



TSS Gender Affirmation Guide (including Gender Affirmation Leave)

May 2023

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Publisher:
Department of Premier and Cabinet

Date:
May 2023

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Acknowledgements

We acknowledge the work undertaken by team members of the Department of Justice who provided support, guidance, and expertise to develop a Gender Affirmation Leave Guide. Thank you!

Throughout the development of the Guide we were mindful that every person's gender affirmation is unique and can be stressful. It is important to be aware of this and not make assumptions.

All Tasmanian State Service (TSS) employees should feel safe, supported, respected, and included at work. When a transgender employee communicates their intent to affirm their gender and access Gender Affirmation Leave, the intent of the entitlement is that it should be able to be accessed in a consistent and respectful way across the State Service.

State Service Management Office
Department of Premier and Cabinet

If you have any questions relating to this Guide, please contact ssmo@dpac.tas.gov.au

Definitions - For the purpose of Gender Affirmation Leave

Employee

For the purpose of accessing Gender Affirmation Leave employee means an employee or officer of the Tasmanian State Service who is affirming their gender.

Gender Affirmation Leave

Please refer to the Gender Affirmation Leave Clause included in this Guide.

Eligibility Process and Employee Self Service (ESS)

To be eligible for Gender Affirmation Leave employees must satisfy the eligibility process.

Manager/supervisor

The manager or supervisor who has authority to approve Gender Affirmation Leave and who the employee's leave request is assigned to for approval.

SECTION I

Setting the Context

What is Gender Affirmation?

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

Sex and/or 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 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 (transgender men), people who were assigned male at birth but identify as a girl or woman (transgender women), as well as people who identify as non-binary (neither male nor female), gender fluid, or a range of other identities.

Intersex people have innate sex characteristics that don't fit medical norms for female or male bodies. Many intersex people have been subject to forced medical interventions in infancy to modify their sex characteristics. Some intersex people understand themselves as male, female, male and female, or neither. Being intersex is not the same as being transgender. An intersex person may identify as cisgender or transgender and may pursue a gender affirmation process. For the purpose of these guidelines, no assumptions should be made about the gender identity of an intersex person making a request for Gender Affirmation Leave.

Purpose of the Guide

This Guide has been designed as a comprehensive, informative, and credible resource to support managers, supervisors and employees to understand the TSS Gender Affirmation Leave provisions and for managers and supervisors to make informed, respectful, and unbiased decisions in relation to requests for Gender Affirmation Leave from employees.

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

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

SECTION 2

Gender Affirmation Support

The Gender Affirmation Support Process

Every person's gender affirmation is unique and can be stressful. It is important to be aware and not make assumptions. The person who is affirming their gender guides and informs the process and the below should be adapted to suit them.

For the purpose of this plan, the term employee will refer to the gender affirming employee.

- I. Before the affirmation begins:
 - a. We encourage employees or their representative to have a conversation with their manager and/or your Agency's HR team.
 - b. The employee and manager should meet to identify possible support persons, referred to as the Work Support Group. Communication could include, setting a common understanding of what support is available and what the employee would like to happen, set timeframes for staged support and create a Workplace Plan.
 - c. Work Support Group members should familiarise themselves with their agency's policies and other relevant resources and understand what their role is eg. emotional support, help with communication.
 - d. The Workplace Plan should include, as far as possible:
 - i. How the employee would like to be identified in the workplace, and from when this should occur, if known. This includes their names and pronouns.
 - ii. Determine who will be notified of the affirmation, when, how and in what format. Some employees may prefer to communicate their affirmation to colleagues in their own time, with or without any official announcement.
 - iii. Consideration of awareness raising/training requirements for immediate work area to help colleagues understand and know how to respond respectfully.
 - iv. Any requirements for Gender Affirmation Leave

2. Communication in the workplace, as detailed in the Workplace Plan
 - a. The employee, in consultation with their manager and Work Support Group, will determine when and how and by whom the affirmation may be announced:
 - i. Within the team,
 - ii. Outside of the team and
 - iii. More broadly if required.
 - b. The employee can choose to inform colleagues of their affirmation in person, in writing or ask their manager or other support person to inform colleagues on their behalf. When communicating to staff, consider including:
 - i. Showing clear support from management of the employee's affirmation.
 - ii. Expectation that staff will respect the employee's gender
 - iii. Expectation that the employee's new name and pronoun is used in all communication – written and oral, formal, and informal.
 - iv. Providing an opportunity for all staff to ask questions.
 - v. Indicating how the employee would like colleagues to respond to the change – whether they are comfortable with people openly asking questions or prefer not to draw attention to the change.
 - vi. Showing understanding that change can make people feel uncomfortable and support work colleagues who may find the affirmation confronting so that they are able to treat the employee with respect. This may include having one on one meetings with some colleagues to allow them to ask questions that 'you are not allowed to ask' and work through any expectations.
3. Employee's official workplace affirmation

The manager should ensure that the employee has a new photo taken, where necessary, and that all work documents have the appropriate name and gender listed.

