



SUPPORTING GENDER TRANSITION IN THE WORKPLACE

A TOOLKIT FOR ACT EMPLOYERS



PURPOSE OF THIS TOOLKIT

This toolkit is intended to be practical and user-friendly and will clearly step employers through the key considerations for building effective and safe systems to support an employee's transition. The information has been drawn from the best practice experience of A Gender Agenda (AGA) staff and is informed by the lived experiences of the trans and gender diverse community. These steps will assist you to create a written management plan that reflects the needs and desires of the employee, considerations for other staff and the unique capacity of your organisation.

It is important to recognise that both territory and national laws require ACT employers to protect their trans and gender diverse employees from discrimination in the workplace. For more information about your legal obligations under ACT discrimination law please check out our resource entitled *Trans and Gender Diverse Employees in the Workplace: Guidelines for ACT Employers*.

WHAT IS GENDER TRANSITION?

Gender transition involves the processes through which a person affirms a gender identity that is different from the sex and gender assigned to them at birth. This may involve changing their name, registered sex, pronouns, clothing, and other characteristics related to gender expression. Transition can also involve medical procedures such as hormonal treatment and surgeries, but for a variety of reasons, not all trans people undergo medical transition. It is important to emphasise that transition is a deeply personal process and one person's experience of transitioning will look very different to another person's experience.

PUTTING THE EMPLOYEE FIRST

The person who understands most about their gender transition and their needs throughout the process is the employee themselves. Their explicit consent needs to be central to any decision or action involved in workplace related processes concerning their transition, and their privacy and agency needs to be respected at each step. Making decisions on behalf of the employee can compound the feelings of stigma and vulnerability that trans and gender diverse people are known to suffer.

Ensuring that the person needs and concerns are put first in decision-making and planning regarding their transition, as well as being constantly vigilant of their well-being and safety, will help to ensure a smoother transition process.



SEX AND GENDER

A person's sex refers to the biological and physical characteristics (both internal and external) that we typically use to distinguish male and female bodies. Meanwhile, gender refers to our internal sense of who we are, and our personal identification as male, female or neither. Gender identity can be expressed through our behaviour, mannerisms, and dress. When we are born, we are usually assigned a gender based on visible sex characteristics.

Cisgender people are those whose internal gender aligns with the one they were assigned at birth. Transgender – or trans for short – is an umbrella term for people whose gender differs from that which they were assigned at birth. This includes people who were assigned female at birth but identify as a boy or man (trans men), people who were assigned male at birth but identify as a girl or woman (trans women), as well as people who identify as *non-binary* (neither male nor female) and *gender fluid*.

BEFORE/EARLY STAGES

The 'first contact' that an employee makes with their management team to signal their intention to transition in the workplace is a critical time. Having the right conversations early on and laying the foundations for gender affirming processes will better ensure a smooth, safe and comfortable transition. There are a number of practical considerations that need attention at this stage.

1. Implementing a consultative process (seeking clarity)

2. Ensuring privacy

3. Seeking external support

4. Developing a transition plan

5. Establishing a timeframe

6. Identifying a support team

7. Negotiating workplace leave

8. Preparing for resistance



THE TRANSITION

Once the preliminary planning stage has finished and a timeframe has been established, the workplace can begin undertaking steps to affirm the employee's gender identity. Keep in mind that no two people's transitions will be identical, and thus the process needs to be informed by the employee. The following considerations are likely to be highly relevant.

9. Staff briefing

10. Records and documentation

11. Access to facilities

12. Uniforms and dress codes

13. Training



MOVING FORWARD

An employee's transition does not simply end once the steps above have been implemented. To ensure their ongoing safety and general workplace harmony, employers should consider the following.

14. Regular check-ins with the employee

15. Proactively promoting inclusivity

16. Further training

17. Dealing with hostility

BEFORE/EARLY STAGES

1. IMPLEMENTING A CONSULTATIVE PROCESS

Publicly transitioning gender is a deeply personal and momentous process – no two transitions will look exactly the same. As such, it is essential that from the get-go, employers adopt a consultative process that gives the employee the freedom to articulate their own vision for their transition. Seeking clarity around the identity that an employee is aiming to affirm is key here (i.e. binary or non-binary). It is essential that at each step of the planning, implementation and management stage, the goals, wishes and concerns of the employee are central.

2. ENSURING PRIVACY

For the employee, making decisions about what information is shared, with whom and when, is integral to their health, safety and wellbeing. Accordingly, maintaining the privacy and confidentiality of the employee's intention to transition in the workplace is essential in the early stages of a transition process. Initially, information should only be shared on a 'need-to-know' basis that is guided by the explicit consent of the employee. Disclosure of personal information to colleagues or other third parties without informed consent may breach obligations under ACT or Commonwealth information privacy guidelines.

