

# Gender History

## Discrimination

It is unlawful under the *Equal Opportunity Act 1984* (the Act) to discriminate against a person because of gender history.



 *Equal Opportunity Commission*

Under the Act gender history is when a person identifying as a member of the opposite sex by living, or seeking to live as a member of the opposite sex.

To be protected under the Act, a gender reassigned person must have been issued with a gender recognition certificate.

**Direct gender history discrimination** occurs when a person is treated less favourably because of their gender history, compared to another person in the same or similar circumstances. This 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 an unfair effect on a gender reassigned person when compared to someone without a reassigned gender, and is unreasonable in the circumstances.

### Where does the protection apply?

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

- Work
- Education
- Access to places and vehicles
- Provision of goods, services and facilities
- Accommodation
- Disposal of land or estate
- Clubs
- Sport – in some instances
- Application forms
- Superannuation schemes and provident funds.

### Responsibilities

Organisations must ensure they provide a working environment and services that are free from gender history discrimination and they must take all reasonable steps to prevent it from happening or they may be held responsible for their employees' actions.

A person causing, instructing, inducing, helping or permitting another person to do something unlawful is the same as doing it, for the purpose of the Act.

### Making a complaint

A person who believes they have been discriminated against because of their gender history can lodge a complaint with the WA Equal Opportunity Commissioner. The onus of proof lies with the person making the complaint.

The incident or incidents in the complaint must have occurred within the 12 months previous to the date the complaint is lodged.

In some circumstances the Commissioner may rule there is good reason, or good cause, to include incidents that occurred more than 12 months before the complaint is lodged.



The Commissioner for Equal Opportunity provides information about the Act, investigates and conciliates complaints, conducts community education and training and develops programs to promote equal opportunity.

### Examples of gender history discrimination

A gender reassigned person asked a job agency to refer her to a specific vacancy and was told by the job agency that the prospective employer wanted a woman with “no complications”. The comment was a reference to her gender history.

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A transgender person with strong work qualifications was advised that her salary would be doubled if she reverted to living and dressing as a man. She refused and while recuperating from sex-reassignment surgery her work was reviewed and she was dismissed. The company was not prepared to manage issues relating to gender history.

#### Disclaimer

The material in this brochure is not intended to be legal advice. The Commissioner expressly disclaims any liability in respect to anything done or not done to any person in reliance upon any of the contents of this publication.

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### 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.

### How to contact the Commission

#### Telephone

General enquiries: 9216 3900  
Training courses: 9216 3927  
Country callers: 1800 198 149

#### Email

[eoc@eoc.wa.gov.au](mailto:eoc@eoc.wa.gov.au)

#### Website

[www.eoc.wa.gov.au](http://www.eoc.wa.gov.au)



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Interpreter service: 13 14 50