

Human Resource Transgender Policy

This document has been developed for use by chief executive officers and human resource practitioners involved in developing human resource policies and procedures in areas such as recruitment and selection, freedom from harassment and grievance management. It is Department of Health policy that all managers must ensure that transgender people are not harassed or discriminated against in any aspect of recruitment and employment. This includes ensuring that they are not harassed or discriminated against by other staff while they are in the process of transition to their preferred gender.

Managing Workplace Issues For Transgender People

Since October 1996 it has been against the law in N.S.W. to discriminate or harass people because:

- they are transgender;
- you think they are transgender; or
- they have a relative or associate who is (or you think is) transgender.

It is Department of Health policy that all managers must ensure that transgender people are not harassed or discriminated against in any aspect of recruitment and employment.

This includes ensuring that they are not harassed or discriminated against by other staff while they are in the process of transition to their preferred gender.

Workplace grievance and harassment policies should include transgender issues as ground for discrimination and harassment.

Purpose of this document:

This document has been developed for use by chief executive officers and human resource practitioners involved in developing human resource policies and procedures in areas such as recruitment and selection, freedom from harassment and grievance management.

Health Services should review Human Resources policies and procedures to ensure they are consistent with this circular.

Definitions:

The following definitions are provided by the N.S.W. Anti-Discrimination Board:

Transgender

A transgender person is someone who:

- identifies as a member of the opposite sex by living, or seeking to live, as a member of the opposite sex;
- has identified as a member of the opposite sex by living as a member of the opposite sex; or
- who is of indeterminate sex but identifies as a member of a particular sex by living as a member of that sex.

Recognised Transgender Person

A sub-category of "transgender person" is a "recognised transgender person". A transgender person is a "recognised transgender person" if:

- they have a new birth certificate issued by N.S.W. Births Deaths and Marriages Registry that states that sex that the person identifies with;
- if they have a recognition certificate issue by a South Australian magistrate; or
- they have some similar official document issue by another Australian State or Territory [at the time of issuing this policy no other Australia State or Territory issues such a certificate].

Although a person can only legally be considered the opposite gender to their birth gender when they are a "recognised transgender person", it is appropriate, in most cases, to extend the same rights and conditions to both groups of transgender people in the workplace.

Transgender people in transition:

Transition is the term used to identify the period of time required by the transgender person to change over from their birth gender to their preferred gender. From a workplace perspective it will probably be perceived as the day on which the staff member informs management and other staff that they will be presenting in a new gender role.

There is no legal requirement for a transgender person to inform management or anyone else in their workplace of their intention to transition, however, in practice many transgender people do inform management and/or other staff of their intention as ideally this assists in making the transition smooth for the transgender person and other staff.

From the point of view of management, the crucial time will probably be the early days in which the transgender person presents in their new gender role - this is the most visible aspect of transition and the time that other staff are likely to find most difficult.

However, transition can be a lengthy period in reality, starting from the day that the transgender person makes the decision to transition until they have comfortably moved into the role of their preferred gender.

Where management becomes aware of an individual's intention to transition, they should take all appropriate action, in consultation with the transitioning person, to provide a safe and supportive environment for the individual concerned and for all other staff members. To assist in developing a supportive environment managers should provide information to other staff on transgender issues.

Once informed, management should discuss the situation in full with the staff member (where the transitioning staff member wishes to) and become cognisant of their issues and concerns and how they wish to handle the transition and post-transition stages. Expert advice and information should be sought. The Gender Centre can assist in regard to gender issues and the "Anti-Discrimination Board of Guidelines for Human Resource Transgender Policy" can provide legal advice. Both the Anti-Discrimination Board and the Gender Centre have model policies on transitioning.

Recruitment and Promotion:

All jobs, apprenticeships and traineeships must be open to anyone who is a transgender person, in the same way that they are open to anyone else. Transgender people must be assessed on their merits against the specific criteria for the particular job in the same way as all other applicants.

It is not against the law to target a job towards transgender people, as long as the job is open to all transgender people. However, if you wish to target a job towards transgender people you should seek advice from the Anti-Discrimination Board as you may need to seek an exemption under the Anti-Discrimination Act.

Someone who is a transgender person has the legal right to be considered for a job that is targeted towards only one gender, if they have an official birth certificate or recognition certificate issued in that gender (this could be a certificate in their birth gender, or in their preferred gender).

Dismissal:

A person must not be dismissed on the basis of being a transgender person, or for deciding to "transition" to their preferred gender while working for you - unless the job they are currently performing is legally only open to people of their birth gender. In these instances you can only dismiss someone once they have a new birth certificate or recognition certificate in their new gender and only once other options (i.e.: transfer) have been considered first.

Use of amenities, uniform / dress code and form of address:

A "recognised transgender person" can use the toilets and change rooms of their preferred gender, and they can wear the dress or uniform of their preferred gender.

A transgender person who is not a "recognised transgender person" can insist on using the toilets and change rooms and wearing the uniform of their preferred gender unless it is unreasonable in all circumstances to do so.

Health Services are encouraged to allow all transgender people to wear the dress or uniform and use the amenities of their preferred gender.

It is equally important that transgender people are treated with respect by using their preferred names and pronouns that reflect their preferred gender. If a transgender staff member has changed their name, you should change your records to reflect this. You can ask for an official document to confirm the name change, although you do not have to do this.

Sources of Further Information:

The Gender Centre Inc.
41-43 Parramatta Road
Annandale N.S.W. 2038
Phone (02) 9519 7599, Fax (02) 9569 1176

Anti-Discrimination Board
Level 4, 175-183 Castlereagh Street
Sydney N.S.W. 2000
Phone (02) 9268 5544, Fax (02) 9268 550