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# Acts Amendment (Sexuality Discrimination) Bill 1997

## Explanatory Memorandum

# ACTS AMENDMENT (SEXUALITY DISCRIMINATION) BILL 1999

## Explanatory Notes

### PART 1 – PRELIMINARY

#### **Clause 1**     *Short title*

Short title of the Act

#### **Clause 2**     *Commencement*

The Act will come into operation on the day on which it receives Royal Assent

### PART 2 – EQUAL OPPORTUNITY ACT 1984 AMENDED

#### **Clause 3**     *Principal Act*

The amendments provided for in this Part of the Bill are amendments to the Equal Opportunity Act 1984.

#### **Clause 4**     *Long title amended*

Transgender and sexuality will be added as a grounds for complaint under the Equal Opportunity Act 1984.

#### **Clause 5**     *Section 3 amended*

The objects of the Equal Opportunity Act 1984 are amended to include the elimination of discrimination on the grounds of transgender identity and sexuality, and the promotion of acceptance within the community of others regardless of their transgender identity or sexuality.

#### **Clause 6**     *Section 4 amended*

The interpretation provision of the Equal Opportunity Act 1984 is amended to insert provision to provide for the inclusion of the definition of the terms “opposite sex”, “sexuality”, “transgender” and “de facto spouse” in their appropriate alphabetical position.

#### **Clause 7**     *Section 5 amended*

Includes the new part of the Equal Opportunity Act created for the purpose of including sexuality as a ground for complaint under the Act within the section.

**Clause 8      Part IIB inserted**

Inserts a new Part into the Equal Opportunity Act that will include discrimination on the grounds of sexuality or transgender identity as unlawful under the Act.

***DIVISION 1 – GENERAL***

Introduces and defines two new grounds on which discrimination will be prohibited in defined circumstances, namely sexuality and transgender identity, as defined under amendments to section 4 of the Act.

***New section 35O and 35P***

Defines what circumstances constitute discrimination on the grounds of sexuality.

If a person treats another person less favourably than would otherwise be the case, on the ground of the person's sexuality, presumed sexuality, transgender or presumed transgender, or a characteristic that appertains generally to or is generally imputed to persons of that sexuality or transgender.

It is also discrimination if a person unreasonably requires another person to comply with a requirement with which a substantially higher proportion of persons who are not of that person's sexuality or transgender are able to comply.

***DIVISION 2 – DISCRIMINATION IN WORK***

Sets out circumstances relating to work in which discrimination on the ground of sexuality or transgender identity (as defined by Division 1) is unlawful. The work areas dealt with are:

- Discrimination against applicants and employees (*new section 35Q*) – on the basis of who should be employed, dismissed, the terms and conditions of employment or who should be offered advancement
- Discrimination against commission agents (*new section 35R*) – as to who should be commissioned, terms and conditions of commission, termination of commission
- Discrimination against contract workers (*new section 35S*) – as to terms of contract, awarding of contracts, termination of contracts
- Discrimination by partnerships (*new section 35T*) – only applies to partnerships with six or more persons in determining who should be included in the partnerships or the terms offered to partners
- Discrimination by profession or trade organisations (*new section 35U*) – in terms of the acceptance or denial of membership, terms of the membership
- Discrimination by qualifying bodies in relation to a person's ability to carry on a business, profession, trade or occupation (*new section 35V*)
- Discrimination by employment agencies (*new section 35W*)

### ***DIVISION 3 – DISCRIMINATION IN OTHER AREAS***

Sets out further circumstances in which discrimination on the ground of sexuality or transgender identity (as defined by Division 1) is unlawful. The circumstances relate to:

- Education (*new section 35X*) – in refusing to accept application for admission or providing for different terms or conditions of enrolment, expelling a student or denying or limiting the students access to educational benefits.
- Access to places and vehicles (*new section 35Y*) – denying, limiting or placing special or different conditions upon access to places or vehicles
- Provision of goods, services and facilities (*new section 35Z*)
- Provision of accommodation (*new section 35ZA*) - includes the following exclusions:
  - (a) discrimination by particular organisations established to provide accommodation for persons of a particular sexuality or transgender identity
  - (b) discrimination if the accommodation is provided by a charitable or voluntary body solely for persons of a particular sexuality or transgender identity
  - (c) discrimination in respect of accommodation at premises where the provider or a near relative resides
  - (d) discrimination in respect of accommodation provided by a religious body
- Membership of a club or incorporated association (*new section 35ZB*) – includes an exclusion that allows discrimination by organisations established to provide membership for persons of a particular sexuality or transgender identity
- Participation in a sporting activity (*new section 35ZC*) – includes an exclusion that allows discrimination where the activity is conducted only for persons of a particular sexuality or transgender identity
- Disposal of an interest in land (*new section 35ZD*) – includes the following exclusions:
  - (a) discrimination if the disposal is by will or gift
  - (b) discrimination if, within a complex of residential premises, its primary purpose is intended to be for the occupation of individuals of a particular sexuality or transgender identity
- Application forms (*new section 35ZE*)
- Superannuation and provident funds (*new section 35ZF*)

### ***Clause 9 section 74 amended***

Inserts sexuality and transgender identity in the provision that excludes establishments providing housing accommodation and other services for aged persons from having to comply with the Act.

This ensures sexuality and transgender identity are treated the same as other grounds for complaint under the Act.

**Clause 10      Section 80 amended**

Includes the grounds of sexuality and transgender identity into the provision dealing with general functions of the Commission for Equal Opportunity.

**Clause 11      Section 140 amended**

In the Part of the Act dealing with equal opportunity in public employment, this clause inserts sexuality and transgender identity into the provision dealing with the objects of the Part. It includes the two grounds in the object of eliminating discrimination in the public sector.

**Clause 12      Section 146 amended**

Adds sexuality and transgender identity to the section requiring the annual report from the authority to the Director to include a statement of the activities and programmes undertaken to eliminate and ensure the absence of discrimination in public sector employment.

**PART 3 – THE CRIMINAL CODE AMENDED**

**Clause 13      Interpretation**

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

**Clause 14      Section 184 amended**

Makes the section dealing with “Indecent practices between males in public” a gender-neutral offence. That is the amendment will make it an offence for any persons to commit an act of gross indecency with another, or procures another to commit an act of gross indecency in public.

**Clause 15      Section 186 amended**

Amends the section dealing with an “Occupier or owner allowing certain persons to be on premises for unlawful carnal knowledge” to make the offence uniform regardless of the offenders gender and sexuality and regardless of the victims gender.

The amendment will result in an offence being committed if an owner or occupier of a premises induces or knowingly permits any person to be on the premises for the purpose of having unlawful carnal knowledge. It would set one liable imprisonment term of two years if the victim is under 16, and another of 20 years if the victim is under 13 years of age.

It also amends the defence provision. It will make it a defence to the offence if the accused believed on reasonable grounds that the victim was of or above 16 years.

**Clause 16    Section 192 amended**

Amends the section that creates the offence of "Procuring person to have unlawful carnal knowledge by threats, fraud or administering drugs". The effect of the amendment is to make the law non-gender specific in relation to both victim and offender.

**Clause 17    Section 195 amended**

Amends the section that creates the offence of "Permitting boys to resort to brothels". The effect of the amendment is to make it unlawful for any child to be allowed to frequent a brothel, regardless of the gender of the child. It will also make the reference to the sex workers non-gender specific.

**Clause 18    Section 322A repealed**

Deletes the section that creates a different age of consent for male with male sexual intercourse. The effect of the deletion of the section will be for consenting males over the age of 16 to be permitted to enter into consensual sexual relationships. Section 321A will continue to apply to outlaw sexual relationships between any person of any gender over the age of 16 having sexual relations with any child of any gender under the age of 16 years.

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

**Clause 19    Act repealed**

The effect of the repeal of the Act is to repeal the preamble.