discriminator treats or would treat a person who is not of
 that sexuality.

25 (2) For the purposes of this Act, a person (in this
 subsection referred to as the “discriminator”) discriminates
 against another person (in this subsection referred to as the
 “aggrieved person”) on the ground of sexuality if the

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discriminator requires the aggrieved person to comply with a requirement or condition —

- 5
- (a) with which a substantially higher proportion of persons who are not of the sexuality or the presumed sexuality of the aggrieved person comply or are able to comply;
 - (b) which is not reasonable having regard to the circumstances of the case; and
 - 10 (c) with which the aggrieved person does not or is not able to comply.

15 (3) For the purposes of this Act, a person (in this subsection referred to as the “discriminator”) discriminates against another person (in this subsection referred to as the “aggrieved person”) on the ground of sexuality if, on the ground of —

- (a) the sexuality or presumed sexuality of;
- (b) a characteristic that appertains generally to persons of the same sexuality or presumed sexuality as; or
- 20 (c) a characteristic that is generally imputed to persons of the same sexuality or presumed sexuality as,

25 any relative or associate of the aggrieved person, the discriminator treats the aggrieved person less favourably than in the same circumstances, or in circumstances that are not materially different, the discriminator treats or would treat a person who is not of that sexuality.

Discrimination on the ground of transgender

5 **35P.** (1) For the purposes of this Act, a person (in this subsection referred to as the “discriminator”) discriminates against another person (in this subsection referred to as the “aggrieved person”) on the ground of transgender identity if, on the ground of —

- 10 (a) the transgender or presumed transgender of the aggrieved person;
- (b) a characteristic that appertains generally to persons who are transgender; or
- (c) a characteristic that is generally imputed to persons who are transgender,

15 the discriminator treats the aggrieved person less favourably than in the same circumstances, or in circumstances that are not materially different, the discriminator treats or would treat a person who is not a transgender.

20 (2) For the purposes of this Act, a person (in this subsection referred to as the “discriminator”) discriminates against another person (in this subsection referred to as the “aggrieved person”) on the ground of transgender identity if the discriminator requires the aggrieved person to comply with a requirement or condition —

- 25 (a) with which a substantially higher proportion of persons who are not transgender comply or are able to comply;
- (b) which is not reasonable having regard to the circumstances of the case; and
- 30 (c) with which the aggrieved person does not or is not able to comply.

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5 (3) For the purposes of this Act, a person (in this subsection referred to as the “discriminator”) discriminates against another person (in this subsection referred to as the “aggrieved person”) on the ground of transgender identity if, on the ground of the transgender or presumed transgender of any relative or associate of the aggrieved person, the discriminator treats the aggrieved person less favourably than in the same circumstances, or in circumstances that are not materially different, the discriminator treats or would treat a person who is not a transgender or who had a relative or associate who is not a transgender.

Division 2 — Discrimination in work

Discrimination against applicants and employees

15 **35Q.** (1) It is unlawful for an employer to discriminate against a person on the ground of the person’s sexuality or transgender identity —

- 20 (a) in the arrangements made for the purpose of determining who should be offered employment;
- (b) in determining who should be offered employment;
- (c) in the terms or conditions on which employment is offered.

25 (2) It is unlawful for an employer to discriminate against an employee on the ground of the employee’s sexuality or transgender identity —

- (a) in the terms or conditions of employment that the employer affords the employee;

- 5
- (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.

10 (3) Nothing in subsection (1) renders it unlawful for a person to discriminate against another person, on the ground of the other person's sexuality, in connection with employment to perform domestic duties at the premises in which the first-mentioned person resides.

Discrimination against commission agents

15 **35R.** (1) It is unlawful for a principal to discriminate against a person on the ground of the person's sexuality or transgender identity —

- 20
- (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;
 - (c) in the terms or conditions on which the person is engaged as a commission agent.

25 (2) It is unlawful for a principal to discriminate against a commission agent on the ground of the commission agent's sexuality or transgender identity —

- (a) in the terms or conditions that the principal affords the commission agent as a commission agent;

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- 5
- (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.

Discrimination against contract workers

10 **35S.** (1) It is unlawful for a principal to discriminate against a contract worker on the ground of the contract worker's sexuality or transgender identity —

- 15
- (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 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.

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(2) Nothing in subsection (1) renders it unlawful for a person to discriminate against another person, on the ground of the other person's sexuality, in connection with work to perform domestic duties at the premises in which the first-mentioned person resides.

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Partnerships

5 **35T.** (1) It is unlawful for 6 or more persons being persons who are proposing to form themselves into a partnership to discriminate against a person on the ground of the person's sexuality or transgender identity —

(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.

10 (2) It is unlawful for any one or more partners in a partnership consisting of 6 or more partners to discriminate against a person on the ground of the person's sexuality or transgender identity —

15 (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.

20 (3) It is unlawful for any one or more of the partners in a partnership consisting of 6 or more partners to discriminate against a partner in the partnership on the ground of the partner's sexuality or transgender identity —

(a) by denying the partner access, or limiting the partner's access, to any benefit arising from being a partner in the partnership;

25 (b) by expelling the partner from the partnership; or

(c) by subjecting the partner to any other detriment.