3. SEEKING EXTERNAL SUPPORT

We understand that managing an employee's gender affirmation process may seem like a daunting task – but it need not be. Through trainings, consultation, resource provision and referrals, services like AGA exist to support workplaces and employees in navigating gender transition in the workplace. Our work ethic and expertise is guided by lived-experience and deep-consultation with our diverse community-base.

Including services like ours as early as possible – rather than relying upon us as 'mediators' if things get tricky down the track – will help to ensure a smoother transition process.

4. DEVELOPING A TRANSITION PLAN

A transition plan is a the overarching strategic outline to facilitate an employee's gender affirmation process, and identify how the employee will be supported. It is essential that the plan is developed in consultation with the employee. It should address a range of practical considerations, such as those covered in point 5, 6, 7 and 8. The team that helps devise this plan might include relevant managers, HR staff, a union representative, or an external support agency – as well as the employee themself.



5. ESTABLISHING A TIMEFRAME

Having a clear timeframe setting out key changes and steps to affirm the employee's gender is critical to demonstrating your commitment to supporting the employee. Key dates might include: when other colleagues will be informed, when the employee might start using a new name and/or pronouns, when the employee will begin using toilets/facilities appropriate for their affirmed gender and when personal leave might be taken. All dates should be settled with the explicit consent of the employee in the early development of the transition plan.

6. IDENTIFYING A SUPPORT TEAM

Establishing a core group of management staff, colleagues, union representatives and/or externals to be involved in the planning discussions and act as a support team will help promote the safety and wellbeing of the transitioning employee.

If at any time during their transition the employee suffers discrimination or distress in the workplace, it is important that they have multiple people with whom they feel comfortable to discuss the issue. Once again, it is important that the employee expresses explicit consent for the presence of every member on their support team.

7. NEGOTIATING WORKPLACE LEAVE

Employers should be prepared to be flexible in regards to leave that might be required in relation to the transitioning employee's gender affirmation process. Approved leave may be required for medical appointments, legal appointments or appointments related to officially registering a change of name/sex. Where possible, this leave should be incorporated into the transition plan from the beginning.

8. PREPARING FOR STAFF RESPONSES

Management should be prepared to respond to questions or concerns from other staff members. This can be as simple as affirming the relevant facts of the transition and the specific policy area that applies while maintaining the confidentiality of the employee. AGA can assist you to develop some affirmative messages to share with key staff to ensure that they are confident to respond to potential concerns across the organisation in a consistent and positive way.

Preparing for staff responses will also entail having an action plan for how hostile behaviour will be managed, who reports hostile behaviour, and to whom it is reported. These procedures should also be outlined in the transition plan.

QUESTIONS AND AFFIRMING MESSAGES

Ensuring that a core group of managers or other colleagues selected by the employee are well-equipped to deal with responses and questions about the transition will take the burden of explanation off the employee themselves and will help them feel more supported. It's a good idea to pre-empt the kinds of questions or concerns that might be raised and collectively come up with positive and affirming responses that reinforce your support of the employee.

Possible questions might relate to why the colleague is now wearing different

clothing/uniform, or why their colleague is now using different bathrooms. Positive and affirming responses might be:

"Louise is a valued employee, and it is important to our organisation that all staff feel they can be their whole, authentic selves at work."

"Diversity and inclusion are central values of our organisation. As such, we need to respect the steps that Bjorn is taking to affirm his identity. If anyone has an issue with this, or sees any incident of bullying or discrimination, come straight to me."

At all times, it needs to be reinforced that these decisions are fully supported by the organisation's leaders, and managers need to set a strong example. This will include being upfront about a zero-tolerance approach to discrimination, harassment and bullying, and making it clear that perpetrators will be dealt with, which takes the burden off the employee themselves to assert their right to affirm their gender identity. Emphasising the value of the employee, and the core principles of the business, will strengthen this message.

THE TRANSITION

9. STAFF BRIEFING

The transitioning employee should be supported to identify how they want their colleagues to be advised of the transition. This may include identifying what topics relating to the transition are or are not acceptable for colleagues to ask, how colleagues will be informed about the appropriate name and pronouns to use and how other employees will be advised that the transitioning employee will be using toilets and other facilities appropriate to their affirmed gender.

The transitioning employee should decide who is best placed to deliver this message and whether or not this is communicated in writing or by a face-to-face meeting. If a meeting is arranged, other senior management should also attend to show solidarity with the transitioning employee and come prepared to respond to any expected questions or comments. The transitioning employee should also decide whether or not it is appropriate to attend.

