

FIRST PRINT

ANTI-DISCRIMINATION (TRANSGENDER) AMENDMENT BILL 1994

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Anti-Discrimination Act 1977 to make it unlawful to discriminate against a person on the ground of the person, or a relative or associate of the person, being transgender.

A transgender person (as defined in the Bill) is a person of one sex who:

- (a) assumes any of the characteristics of the other sex, whether by means of medical intervention or otherwise; or
- (b) identifies himself or herself as a member of the other sex; or
- (c) lives or seeks to live as a member of the other sex,

and includes a person who is, attempts to be, or identifies himself or herself as, transsexual. A reference to a transgender person will include a reference to a person who is thought to be a transgender person, so that discrimination against a person on transgender grounds is unlawful whether the person, or a relative or associate of the person, is in fact a transgender person or not.

The Bill inserts proposed Part 3A in the Anti-Discrimination Act 1977 which generally parallels existing provisions of the Act dealing with discrimination on other grounds.

The Part specifies the situations in which a person will be regarded as discriminating against a person on transgender grounds, including where the person treats the person less favourably than he or she would, in the same circumstances, treat a person he or she did not think of as a transgender person.

Discrimination on transgender grounds will be unlawful generally in the same circumstances as discrimination on other grounds. For example it will be unlawful:

- for an employer to discriminate against an employee or applicant for employment in the terms on which employment is offered or afforded to the person or to discriminate against an employee by dismissing the employee

Anti-Discrimination (Transgender) Amendment 1994

- for a partnership (consisting of 6 or more partners) to discriminate against a potential applicant for partnership or another partner in the terms on which partnership is offered to the person or by denying the person access to partnership
- for an industrial organisation or a registered club to discriminate against a person in the terms on which membership of the organisation or club is given to the person or by refusing to accept the person's application for that membership.

The other types of discrimination covered are discrimination by principals against commission agents, discrimination against contract workers, discrimination by employment agencies, local government councillors, qualifying bodies (such as professional bodies or trade associations) and educational authorities, and discrimination by providers of goods and services or accommodation.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act 3 months after assent, unless commenced sooner by proclamation.

Clause 3 contains the amendment to the Anti-Discrimination Act 1977 described above.

FIRST PRINT

**ANTI-DISCRIMINATION (TRANSGENDER) AMENDMENT
BILL 1994**

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
 2. Commencement
 3. Amendment of Anti-Discrimination Act 1977 No. 48
-

**ANTI-DISCRIMINATION (TRANSGENDER) AMENDMENT
BILL 1994**

NEW SOUTH WALES



No. , 1994

A BILL FOR

An Act to amend the Anti-Discrimination Act 1977 to render transgender discrimination unlawful.

Anti-Discrimination (Transgender) Amendment 1994

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Anti-Discrimination (Transgender) Amendment Act 1994.

5 **Commencement**

2. This Act commences 3 months after the date of assent, unless commenced sooner by proclamation.

Amendment of Anti-Discrimination Act 1977 No. 48

10 3. The Anti-Discrimination Act 1977 is amended by inserting after Part 3 the following Part:

**PART 3A—DISCRIMINATION ON TRANSGENDER
GROUNDS**

Division 1—General

Interpretation

15 38A. (1) A reference in this Part to a person being transgender or a transgender person is a reference to a person of one sex who:

- (a) assumes any of the characteristics of the other sex, whether by means of medical intervention or otherwise; or
- (b) identifies himself or herself as a member of the other sex; or
- 20 (c) lives or seeks to live as a member of the other sex, and includes a person who is, attempts to be, or identifies himself or herself as, transsexual.

25 (2) A reference in this Part to a person being transgender includes a reference to the person's being thought to be a transgender person, whether the person is in fact a transgender person or not.

What constitutes discrimination on transgender grounds

30 38B. (1) A person ("**the perpetrator**") discriminates against another person ("**the aggrieved person**") on transgender grounds if, on the ground of the aggrieved person's being transgender or a relative or associate of the aggrieved person being transgender, the perpetrator:

- (a) treats the aggrieved person less favourably than in the same circumstances, or in circumstances which are not materially different, the perpetrator treats or would treat a person who he or she did not think was a transgender person or who does not have such a relative or associate who he or she thinks was a transgender person; or
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Anti-Discrimination (Transgender) Amendment 1994

- (b) requires the aggrieved person to comply with a requirement or condition with which a substantially higher proportion of persons who are not transgender persons, or who do not have such a relative or associate who is a transgender person, comply or are able to comply, being a requirement which is not reasonable having regard to the circumstances of the case and with which the aggrieved person does not or is not able to comply. 5

- (2) For the purposes of subsection (1) (a), something is done on the ground of a person's being transgender if it is done on the ground of the person's being transgender, a characteristic that appertains generally to transgender persons or a characteristic that is generally imputed to transgender persons. 10

Division 2—Discrimination in work

Discrimination against applicants and employees 15

38C. (1) It is unlawful for an employer to discriminate against a person on transgender grounds:

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

(2) It is unlawful for an employer to discriminate against an employee on transgender grounds:

- (a) in the terms or conditions of employment which the employer affords the employee; or 25
(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; or
(c) by dismissing the employee or subjecting the employee to any other detriment. 30

(3) Subsections (1) and (2) do not apply to employment:

- (a) for the purposes of a private household; or
(b) where the number of persons employed by the employer, disregarding any persons employed within the employer's private household, does not exceed 5; or 35
(c) by a private educational authority.

