



GENDER HISTORY

It is unlawful under the *Equal Opportunity Act 1984* to discriminate against a gender reassigned person.

Direct gender history discrimination occurs when a gender reassigned person is treated less favourably than a person who does not have a gender history, in the same or similar circumstances and includes treating that person as being of his or her former sex.

Indirect gender history discrimination is when a requirement, condition or practice that is the same for everyone has a greater effect on a gender reassigned person when compared to someone without a gender history, and is unreasonable in the circumstances.

Where does the Act apply?

Under the Act it is unlawful to discriminate against a person because of their gender history in certain areas of public life and these areas include:

- Employment
- Education
- Access to places and vehicles
- Provision of goods, services and facilities
- Accommodation
- Disposal of land
- Club membership
- Sport
- Application forms
- Superannuation and provident funds.

Gender Reassignment

Under the Act a gender reassigned person is a person who has been issued with a gender reassignment certificate under the *Gender Reassignment Act 2000*, or an equivalent certificate issued under a corresponding law.

Exceptions

There are some instances where it is not unlawful to discriminate against a gender reassigned person because of their gender history and these exceptions include:

Employment as a domestic worker in a private household

- Employment by an educational institution established for religious purposes
- Employment by a religious organisation
- Accommodation in private households of less than five people
- Accommodation provided by a religious body
- Partnerships of less than six people
- Orders of a court or the State Administrative Tribunal
- The provision of charitable benefits
- Voluntary bodies – admissions and benefits
- Competitive sport where the gender reassigned person would have a significant advantage.

If an individual or organisation relies upon an exception under the Act when a complaint is made against them, they must justify the use of that exception to the Commissioner for Equal Opportunity.

Responsibilities

Organisations must ensure they provide a working environment, plus services, free from gender history discrimination.

Organisations are liable for the unlawful action/s of their employees unless they can show they have taken all reasonable steps to prevent discrimination.

Liability

A person who causes, instructs, induces, aids or permits another person to do something that is unlawful under Section 160 of the Act shall, for the purposes of the Act, be taken to have done the act.

How to lodge a complaint

A person who believes they have been discriminated against on the basis of their gender history can lodge a complaint with the Commissioner.

The onus of proof lies with the person making the complaint. The complaint must be lodged within 12 months of the last incident of discrimination however, in some circumstances, the Commissioner may rule there is good reason to accept a complaint that falls outside the 12 month time frame.

Examples of Gender History Discrimination

The managing director of an employment agency discriminated against a gender reassigned person because he neither obtained a reference from a former employer nor returned her call as promised. A short time later she asked the agency to refer her to a specific job vacancy and was told the employer wanted a 'vanilla woman', that is a woman 'with no complications'.

The term 'vanilla woman' was a reference to her gender reassignment status.

A transgender person born biologically male entered into a contract of employment for a sales position on a trial basis, with future employment based on her sales figures. Before she started her contract she was asked to work from home and she refused. Later,

after producing good sales figures and having her contract extended, she was advised her salary would be doubled if she would revert to living and dressing as a man. While recuperating from sex-reassignment surgery her work was again reviewed and she was dismissed. The company was not prepared to manage issues relating to gender history.

The Commissioner for Equal Opportunity provides information about the Act, investigates complaints and conducts community education and training services.

How to contact the Commission

By telephone

General enquiries:	08 9216 3900
Training Courses:	08 9216 3927
Facsimile:	08 9216 3960
Country callers:	1800 198 149
TTY:	08 9216 3936
Interpreter services:	13 14 50

By e-mail

eoc@eoc.wa.gov.au

By visiting our website

www.eoc.wa.gov.au

By visiting our office

Level 2
Westralia Square
141 St Georges Terrace
Perth WA 6000

By post

PO Box 7370
Cloisters Square
Perth WA 6850

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