10. RECORDS AND DOCUMENTATION

Anything that directly identifies the transitioning employee should be altered to reflect their new name and pronoun, and if necessary, photograph. Each workplace will be different, but these procedures may include changing the following:

- ▶ New ID badge and photo
- ▶ Update email address and directory listing
- ▶ Update staff profile in all necessary databases
- ▶ Update email signature
- ▶ Advise relevant stakeholders about name/pronoun change

It is important that these changes are in place before the employee's official date of transition to avoid any unnecessary confusion.

11. ACCESS TO FACILITIES

Workplaces should accommodate the transitioning employee's decisions about which toilets (and other relevant facilities) they will feel most comfortable using. Such considerations might also entail the establishment of a 'gender-neutral' toilet option accessible to everyone. It is thoroughly important for these decisions to be guided by the preferences of the employee. A top-down decision to provide them access to a designated unisex or accessible toilet might exacerbate feelings of stigma.

12. UNIFORMS AND DRESS CODES

If the workplace has a uniform or dress code, it is important that the transitioning employee is able to conform in a manner that affirms their gender identity. For employees affirming a non-binary identity, provisions should be made for the employee to wear elements of the dress code in a way that makes them feel comfortable.

13. TRAINING

Providing workplace training to colleagues prior to the transitioning employee's official transition date is a good opportunity to prepare colleagues, build empathy and allow them to ask questions safely without making it specifically about the transitioning employee's circumstances. Resources on diversity and inclusion should also be made readily accessible to other employees. Again, the employee will have clear ideas about whether training is appropriate, and if so, who should take part.

AGA specialises in diversity and inclusion training and has a range of awareness raising resources.



MAKING THE ANNOUNCEMENT

Below is a suggested checklist of key considerations for when the employee's transition is becoming public knowledge within the workplace:

WHO WILL MAKE THE ANNOUNCEMENT?

If the transitioning employee has consented, the head of the transitioning employee's work team should announce the transition. Otherwise the transitioning employee should advise who they would prefer to make the announcement.

EMPHASISE THE TRANSITIONING EMPLOYEE'S CONTRIBUTION

The speaker should emphasise the transitioning employee's contribution to the organisation and management's complete support of the transition.

ADVISE OF CHANGES TO AFFIRM THE TRANSITIONING EMPLOYEE'S GENDER IDENTITY

The speaker needs to establish expectations in the workplace around respecting the identity of the transitioning employee. This needs to acknowledge how the employee now chooses to be addressed, including new name (if relevant) and preferred pronouns, while establishing boundaries against misgendering or abuse.

If relevant, colleagues should also be advised if the transitioning employee will be using different toilets or other facilities appropriate to their affirmed gender. The speaker should advise colleagues the date from which these changes will commence.

ACKNOWLEDGE MINIMAL IMPACT ON WORKPLACE

The speaker should acknowledge that the transition will not change the workplace and that everything should go on as it did previously while respecting the transitioning employee's new name and pronouns.

REVIEW THE ORGANISATION'S NON-DISCRIMINATION POLICIES

The speaker should refer to the organisation's non-discrimination policies and explain how supporting the transitioning employee in their transition is aligned with these policies.

ASK FOR QUESTIONS

The speaker should set boundaries for what questions are and are not appropriate to ask the transitioning employee, but should invite questions from colleagues in the meeting. If the speaker is unable to answer any questions, or if questions arise after the meeting, colleagues should be advised of who the best person is to speak to about any questions they may have.

SET THE MODEL FOR BEHAVIOUR

The speaker should set the model for behaviour by using the transitioning employee's new name and pronouns in all communication: written and oral, formal and informal. This may include correcting other employees when the transitioning employee isn't around.

MOVING FORWARD

14. REGULAR CHECK-INS WITH THE EMPLOYEE

Check-ins demonstrate the workplace's commitment to supporting the transitioning employee, and should provide a space in which they feel comfortable to express any distress or concerns they have experienced. The nature and regularity with which they take place will depend upon the employee. It might be that they only require a monthly meet with a designated support person amongst their colleagues, or it might be decided that more frequent meetings with senior management are required. Initially, you might think it appropriate to meet more regularly, with the frequency of check-ins being reduced over time.