Anti-Discrimination (Transgender) Amendment 1994

(4) For the purposes of subsection (3) (b), a corporation is regarded as the employer of the employees of any other corporation which, with respect to the firstmentioned corporation, is a related body corporate within the meaning of the Corporations Law.

5 **Discrimination against commission agents**

38D. (1) It is unlawful for a principal to discriminate against a person on transgender grounds:

- (a) in the arrangements the principal makes for the purpose of determining who should be engaged as a commission agent; or
- 10 (b) in determining who should be engaged as a commission agent; or
- (c) in the terms on which the principal engages the person as a commission agent.

15 (2) It is unlawful for a principal to discriminate against a commission agent on transgender grounds:

- (a) in the terms or conditions which the principal affords him or her as a commission agent; or
- (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 his or her position as a commission agent; or
- 20 (c) by terminating the commission agent's engagement or subjecting the commission agent to any other detriment.

Discrimination against contract workers

25 38E. It is unlawful for a principal to discriminate against a contract worker on transgender grounds:

- (a) in the terms on which the principal allows the contract worker to work; or
- (b) by not allowing the contract worker to work or continue to work; or
- 30 (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 his or her employer is made; or
- 35 (d) by subjecting the contract worker to any other detriment.

Anti-Discrimination (Transgender) Amendment 1994

Partnerships

38F. (1) It is unlawful for a firm consisting of 6 or more partners, or for any one or more of 6 or more persons proposing to form themselves into a partnership, to discriminate against a person on transgender grounds:

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- (a) in the arrangements made for the purpose of determining who should be offered a position as partner in the firm; or
- (b) in determining who should be offered a position as partner in the firm; or
- (c) in the terms on which the other person is offered a position as partner in the firm.

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(2) It is unlawful for a firm consisting of 6 or more partners to discriminate against a partner on transgender grounds:

- (a) by denying the partner access, or limiting the partner's access, to any benefit arising from membership of the firm; or
- (b) by expelling the partner from the firm; or
- (c) by subjecting the partner to any other detriment.

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Discrimination by local government councillors

38G. It is unlawful for any member or members of a council of a local government area when acting (whether alone or together) in the course of his, her or their official functions to discriminate against another member of the council on transgender grounds.

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Industrial organisations

38H. (1) It is unlawful for an industrial organisation to discriminate on transgender grounds against a person who is not a member of the industrial organisation:

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- (a) by refusing or failing to accept the person's application for membership of the organisation; or
- (b) in the terms on which it is prepared to admit the person to membership of the organisation.

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(2) It is unlawful for an industrial organisation to discriminate against a member of the industrial organisation on transgender grounds:

- (a) by denying the member access, or limiting the member's access, to any benefit provided by the organisation; or
- (b) by depriving the member of membership or varying the terms of his or her membership; or
- (c) by subjecting the member to any other detriment.

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Anti-Discrimination (Transgender) Amendment 1994

Qualifying bodies

5 38I. It is unlawful for an authority or a body which is empowered to confer, renew or extend an authorisation or a qualification that is needed for or facilitates the practice of a profession, the carrying on of a trade or the engaging in of an occupation to discriminate against a person on transgender grounds:

- (a) by refusing or failing to confer, renew or extend the authorisation or qualification; or
- 10 (b) in the terms on which it is prepared to confer the authorisation or qualification or to renew or extend the authorisation or qualification; or
- (c) by withdrawing the authorisation or qualification or varying the terms or conditions upon which it is held.

Employment agencies

15 38J. It is unlawful for an employment agency to discriminate against a person on transgender grounds:

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

Division 3—Discrimination in other areas**Education**

25 38K. (1) It is unlawful for an educational authority to discriminate against a person on transgender grounds:

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

30 (2) It is unlawful for an educational authority to discriminate against a student on transgender grounds:

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

(3) Nothing in this section applies to or in respect of a private educational authority.

Anti-Discrimination (Transgender) Amendment 1994

Provision of goods and services

38L. It is unlawful for a person who provides, for payment or not, goods or services to discriminate against another person on transgender grounds:

- (a) by refusing to provide the person with those goods or services; 5
or
- (b) in the terms on which he or she provides the person with those goods or services.

Accommodation

38M. (1) It is unlawful for a person, whether as principal or agent, to discriminate against another person on transgender grounds: 10

- (a) by refusing the person's application for accommodation; or
- (b) in the terms on which he or she offers the person accommodation; or
- (c) by deferring the person's application for accommodation or 15
according the 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 another person on transgender grounds:

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

(3) Nothing in this section applies to or in respect of the provision of accommodation in premises if: 25

- (a) 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
- (b) the accommodation provided in those premises is for no more 30
than 6 persons.

Registered clubs

38N. (1) It is unlawful for a registered club to discriminate on transgender grounds against a person who is not a member of the registered club: 35

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

Anti-Discrimination (Transgender) Amendment 1994

(b) in the terms on which it is prepared to admit the person to membership.

(2) It is unlawful for a registered club to discriminate on transgender grounds against a member of the registered club:

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