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GRNS--The Greens

LEGISLATIVE COUNCIL

Equality Legislation Amendment (LGBTIQ+) Bill 2024

Second print

Proposed amendment

No. 1 **Amendment of Anti-Discrimination Act 1977**

Page 2. Insert after line 7—

**Schedule 1AA Amendment of Anti-Discrimination Act 1977
No 48**

[1] Section 4 Definitions

Omit the definitions of *homosexual* and *recognised transgender person*.

Insert in alphabetical order in section 4(1)—
sexuality, for Part 4C—see section 49ZF.

[2] Section 38A Interpretation

Omit “, whether or not the person is a recognised transgender person”.

[3] Section 38A(a) and (b)

Omit “the opposite sex by living” wherever occurring.

Insert instead “another sex by living”.

[4] Section 38A(a) and (b)

Omit “member of the opposite sex, or” wherever occurring.

Insert instead “member of the other sex, or”.

[5] Section 38A(c)

Omit the paragraph. Insert instead—

- (c) who identifies as a particular sex that is not exclusively male or female by living as a member of that sex,

[6] Section 38B What constitutes discrimination on transgender grounds

Omit “, being a recognised transgender person,” wherever occurring in section 38B(1)(c).

[7] Section 38B(1)(c)

Insert “or a different sex to that which the person identifies” after “being of the person’s former sex”.

[8] Section 38B(1)(c)

Insert “or of a different sex to that which the person identifies” after “persons of the person’s former sex”.

[9] Section 38C(3)(b)

Omit “5, or”. Insert instead “5.”.

[10] Section 38C(3)(c)

Omit the paragraph.

[11] Section 38K Education

Omit section 38K(3).

[12] Section 38P

Omit sections 38P and 38Q. Insert instead—

38P Sport

- (1) Nothing in this part makes it unlawful 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 conducted as part of a competition, and
 - (c) the strength, stamina or physique of a person competing in the competition is relevant, and
 - (d) the exclusion of the person is reasonable and proportionate in all the circumstances.
- (2) Subsection (1) does not apply to the umpiring or refereeing of a sporting activity.

[13] Part 3B

Insert after Part 3A—

Part 3B Discrimination on ground of variations of sex characteristics

Division 1 General

38T Interpretation

A reference in this part to a person having a variation of sex characteristics—

- (a) means a person who has an innate variation of primary or secondary sex characteristics that differ from norms for female or male bodies, and
- (b) includes a reference to the person being thought of as having a variation of sex characteristics, whether the person has, or had, a variation of sex characteristics.

38U What constitutes discrimination on ground of variations of sex characteristics

- (1) A person (*the perpetrator*) discriminates against another person (*the aggrieved person*) on the ground of variations of sex characteristics if the perpetrator—
 - (a) on the ground of the aggrieved person having a variation of sex characteristics or a relative or associate of the aggrieved person having a variation of sex characteristics, 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 the perpetrator did not think had a variation of sex characteristics or who does not have a relative or associate who the perpetrator did not think had a variation of sex characteristics, or
 - (b) requires the aggrieved person to comply with a requirement or condition with which a substantially higher proportion of persons who do not have a variation of sex characteristics, or who do not have a relative or associate who has a variation of sex characteristics, 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.
- (2) For the purposes of subsection (1)(a), something is done on the ground of a person having a variation of sex characteristics if it is done on the ground of the person having a variation of sex characteristics, a characteristic that appertains generally to persons who have a variation of sex characteristics or a characteristic that is generally imputed to persons who have a variation of sex characteristics.

Division 2 Discrimination in work

38V Discrimination against applicants and employees

- (1) It is unlawful for an employer to discriminate against a person on the ground of a variation of sex characteristics—
 - (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
 - (c) in the terms on which employment is offered.
- (2) It is unlawful for an employer to discriminate against an employee on the ground of a variation of sex characteristics—
 - (a) in the terms or conditions of employment that are afforded to the employee, or
 - (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.
- (3) Subsections (1) and (2) do not apply to employment for the purposes of a private household.

38W Discrimination against commission agents

- (1) It is unlawful for a principal to discriminate against a person on the ground of a variation of sex characteristics—

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- (a) in the arrangements the principal makes for the purpose of determining who should be engaged as a commission agent, or
 - (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.
- (2) It is unlawful for a principal to discriminate against a commission agent on the ground of a variation of sex characteristics—
- (a) in the terms or conditions that are afforded to the 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 the position as a commission agent, or
 - (c) by terminating the commission agent's engagement or subjecting the commission agent to any other detriment.

38X Discrimination against contract workers

It is unlawful for a principal to discriminate against a contract worker on the ground of a variation of sex characteristics—

- (a) in the terms on which the contract worker is allowed to work, or
- (b) by not allowing the contract worker to work or continue to work, or
- (c) by denying the contract worker access, or limiting the contract worker's access, to any benefit associated with the work performed by the contract worker, or
- (d) by subjecting the contract worker to any other detriment.

