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*The Key* is published four times per year

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ISSN 1321-568X

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## New Laws on Gender History & Sexual Orientation

**The Western Australian parliament recently proclaimed new legislation to protect people from discrimination on the grounds of gender history and sexual orientation.**

On 21 September 2002 the State Government proclaimed legislation under the *Acts Amendment (Lesbian and Gay Law Reform) Act 2001*, making it unlawful to directly or indirectly discriminate against any person within Western Australia on the ground of gender history and sexual orientation (gay, lesbian, bisexual or heterosexual). Parliament had previously passed the *Gender Reassignment Act 2000*, in December 2001.

The *Equal Opportunity Act (1984)* has been amended to reflect the new legislation. Gender History and Sexual Orientation are now included in the Act as areas for discrimination.

All Western Australian public sector authorities are required to comply with these amendments to the *Equal Opportunity Act (1984)*. Public sector authorities are vicariously liable for discriminatory practices that occur on site.

Therefore, it is imperative that agencies review and amend existing policies, procedures, practices, functions and other documentation to ensure that current practices and the organisational culture do not directly or indirectly discriminate against any person(s), or group(s) on the ground of sexual orientation and gender history or any other ground covered within the Act.

Information about the amendment to the Act needs to be communicated widely to all staff including directors, supervisors, managers, contract workers and consultants.

Already there have been successful claims in the Federal Tribunal on trans-gender issues (see the case study in this issue). Employers must be aware of the implications.

The Equal Opportunity Commission's website has more detailed information on the changes to the legislation and the potential implications. The Commission also provides training that public sector employees can attend to increase their understanding of the changes. Contact the Commission by telephone on (08) 9216 3900, or their website at [www.equalopportunity.wa.gov.au](http://www.equalopportunity.wa.gov.au).

The Office of Equal Employment Opportunity has consultants available to help with information regarding the review and/or amendment of policies, procedures, documents etc relating to public sector employment and the provision of services under Part IX of the *Equal Opportunity Act (1984)*. Contact the Office on (08) 9214 6600, or via the website [www.oeeo.wa.gov.au](http://www.oeeo.wa.gov.au).

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## Director's Comment

This will be my last opportunity to write as the acting Director of Equal Opportunity in Public Employment, as I am taking up an appointment elsewhere. Although the four months I have acted as Director have gone quickly, I am proud of the achievements my Office and I have completed in this short time. It has certainly been a busy period!

The three major achievements have been the submission of my Annual Report to the Premier, the collation of the latest equity and diversity data from the public sector and the distribution of the *How Does Your Agency Compare?* reports, and, perhaps most significantly, the new Indigenous Employment Strategy.

*Indigenous Employment in the WA Public Sector – Valuing the Difference* is one of the support strategies for the *Equity and Diversity Plan for the Public Sector Workforce 2001-2005*. The Premier will shortly be officially releasing the document to public sector agencies. It provides a range of suggestions and strategies for improving Indigenous representation at all levels and will, I am sure, prove to be a valuable aid to agencies.

The most recent EEO Diversity forum was held on the 6 November. Guest speakers included Liz Westoby from the Equal Opportunity Commission gave an overview of the new legislation pertaining to gender history and sexual orientation. Amanda Willis and Liz Campbell from Curtin University spoke about their recent cultural and linguistic diversity survey. The Forum was well attended and the next is scheduled for February 2003.

I have enjoyed working with you in this role and thank you for your support, encouragement and cooperation.

Jody Broun  
A/Director of Equal Opportunity in Public Employment

## From the DEOPE Annual Report 2001-2002

A summary of recent public sector trends, based on 2002 data, shows the following highlights:

### Women

Representation of women in the public sector is increasing (now 62% of employees and 57.3% of FTEs). The Equity Index increased to 55 in 2002 from 53 in 2001 and 42 in 1994.

In 2002, women constituted 20.2% of the Senior Executive Service, compared with 20.3% in 2001 and 19.1% in 2000.

As at 30 June 2002 there had been an increase in the representation of women in Management Tier 1 (CEO positions). There was also improved representation of women in Tier 3, following a decline in previous years. The improvement is important because this level of management provides the pool for future leaders. However, there was a decline in the representation of women in Tier 2 management positions (managers reporting to the Chief Executive Officer). This is of concern if there are barriers to women moving into senior positions.