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Professional or trade organizations, etc.

35U. (1) This section applies to an organization of employees and to an organization of employers.

5 (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 against a person who is not a member of the organization on the ground of the person's sexuality or transgender identity —

10 (a) by refusing or failing to accept the person's application for membership; or

(b) in the terms or conditions on which the organization is prepared to admit the person to membership.

15 (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 against a person who is a member of the organization on the ground of the person's
20 sexuality or transgender identity —

(a) by denying the person access, or limiting the person's access, to any benefit provided by the organization;

25 (b) by depriving the person of membership or varying the terms of the person's membership;

(c) by subjecting the person to any other detriment.

Qualifying bodies

35V. It is unlawful for an authority or body that is empowered to confer, renew, extend, revoke or withdraw an

5 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 person on the ground of the person's sexuality or transgender identity —

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

15 **Employment agencies**

35W. (1) It is unlawful for an employment agency to discriminate against a person on the ground of the person's sexuality or transgender identity —

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

Division 3 — Discrimination in other areas

Education

5 **35X.** (1) It is unlawful for an educational authority to discriminate against a person on the ground of the person's sexuality or transgender identity —

- (a) by refusing or failing to accept the person's application for admission as a student; or
- (b) in the terms or conditions on which it is prepared to admit the person as a student.

10 (2) It is unlawful for an educational authority to discriminate against a student on the ground of the student's sexuality or transgender identity —

- 15 (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.

Access to places and vehicles

20 **35Y.** It is unlawful for a person (in this section referred to as the "discriminator") to discriminate against another person (in this section referred to as the "aggrieved person") on the ground of the aggrieved person's sexuality or transgender identity —

- 25 (a) by refusing to allow the aggrieved 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;

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- (b) in the terms on which the discriminator is prepared to allow the aggrieved person access to or use of any such place or vehicle;
- (c) by refusing to allow the aggrieved 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;
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- (d) in the terms on which the discriminator is prepared to allow the aggrieved person the use of any such facilities; or
- (e) by requiring the aggrieved person to leave or cease to use any such place or vehicle or any such facilities.

Goods, services and facilities

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- 35Z.** It is unlawful for a person who, whether for payment or not, provides goods or services, or makes facilities available, to discriminate against another person on the ground of the other person's sexuality or transgender identity —
- 20
- (a) by refusing to provide the other person with those goods or services or to make those facilities available to the other person;
- 25
- (b) in the terms or conditions on which the first-mentioned person provides the other person with those goods or services or makes those facilities available to the other person; or
- 30
- (c) in the manner in which the first-mentioned person provides the other person with those goods or services or makes those facilities available to the other person.

cl. 8

Accommodation

5 **35ZA.** (1) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of the other person's sexuality or transgender identity —

- (a) by refusing the other person's application for accommodation;
- (b) in the terms or conditions on which accommodation is offered to the other person; or
- 10 (c) by deferring the other person's application for accommodation or according to the other person a lower order of precedence than would otherwise be the case in any list of applicants for that accommodation.

15 (2) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of the other person's sexuality or transgender identity —

- 20 (a) by denying the other person access, or limiting the other person's access, to any benefit associated with accommodation occupied by the other person;
- (b) by evicting the other person from accommodation occupied by the other person; or
- 25 (c) by subjecting the other person to any other detriment in relation to accommodation occupied by the other person.

(3) Nothing in this section applies to or in respect of —

(a) the provision of accommodation in premises if —

5

(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

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(II) the accommodation provided in those premises is for no more than 3 persons other than a person referred to in subparagraph (I) or near relatives of such person;

(b) accommodation provided by a religious body; or

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(c) accommodation provided by a charitable or other voluntary body solely for persons of a particular sexuality or transgender identity.

Clubs and incorporated associations

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35ZB. (1) It is unlawful for an association, incorporated or not, its committee of management or a member of the committee of management to discriminate against a person who is not a member of the association on the ground of the person's sexuality or transgender identity —

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(a) by refusing or failing to accept the person's application for membership; or

(b) in the terms or conditions on which the association is prepared to admit the person to membership.

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5 (2) It is unlawful for an association, incorporated or not, its committee of management or a member of the committee of management to discriminate against a person who is a member of the association on the ground of the member's sexuality or transgender identity —

- 10 (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 association;
- 15 (d) by depriving the member of membership or varying the terms of membership;
- (e) by subjecting the member to any other detriment.

20 (3) Nothing in subsection (1) or (2) applies to or in respect of an association, incorporated or not, that has as its sole or principal object the provision of benefits for persons of a particular sexuality or transgender identity.

(4) In determining whether the sole or principal object of an association, incorporated or not, is subject to subsection (3), regard shall be had to —

- 25 (a) the essential character of the association;
- (b) the extent to which the affairs of the association are so conducted that the persons solely or primarily enjoying the benefits of membership are of a particular sexuality or transgender identity, and
- 30

- (c) any other relevant circumstance.

Discrimination in sport on ground of sexuality

5 **35ZC.** (1) It is unlawful for a person to discriminate against another person on the ground of the other person's sexuality or transgender identity by excluding that person from a sporting activity, or in the selection for or the level or nature of participation in, any sporting activity.