38Y Partnerships

- (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 the ground of a variation of sex characteristics—
- (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 person is offered a position as partner in the firm.
- (2) It is unlawful for a firm consisting of 6 or more partners to discriminate against a partner on the ground of a variation of sex characteristics—
- (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.

38Z Discrimination by local government councillors

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 the member's or members' official functions to discriminate against another member of the council on the ground of a variation of sex characteristics.

38ZA Industrial organisations

- (1) It is unlawful for an industrial organisation to discriminate on the ground of a variation of sex characteristics against a person who is not a member of the industrial organisation—
 - (a) by refusing or failing to accept the person's application for membership, or
 - (b) in the terms on which it is prepared to admit the person to membership.
- (2) It is unlawful for an industrial organisation to discriminate against a member of the organisation on the ground of a variation of sex characteristics—
 - (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 the membership, or
 - (c) by subjecting the member to any other detriment.

38ZB Qualifying bodies

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 the ground of a variation of sex characteristics—

- (a) by refusing or failing to confer, renew or extend the authorisation or qualification, or
- (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 on which it is held.

38ZC Employment agencies

It is unlawful for an employment agency to discriminate against a person on the ground of a variation of sex characteristics—

- (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
- (c) in the way in which it provides the person with any of its services.

Division 3 Discrimination in other areas

38ZD Education

- (1) It is unlawful for an educational authority to discriminate against a person on the ground of a variation of sex characteristics—
 - (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.
- (2) It is unlawful for an educational authority to discriminate against a student on the ground of a variation of sex characteristics—
 - (a) by denying the student access, or limiting the student's access, to any benefit provided by the educational authority, or

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- (b) by expelling the student or subjecting the student to any other detriment.

38ZE Provision of goods and services

It is unlawful for a person who provides, whether or not for payment, goods or services to discriminate against another person on the ground of a variation of sex characteristics—

- (a) by refusing to provide the person with the goods or services, or
- (b) in the terms on which the other person is provided with the goods or services.

38ZF Accommodation

- (1) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of a variation of sex characteristics—

- (a) by refusing the person's application for accommodation, or
- (b) in the terms on which the person offers the other person accommodation, or
- (c) by deferring the person's application for accommodation or giving 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 the ground of a variation of sex characteristics—

- (a) by denying the person access, or limiting the person's access, to a 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 relation to the provision of accommodation in premises if—

- (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, in the premises, and
- (b) the accommodation provided in the premises is for no more than 6 persons.

38ZG Registered clubs

- (1) It is unlawful for a registered club to discriminate on the ground of a variation of sex characteristics against a person who is not a member of the registered club—

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

- (2) It is unlawful for a registered club to discriminate on the ground of a variation of sex characteristics against a member of the registered club—

- (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 the membership, or

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- (c) by subjecting the member to any other detriment.

Division 4 Vilification on the ground of variations of sex characteristics

38ZH Definition

In this division—

public act includes—

- (a) any form of communication to the public, including speaking, writing, printing, displaying notices, broadcasting, telecasting, screening and playing of tapes or other recorded material, and
- (b) any conduct, that is not a form of communication referred to in paragraph (a), observable by the public, including actions and gestures and the wearing or display of clothing, signs, flags, emblems and insignia, and
- (c) the distribution or dissemination of any matter to the public with knowledge the matter promotes or expresses hatred towards, serious contempt for, or severe ridicule of—
 - (i) a person on the ground the person has a variation of sex characteristics, or
 - (ii) a group of persons on the ground that the members of the group have variations of sex characteristics.

38ZI Vilification on ground of sex characteristics unlawful

- (1) It is unlawful for a person, by a public act, to incite hatred towards, serious contempt for, or severe ridicule of—
 - (a) a person on the ground the person has a variation of sex characteristics, or
 - (b) a group of persons on the ground the members of the group have variations of sex characteristics.
- (2) Nothing in this section renders unlawful—
 - (a) a fair report of a public act referred to in subsection (1), or
 - (b) a communication or the distribution or dissemination of any matter on an occasion that would be subject to a defence of absolute privilege, whether under the *Defamation Act 2005* or otherwise, in proceedings for defamation, or
 - (c) a public act, done reasonably and in good faith, for academic, artistic, scientific, research or religious discussion or instruction purposes or for other purposes in the public interest, including discussion or debate about and expositions of any act or matter.

[14] Section 40 Discrimination against applicants and employees

Insert “or” after “household,” in section 40(3)(a).

[15] Section 40(3)(b)

Omit “5, or”. Insert instead “5.”.

[16] Section 40(3)(c)

Omit the paragraph.

[17] Section 46A Education

Omit section 46A(3).

[18] Section 49D Discrimination against applicants and employees

Omit “5, or” from section 49D(3)(b). Insert instead “5.”.

[19] Section 49D(3)(c).

Omit the paragraph.