### **Indigenous Australians**

Compared to the WA population, Indigenous Australians remain under-represented in all public authorities. The proportion of Indigenous Australians in the public sector increased slightly in 2002 to 2.2%. Indigenous Australians remain primarily employed at the lower levels.

### **People with Disabilities**

Representation of people with disabilities appears to have declined since 2001 due to a change in the definition used by one large agency. When this is accounted for, the representation has remained relatively steady. Employment is across all levels.

### **People from Culturally Diverse Backgrounds**

There has been an increase in the representation of people from culturally diverse backgrounds to 4.8% in 2002 compared to 4.3% in 2001 (but remains substantially lower than population estimates). Employment is across all levels.

### **Youth and Mature Workers**

Currently, 5.0% of public sector employees are youth (<25 years) and 44.8% are mature workers (>45 years). The proportion of both youth and mature workers has increased slightly since 2001. Agencies need to consider strategies to attract and retain younger workers, as well as manage succession planning for the mature workforce that is reaching retirement age.

### **Community Profiles**

Results from the 2001 census conducted by the Australian Bureau of Statistics have enabled updates to the population estimates of diversity groups. There has been a minor increase in the Western Australian population of Indigenous Australians since 1996 and a significant increase in people from culturally diverse backgrounds (increased to 17% from 12%).

### **Amalgamation of Public Sector Agencies**

The Machinery of Government taskforce noted that if recent equity gains in senior management are to be retained, public sector agencies will need to monitor the effect of changes on diversity in senior management and new structures associated with amalgamation of agencies.

### **Diversity Groups in the Senior Executive Service (SES)**

Data for 2002 on diversity groups in the Senior Executive Service show that there has been a decrease in the actual number of women in the SES but no change in the proportion (due to an overall decrease in the SES numbers). For Indigenous Australians and people from culturally diverse backgrounds, the number of people in the SES has remained constant but the proportions have increased (again due to an overall decrease in the SES numbers).

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## Case Study: Trans-Gender Discrimination in Employment

### ***Menzies v Waycott & Anor***

In a case heard by the Victorian Civil and Administrative Tribunal (prior to the proclamation of the *Acts Amendment (Lesbian and Gay Law Reform) Act 2001* and the *Gender Reassignment Act 2000*), the complainant (Menzies) was born a biological male but in middle age started living as a transsexual female.

Menzies had worked within the industry for many years as a man and, in early 1996, was employed by Mr Waycott, Managing Director of Astrovac, as a Sales Consultant to develop the industrial side of its central vacuuming business.

After living as a woman for 2 years, the complainant took leave to have sex (gender) reassignment surgery. (A gender reassigned person is a person who has been issued with a recognition certificate under the *Gender Reassignment Act 2000* or a certificate that is an equivalent for the purposes of that Act).

The complainant was then issued a certificate by her surgeon stating that Menzies “should now be regarded as a female”.

During her employment with Astrovac, Menzies faced a number of workplace issues. She was told to work from home, counselled by her employer and asked “had she really thought about this”. She was also encouraged to dress as a man for work and her employer discussed “the prospect of earning more money as a man”. In May 1998, her employment was terminated.

The Victorian Tribunal found that Menzies was treated less favourably on the basis of her transsexualism and had been discriminated against on the ground of imputed impairment.

The Tribunal noted that “the attitude and conduct of the Respondents indicates that they regarded the Complainant’s determination to live and dress as a woman and to proceed to gender reassignment surgery as a psychological abnormality which they counselled her to reconsider. Further, they regarded her physical state, both before and after surgery, as an abnormality”.

The Tribunal found that the Respondents had contravened s. 14(b) of the Victorian *Equal Opportunity Act 1995* on the basis of the attribute of impairment.

### **Outcome**

The case was listed for hearing in the Supreme Court, however an out of court settlement was reached so the matter did not proceed.

### **Implications for Employers**

It is important that employers:

- Promote recognition and acceptance of everyone's right to equality of opportunity; and
- Eliminate, as far as possible, discrimination against people by prohibiting discrimination on the basis of various attributes.

Adapted from: *Menzies v Waycott & Anor* [2001] VCAT 415 (31 March 2001)  
Victorian Civil And Administrative Tribunal