15. PROACTIVELY PROMOTING INCLUSIVITY

One of the most important ways to support your employee is to take an entire workplace approach to promoting inclusivity and diversity. This might involve any or all of the following:

- ▶ Ensuring that internal anti-discrimination policies directly address gender identity
- ▶ Organising further workforce inclusivity training
- ▶ Fundraising and partnership activities with relevant local organisations
- ▶ Creating an LGBTIQ+ ally network
- ▶ Seeking or creating networking opportunities for LGBTIQ+ employees
- ▶ Accurately documenting employee transition planning and implementation to reference when supporting other trans and gender diverse staff in future
- ▶ Reviewing your ICT systems, websites and other communication material to ensure gender language is inclusive
- ▶ Automating HR processes to streamline workplace transitioning for staff who are affirming their gender identity in the future

16. FURTHER TRAINING

Staff turnover is inevitable. Given this reality, it is important to consider future training opportunities for new employees – and even giving long-term employees a refresher! Such efforts are most likely to exhibit sincerity and have more significant impacts when employees of all ranks are involved, and thus upper leadership should set an example to their workplace by attending training sessions.

Inclusive workplaces that respect diversity are better workplaces for everyone!

17. DEALING WITH DISCRIMINATION

Even with the most careful planning, discrimination is a possibility. Leadership must adopt a zero-tolerance approach to discrimination on the grounds of gender identity, and should be constantly vigilant about the wellbeing of their trans or gender diverse employee/s. While a few honest mistakes – such as using the wrong name and/or pronoun – should be expected in the early adjustment phase, persistent and deliberate refusal to respect an employee's gender identity may constitute a breach of discrimination law, and managers must be prepared to enforce disciplinary action accordingly.



FACILITIES

Ensuring your employee has free access to the facilities that align with their gender identity is essential to their well-being and health. Studies in America reveal that 59% of trans people avoid using public bathrooms out of fear of harassment or violence, with a further 32% avoiding eating and drinking throughout the day to lessen the likelihood of needing the bathroom (National Centre for Transgender Equality 2016). These are unhealthy and degrading measures that nobody should have to take. Nevertheless, access to toilets is often the area where trans people face the greatest levels of resistance and hostility from their peers. As such, it is important to consider how leadership might deal with other employees taking issue with the transitioning employee's bathroom access.

Different workplaces take different approaches on this matter: the employee might simply use the toilet that aligns with their gender identity, all toilets might be made unisex, or a designated toilet might be made unisex. It is important that the approach taken does not stigmatise the employee, and is made with their full consent. Making them use the accessible toilet is rarely an appropriate solution. Being transgender is not a disability, and treating it as such will compound feelings of stigmatisation.

A common concern raised by resistant employees relates to privacy i.e. they feel that the trans employee's access to a particular toilet is a violation of their own privacy. Privacy violations are a serious allegation. Allowing a trans person to access the toilet that corresponds to their gender identity simply does not constitute a violation of privacy. The truth of the matter is that ACT anti-discrimination law requires that individuals are permitted to use the toilet that aligns with their gender identity. Behaviour that restricts the trans employee's access to a bathroom through intimidation, bullying or harassment must be addressed, and this burden should not fall upon the transitioning employee. If an employee raises concerns about their own privacy, you should ask them to express exactly how and why they feel their privacy is violated by the trans employee. The following are some suggestions for how asserting the right of the trans employee might take place:

"Louise is as entitled to use the women's toilet as any other female employee. If you have an issue with this, we can discuss your concerns."

"Your privacy is not breached by Bjorn using the men's toilets, just as it is not breached by all the other men who also use the same toilet as you."

These conversations should demonstrate your own affirmation of the employee's gender identity, and also convey your authority and obligations under anti-discrimination law.

CONTACT

A GENDER AGENDA

Due to a lack of education and awareness around trans people in the workplace, some employers find that issues continue to arise despite their best efforts. These issues can be avoided when employers take the initiative to seek support to create a truly inclusive workplace.

Organisations like AGA can assist workplaces meet their obligations through actions such as:

- ▶ providing guidance for developing and implementing a transition plan
- ▶ providing organisational training to bring more awareness and support to the workplace
- ▶ providing advocacy support for the transitioning employee
- ▶ overseeing policy development and implementation
- ▶ facilitating networking and events with the trans and gender diverse community

Phone: (02) 6162 1924
Email: support@genderrights.org.au
Web: genderrights.org.au

ACT HUMAN RIGHTS COMMISSION

If you think you or a friend or family member has been discriminated against, or as an employer or workplace participant you would just like to find out more about your rights and obligations, you can contact the ACT Human Rights Commission for more information. The Commission can provide information about workplace discrimination. We also handle complaints about discrimination, harassment and vilification.

Level 2, 11 Moore Street, Canberra City
Phone: (02) 6205 2222
SMS: 0466 169 997
TTY: (02) 6205 1666
Email: human.rights@act.gov.au
Web: hrc.act.gov.au



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Special thanks to Michael McGrath, Daniel Temme and the ANU College of Law
who contributed to the development of these guidelines.