

Equal Opportunity (Gender Identity and Sexual Orientation) Bill

As Sent Print

EXPLANATORY MEMORANDUM

- Clause 1 sets out the purpose of the Act. Its purpose is to amend the **Equal Opportunity Act 1995** to prohibit discrimination on the basis of gender identity or sexual orientation.
- Clause 2 provides that the provisions of the Act will commence upon proclamation, but no later than 1 January 2001.
- Clause 3 provides that where in this Act a reference is made to the "Principal Act", reference is being made to the **Equal Opportunity Act 1995**.
- Clause 4 inserts definitions of "gender identity" and "sexual orientation" into section 4 of the Principal Act.
- Clause 5 amends section 6 of the Principal Act to include "gender identity" and "sexual orientation" as attributes on which it is unlawful to base discrimination. It also amends section 6 to list the attributes in alphabetical order.
- Clause 6 inserts a new exception in the Principal Act. New section 27B provides that it is not unlawful for an employer, in certain circumstances, to discriminate against a person on the basis of "gender identity" in the area of employment. Under the exception, an employer can discriminate against a job applicant or employee on the basis of the person's "gender identity" if—
- (a) the person does not give the employer adequate notice of the person's gender identity; or
 - (b) the person gives the employer adequate notice of the person's gender identity but it is unreasonable in the circumstances for the employer not to discriminate against the person.

In determining whether or not it is unreasonable for the employer not to discriminate against the person, all relevant facts and circumstances will need to be considered, including a number of factors specified in section 27B(2).

- Clause 7 amends section 66(1) of the Principal Act to provide that it is not unlawful to exclude a person on the basis of that person's gender identity from participating in a competitive sporting activity in which the strength, stamina or physique of competitors is relevant.
- Clause 8 provides a transitional provision. The clause inserts a new section 224 into the Principal Act which provides that a complaint alleging discrimination on the basis of sexual orientation can be lodged whether or not the alleged incident takes place before or after clause 5(3) comes into operation, provided that no other complaint has previously been lodged in respect of the alleged incident. Complaints of sexual orientation discrimination that have already been lodged with the Equal Opportunity Commission must continue to be dealt with as if clause 5(3) had not come into operation.