10 (2) In subsection (1) "sporting activity" includes a reference to an administrative or coaching activity in relation to any sport.

(3) Subsection (1) does not apply where a sporting activity is conducted only for persons of a particular sexuality or transgender identity and the first-mentioned person is not of that sexuality or transgender identity.

15 **Land**

35ZD. (1) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of the other person's sexuality or transgender identity —

- 20 (a) by refusing or failing to dispose of an estate or interest in land to the other person; or
- (b) in the terms or conditions on which an estate or interest in land is offered to the other person.

25 (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 —

- (a) by will or by way of gift; or

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5 (b) within a complex of residential premises (whether or not including hostel units) and appurtenant land, having as its principal object the occupation or intended occupation by persons of a particular sexuality or transgender identity .

(3) In determining whether the principal object of a complex of residential premises is as referred to in subsection (2), regard shall be had to —

10 (a) the essential character of the complex of residential premises;

15 (b) the extent to which the affairs of the complex of residential premises are so conducted that the persons primarily enjoying the benefits of membership are of a particular sexuality or transgender identity; and

 (c) any other relevant circumstance.

Application forms, etc.

20 **35ZE.** 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 another person, on the ground of the other person's sexuality or transgender identity, in doing a particular act, it is unlawful for the first-mentioned person to request or require the other person to provide, in connection with or
25 for the purposes of the doing of the act, information (whether by way of completing a form or otherwise) that persons who are not of the sexuality or transgender identity of that other person would not, in circumstances that are the same or not materially different, be requested or
30 required to provide.

Superannuation schemes and provident funds

5 **35ZF.** It is unlawful for a person who provides a superannuation scheme or provident fund to discriminate against a person on the ground of the person's sexuality or transgender identity —

- 10 (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.

15 **Section 74 amended**

9. Section 74 of the principal Act is amended in subsection (2) paragraph (a) by inserting after “sex” the following —

“ sexuality, transgender identity, ”.

Section 80 amended

20 **10.** Section 80 of the principal Act is amended —

- (a) by inserting after “family responsibility or family status” wherever it occurs the following —
- “ , sexuality, transgender identity, ”;
- 25 (b) in paragraph (f), by inserting after “age” the following —
- “ , transgender identity or sexuality ”.

cl. 11

Section 140 amended

11. Section 140 of the principal Act is amended in paragraph (a) by inserting after “family responsibility or family status” the following —

5 “ , sexuality, transgender identity, ”.

Section 146 amended

12. Section 146 of the principal Act is amended in subsection (2) paragraph (a) subparagraph (i) by inserting after “family responsibility or family status” the following —

10 “ , sexuality, transgender identity, ”.

PART 3 — THE CRIMINAL CODE AMENDED

Interpretation

13. In this part *The Criminal Code* is referred to as the principal Act.

5 **Section 184 amended**

14. Section 184 of the principal Act is amended —

- (a) by deleting the words “between males” wherever they occur;
- 10 (b) by deleting the word “male” wherever it appears before the word “person”;
- (c) by inserting the words “or her” after the word “her” wherever it appears; and
- (d) by inserting the words “or herself” after the word “himself” wherever it appears.

15 **Section 186 amended**

15. (1) Section 186(1) of the principal Act is amended —

- (a) by deleting the word “man” wherever it appears and substituting “person”; and
- 20 (b) by repealing section 186(1)(a) and substituting the following —
 - “
 - (a) if the person is under the age of 16 years, is liable to imprisonment for two years; and
 - ”

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cl. 16

(2) Section 186(2) of the principal Act is amended —

(a) by repealing section 186(2) and substituting the following —

“

5 (2) It is a defence to a charge to any of offences defined in this section prove that the accused person believed, on reasonable grounds, that the person was above the age of 16 years. ”

10 Section 192 amended

16. (1) Section 192(1) of the principal Act is amended —

(a) by deleting the words “woman or girl” and “man” and substituting “person”; and

(b) by deleting “connection” and substituting “knowledge”.

15 (2) Section 192 (2) of the principal Act is repealed and the following subsection is substituted —

“

20 (2) By any false pretence procures a person to have unlawful carnal knowledge with a person, either in Western Australia or elsewhere; or ”

(3) Section 192 (3) of the principal Act is amended —

(a) by deleting the words “woman or girl” and “man” wherever it appears and substituting “person”, and

25 (b) by inserting the words “him or” before “her” wherever it appears; and

(c) by deleting “or” after “her;”.

(4) Section 192 (4) is repealed.

Section 195 amended

- 17.** (1) Section 195 of the principal Act is amended —
- (a) by deleting “boy under the age of 18 years” and substituting “child”; and
 - 5 (b) by deleting the words “girl or woman” wherever it appears and substituting “person”.

Section 322A repealed

- 18.** Section 322A of the principal Act is repealed.

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**PART 4 — LAW REFORM (DECRIMINALISATION OF SODOMY)
ACT 1989 REPEALED**

19. The Law Reform (Decriminalisation of Sodomy) Act 1989 is repealed.

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