[20] Section 49L Education

Omit section 49L(3). Insert instead—

- (3) Nothing in this section applies to or in relation to a refusal or failure to accept a person’s application for admission as a student by an educational authority if the educational authority administers 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 student.

[21] Section 49PA Persons addicted to prohibited drugs

Omit “having hepatitis C, HIV infection or any” from section 49PA(3).

Insert instead “living with HIV or having hepatitis C or another”.

[22] Part 4C, heading

Omit “**homosexuality**”. Insert instead “**sexuality**”.

[23] Section 49ZF

Omit the section. Insert instead—

49ZF Interpretation

- (1) In this part, *sexuality* means—

- (a) homosexuality, or
- (b) bisexuality, or
- (c) asexuality.

- (2) A reference in this part to a person’s sexuality includes a reference to a person being thought to have a particular sexuality, whether or not the person does in fact have that sexuality or not.

[24] Sections 49ZG, 49ZH, 49ZI, 49ZJ, 49ZK, 49ZKA, 49ZL, 49ZM, 49ZN, 49ZO, 49ZP, 49ZQ, 49ZR, 49ZS and 49ZT

Omit “homosexuality” wherever occurring. Insert instead “sexuality”.

[25] Section 49ZG(1)(a)

Omit “he or she did not think was a homosexual person”.

Insert instead “the perpetrator did not think had that sexuality”.

[26] Section 49ZG(1)(a)

Omit “he or she thinks was a homosexual person”.

Insert instead “the perpetrator thinks had that sexuality”.

[27] Section 49ZG(1)(b) and (2)

Omit “homosexual persons” wherever occurring. Insert instead “persons of that particular sexuality”.

[28] Section 49ZG(1)(b)

Omit “homosexual person”. Insert instead “person of that particular sexuality”.

[29] Section 49ZH(3)(a)

Insert “or” after “household,”.

[30] Section 49ZH(3)(b)

Omit “, or”. Insert instead “.”.

[31] Section 49ZH(3)(c)

Omit the paragraph.

[32] Section 49ZO Education

Omit section 49ZO(3).

[33] Part 4C, Division 4

Omit the heading. Insert instead—

Division 4 Vilification on the ground of sexuality

[34] Section 49ZT, heading

Omit “Homosexual”. Insert instead “Sexuality”.

[35] Section 49ZXA, heading

Omit the heading. Insert instead—

Section 49ZXA Definition

[36] Section 49ZXA

Omit the definition of “*HIV/AIDS infected*”.

[37] Section 49ZXB HIV/AIDS vilification unlawful

Omit “HIV/AIDS infected” wherever occurring in section 49ZXB(1).

Insert instead “living with human immunodeficiency virus or acquired immunodeficiency syndrome”.

[38] Section 49ZYL Education

Omit section 49ZYL(3)(b).

[39] Section 56 Religious bodies

Omit section 56(c) and (d). Insert instead—

- (c) the selection or appointment of a person to exercise functions in relation to, or otherwise participate in, a religious observance or practice, or
- (d) another act or practice of a body established to propagate religion that—
 - (i) is reasonable and proportionate in the circumstances, and
 - (ii) conforms to the doctrines of the religion, and
 - (iii) is necessary to avoid injury to the religious susceptibilities of the adherents of the religion.

(2) Subsection (1)(d) does not apply in relation to—

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- (a) employment and education by religious educational institutions, or
 - (b) employment and the provision of goods, services or accommodation by religious bodies providing goods, services or accommodation to the general public.

[40] Section 59A Adoption services

Omit the section.

[41] Section 87 Definitions

Omit “38S, 49ZT or 49ZXB” from section 87, definition of *vilification complaint*.
Insert instead “38S, 38ZI, 49ZT, 49ZXB or 50AO”.

[42] Part 9C

Insert after Part 9B—

Part 9C Forms

122Y Matters relating to gender diversity and same sex relationships

- (1) This section applies if a government sector agency or the head of a government sector agency requires or asks a person to complete a form, or keeps a record about a person, that includes information—
 - (a) about a person’s sex, or
 - (b) that indicates, or could be taken to indicate, a person’s sex.

Example— a form for a school that requires a child’s parents to be identified
- (2) The form or record must include options that—
 - (a) allow a person’s sex to be described in a non-binary way, and
 - (b) allow a person’s relationship to another person to be described in a way that—
 - (i) is in accordance with each person’s identified sex, or
 - (ii) does not indicate either person’s sex.

Example— A form for a school that requires a child’s parents to be identified cannot provide only for an option of ‘mother’ and ‘father’ and instead might choose to use the terms ‘parent 1’ and ‘parent 2’ or allow parents to describe themselves as mother, father or parent as they wish.
- (3) In this section—

government sector agency has the same meaning as in the *Government Sector Employment Act 2013*.

head, of a government sector agency, has the same meaning as in the *Government Sector Employment Act 2013*.