

# Anti-Discrimination (Right to Use Gender-Specific Language) Amendment Bill 2018

## Explanatory Notes

### Short title

The short title of the Bill is the Anti-Discrimination (Right to Use Gender-Specific Language) Amendment Bill.

### Policy objectives and the reasons for them

The policy objectives of this Bill are two fold

1. To protect an individual's right to use traditional gender based language; and
2. To protect businesses and other organisations from disadvantage in the provision of facilities and services that exclusively recognise gender as either male or female.

Additionally, the Bill will ensure that gender classifications under Queensland's Anti-discrimination law reflect accepted shared values without undermining the rights of individuals to use a diverse range of gender classifications in day-to-day environments.

This Bill and its policy objectives, are driven by the need to respond to an increasingly intolerant and hostile social environment. This hostility is resulting in limitations on the use of language that reflects Queensland's traditional shared values.

Over recent years there has been an increase in direct and implied limitations on the use of traditional gender based language in formal and informal environments. Examples include limitation on the use of traditional gender based language in government and non-government employment environments as well as educational institutions, the defence force and the provision of public and private facilities and services.

Limitations on the use of traditional gender based language have taken the form of explicit and implied prohibitions, punishments and disadvantage against individuals and organisations. The increasing prevalence of these limitations requires a legislative response to protect the right to use language that reflects the values of a majority of Queenslanders.

The provisions in this Bill create a new class of prohibited discrimination which fits into the current anti-discrimination framework.

Nothing in this Bill is intended to prohibit the use of non-traditional gender language or the provision of facilities and services by any individual or entity.

### Achievement of policy objectives

The policy objectives of the Bill are achieved through a number of amendments to the *Anti-Discrimination Act 1991* (the Act). These amendments are necessary to achieve the policy objectives by providing legal protection to individuals and entities whilst ensuring the principles of Anti-Discrimination for all individuals remain intact.

These amendments seek to support and protect the use of a wide variety of gender based language.

### **Amendments to the Anti-Discrimination Act 1991**

The Bill makes a number of amendments to the *Anti-Discrimination Act 1991* which achieve the policy objectives by creating protections for individuals and entities who use traditional gender based language.

The amendments create a specific prohibition against discrimination of individuals who use language that describes a person's gender as either male or female. This discrimination applies to individuals in circumstances that are currently covered by existing Anti-Discrimination provisions such as in the workplace or an educational institution. These amendments do not create limitations on the use of non-traditional gender based language in those same circumstances.

The amendments define two types of discrimination, direct and indirect discrimination.

**Direct discrimination** happens if a person treats, or proposes to treat, a person who uses the language less favourably than another person. For example,

*H is C's teacher. C submits a piece of assessment to H. In the assessment, C regularly uses the words 'he', 'she', 'him' and 'her'. H, when marking the assessment, deducts marks for use of the gender-specific language.*

**Indirect discrimination** happens if a person directly or indirectly imposes, or proposes to impose, a term or standard, whether written or unwritten, that a person will not comply with if the person uses the language.

*An employer gives a memo to employees requesting employees stop using the words 'husband' and 'wife'.*

Given the imbalance of power and authority in many professional, educational and commercial environments, it can be reasonably inferred that a preference for the use of particular language articulated by the individual or entity who controls the environment, would imply unfavourable treatment against individuals who do not comply with that preference.

These definitions of the types of discrimination are required to ensure the Bill is clear in the circumstances in which the provisions apply.

The amendments create a new category of prohibited discrimination under the Anti-Discrimination Act. The procedures for complaint under, and enforcement of, these new discrimination categories are the same as existing categories and covered under Chapter 7 of the Act.

### **Alternative ways of achieving policy objectives**

There are no practical alternative ways of achieving the policy objectives.

### **Estimated cost for government implementation**

No additional costs to government are anticipated in the implementation of the measures in this Bill.

### **Consistency with fundamental legislative principles**

The Bill has been drafted with regard to the fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992*.

One of the key elements of the principles is a requirement that legislation must have sufficient regard to rights and liberties of individuals. The provisions in this Bill protect individual rights and liberties by ensuring that the day-to-day use of gender based language is protected whilst not limiting the use of other language in the same circumstances.

## Consultation

Consultation around the principles contained in this Bill have been undertaken with a number of private individuals with various backgrounds and views. This consultation has been undertaken with individuals from a broad cross-section of Queensland's population and the response to the principles suggests a material level of support.

## Consistency with legislation of other jurisdictions

The changes proposed in this Bill have not been contemplated in other Australian jurisdiction.

## Notes on Provisions

### Amendment 1: Short title

This amendment describes the short title of the Bill.

### Amendment 2: Act amended

This amendment indicates the act to be amended; the *Anti-Discrimination Act 1991*

### Amendment 3: Insertion of new section 8A; Discrimination on the basis of use of gender-specific language

Section 8A creates a prohibition of discrimination against a person for use of gender specific language.

Gender-specific language means words, symbols or images that directly or indirectly designate, or are associated with, the male or female gender.

### Amendment 4: Amendment of section 10 (Meaning of direct discrimination)

This amendment creates a definition of *direct discrimination* and provides examples of when the circumstances under which direct discrimination occurs.

*Direct discrimination* happens if a person treats, or proposes to treat, a person who uses gender specific language less favourably than another person. This can apply in many circumstances including in the workplace and in an education environment.

### Amendment 5: Amendment of s 11 (Meaning of indirect discrimination)

This amendment creates a definition of *indirect discrimination* and provides examples of when the circumstances under which direct discrimination occurs.

*Indirect discrimination* happens if a person directly or indirectly imposes, or proposes to impose, a term or standard, whether written or unwritten, that a person will not comply with if the person uses the language. This amendment is required to protect an individual's future right to use gender specific language in normal social environments such as the workplace.

This is achieved by ensuring the entity or individual who controls that environment cannot create a prohibition, either direct or implied, that would be breached if an individual uses gender specific language.

**Amendment 6: Insertion of new chapter 4, part 5**

This amendment creates a new part and section in the Act that aims to protect organisations from discriminatory treatment for failing to provide services and facilities for individuals who don't identify as male or female. Under this section, an *entity* is taken to be any organisation providing services and facilities. This includes businesses, sporting and community groups or non-profit organisations, amongst others.

This amendment is required to protect entities from unfair treatment or harassment because of their decision to provide services and facilities that only accommodate persons who identify as either male or female. This protection applies in any circumstance where the entity provides or proposes to provide such services and facilities including through commercial tender processes.

Nothing in this amendment limits an organisations ability to provide services or facilities to persons who do not identify as either male or female.

**Amendment 7: Amendment of schedule (Dictionary)**

This amendment defines *gender-specific language* as words, symbols or images that directly or indirectly designate, or are associated with, the male or female gender.

Examples—

male, female, man, woman, boy, guy, girl, him, her, he, she, Mr, Mrs, Miss, Ms, husband, wife, widow or widower