

## Schedule 1                      Amendment of Anti-Discrimination Act 1977 No 48

**Schedule 1[1]** inserts the definition of *sexuality* and omits the definition of *homosexual*. Schedule 1[1] also omits the definition of *recognised transgender person* which required a transgender person to alter their sex under the *Births, Deaths and Marriages Registration Act 1995* or under the corresponding provisions of a law of another Australian jurisdiction to be considered a recognised transgender person. **Schedule 1[2] and [6]** make consequential amendments.

**Schedule 1[3]–[5]** provides that for the *Anti-Discrimination Act 1977* a transgender person is a person who lives as a member of another sex. **Schedule 1[7] and [8]** make consequential amendments.

**Schedule 1[10] and [11]** remove exceptions for a private educational authority to discriminate against an employee, an applicant for employment, an applicant for admission as a student or a student on transgender grounds. **Schedule 1[9]** makes a consequential amendment.

**Schedule 1[12]** provides that it is lawful to exclude a transgender person from participation in a sporting activity for members of the sex the person lives, seeks to live or identifies with if—

- (a) the person is over the age of 12 years, and
- (b) the sporting activity is part of a competition, and
- (c) the strength, stamina or physique of a person competing is relevant, and
- (d) the exclusion of the person is reasonable and proportionate, and
- (e) the person is not acting as an umpire or referee.

The provision also removes an exception that allows a person to treat a transgender person as being of the opposite sex to the sex with which the transgender person identifies in the administration of a superannuation or provident fund or scheme.

**Schedule 1[13]** inserts proposed Part 3B to provide for discrimination on the ground of variations of sex characteristics.

Proposed Division 1 sets out what it means for a person to have a variation of sex characteristics and what constitutes discrimination on the ground of a variation of sex characteristics.

Proposed Division 2 provides the particulars in which it is unlawful to discriminate against a person on the ground of a variation of sex characteristics in relation to work for the following—

- (a) employers and applicants,
- (b) employers and employees,
- (c) principals and commission agents,
- (d) principals and contract workers,

- (e) partners in a firm,
- (f) members of a council of a local government area,
- (g) industrial organisations and applicants for membership,
- (h) industrial organisations and members,
- (i) qualifying bodies,
- (j) employment agencies.

Proposed Division 3 provides the particulars in which it is unlawful to discriminate against a person on the ground of a variation of sex characteristics for the following—

- (a) educational authorities and applicants for admission as a student,
- (b) educational authorities and students,
- (c) providers of goods or services, whether or not for payment,
- (d) principals or agents that provide accommodation,
- (e) registered clubs and applicants for membership,
- (f) registered clubs and members.

Proposed Division 4 makes it unlawful for a person, by public act, to incite hatred towards, serious contempt for or severe ridicule of a person or group on the ground the person or a member of the group have variations of sex characteristics. The proposed division also sets out exceptions to an offence under the proposed division. Proposed section 38ZH defines *public act* for the proposed division.

**Schedule 1[14]–[17]** removes an exception for a private educational authority to discriminate against an employee, an applicant for employment, a student or a person applying for admission as a student on the ground of marital or domestic status.

**Schedule 1[18] and [19]** remove an exception for a private education authority to discriminate against an employee or an applicant for employment on the ground of disability.

**Schedule 1[20]** provides that an educational authority may refuse to accept a person’s application for a school, college, university or other institution that is conducted solely for students who have a disability that is not the same as the disability of the person.

**Schedule 1[21]** updates wording in relation to HIV.

**Schedule 1[23]** updates Part 4C to provide for discrimination on the ground of sexuality.

**Schedule 1[22], [24]–[28], [33] and [34]** make consequential amendments.

**Schedule 1[29]** corrects a minor drafting error. **Schedule 1[30]** makes a consequential amendment.

**Schedule 1[31] and [32]** remove an exception for a private educational authority to discriminate against an employee, an applicant for employment, a student or a person applying for admission as a student on the ground of sexuality.

**Schedule 1[37]** updates wording in relation to HIV/AIDS. **Schedule 1[35] and [36]** make consequential amendments.

**Schedule 1[38]** removes an exception for a private educational authority to discriminate against a student or a person applying for admission as a student on the ground of age.

**Schedule 1[39]** inserts proposed Part 4H to provide for discrimination on ground a person is or has been a sex worker.

Proposed Division 1 defines *public act* and *sex worker* for the proposed part and sets out what constitutes discrimination on the ground a person is, or has been, a sex worker.

Proposed Division 2 provides the particulars in which it is unlawful to discriminate against a person on the ground the person is, or has been, a sex worker for the following—

- (a) ~~employers and applicants,~~
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- (b) employers and employees,  
(c) principals and commission agents,  
(d) principals and contract workers,  
(e) partners in a firm,  
(f) members of a council of a local government area,  
(g) industrial organisations and applicants for membership,  
(h) industrial organisations and members,  
(i) qualifying bodies,  
(j) employment agencies.

Proposed Division 3 provides the particulars in which it is unlawful to discriminate against a person on the ground the person is, or has been, a sex worker for the following—

- (a) educational authorities and applicants for admission as a student,  
(b) educational authorities and students,  
(c) providers of goods or services, whether or not for payment,  
(d) principals or agents that provide accommodation,  
(e) registered clubs and applicants for membership,  
(f) registered clubs and members.

Proposed Division 4 makes it unlawful for a person, by public act, to incite hatred towards, serious contempt for or severe ridicule of a person or group on the ground the person or a member of the group is, or has been, a sex worker. The proposed division also sets out exceptions to an offence under the proposed division.

**Schedule 1[40]** provides that the *Anti-Discrimination Act 1977* does not affect the selection or appointment of a person to exercise functions in relation to religious observance or practice or a practice to propagate religion in certain circumstances. However, this provision clarifies that the Act does continue to apply in relation to employment and education by religious educational institutions and employment and the provision of goods, services or accommodation by religious bodies.

**Schedule 1[41]** removes an exception to the *Anti-Discrimination Act 1977*, Parts 3A and 4C for organisations established or controlled by a religious organisation concerning the provision of adoption services under the *Adoption Act 2000*.

**Schedule 1[42]** provides that a vilification complaint includes a complaint in respect to contraventions of proposed sections 38ZI and 50AO, relating to sex characteristics and sex work.

**Schedule 1[43]** inserts proposed Part 9C to require government sector agencies to include options on forms that allow a person's sex to be described in a non-binary way and to allow a person to describe their relationship with another person in a way that accords with each person's identified sex or without indication of either person's sex.