Updating Details Process and Checklist

Personal details	Process details	Action taken (if applicable)
Title	Changes can be made to an alternative title of either Mrs/Mr/Miss/Ms or non-binary title Mx.	
Preferred name	This can be used prior to the employee's personal record once evidence provided. Contact Human Resources for further information.	
Gender	Amend employee's personal record to reflect their preferred gender marker.	
Email	An email address will be updated on a photo as required. There is no limit on the number of times an image can be changed.	
Security pass	An image can be updated on a photo as required. There is no limit on the number of times an image can be changed.	
Other accounts	Systems will be updated depending on departmental requirements.	
Name badge, desk plates, distribution list, local phone list, business cards	New name badges, desk plates, and business cards may be requested.	

SECTION 3

Supporting Information for managers

A psychologically safe conversation

All employees should feel safe, supported, respected, and included at work. When a transgender employee talks to their manager about their plan to affirm their gender, they should be confident that the Agency managers and employees support and respect the employee.

Each person's gender affirmation is unique and will require different support. Managers should work with the employee who is affirming their gender to support them the way they need and ensure the workplace is appropriately supported and informed.

It is important to think about the sensitivities before entering a conversation with an employee regardless of the reasons, i.e., you need to ask the employee to provide further information, demonstrate eligibility or discuss alternative arrangements if the leave application may not be approved.

Be mindful of your language. Your words and meaning may come across differently to that of your intent. Think of the impact.

Further information to support the Leave application

- Clearly explain the information you need and why, reference the part in the Gender Affirmation Leave Clause if you think this will assist the employee understand why you are requesting additional information.
- If you need to ask the employee a question/s or clarify information provided
 - Be clear on why you need to ask the question/s
 - If you need to request additional information or gain clarity from the employee, it is important you clearly communicate to the employee that you are not questioning how they identify. The purpose of the request for further information or clarity is to support the consistent application of the Gender Affirmation Leave eligibility criteria across the TSS.
 - The consistent application of this criteria by managers across the TSS is necessary to ensure that an employee's entitlement to Gender Affirmation Leave is assessed consistently and equitably.

Please note: If a manager is unsure that the application for Leave fits within the intended purpose of the Gender Affirmation Leave Provision, they should contact their agency HR team for advice and guidance.

SECTION 4

Supporting Information for Employees

Eligibility

Gender Affirmation Leave is available to an employee (other than a casual employee) who is undergoing a process of affirming their gender. Employees may affirm their gender in several ways, including through medical, social, and legal changes. An employee is not required to be undergoing specific types of changes, including surgery, to access leave under this clause.

How to apply for Gender Affirmation Leave

To apply for Gender Affirmation Leave, follow the same process in your agency as you would when applying for other types of leave. Please ensure you have provided your supporting documentary evidence (where appropriate).

Your responsibility

- To provide all the information required to support your application for Gender Affirmation Leave
 - (i) An employee wishing to access gender affirmation leave should discuss their intention to take leave with the employer as soon as reasonably practicable.
 - (ii) An employee is to make an application to the employer for gender affirmation leave accompanied by supporting documentary evidence where appropriate.
 - (iii) Documentary evidence may include any of the following:
 - (1) A medical certificate from a registered health practitioner or registered professional operating within their scope of practice; and/or
 - (2) A written referral, issued by a registered health practitioner, to a counsellor; and/or
 - (3) A document issued by a counsellor; and/or
 - (4) A legal or other document issued by a state, territory, or federal government organisation; and/or
 - (5) A statutory declaration (refer to (d) Purpose of Notice and Evidence Requirements in the Gender Affirmation Leave Clause).

Your Rights

- To be given the opportunity to provide to your manager all the relevant information requested for the manager to make an informed decision when considering your application for Gender Affirmation Leave.
- If you are dissatisfied with a decision made about your application for Gender Affirmation Leave it is recommended that you discuss this decision with your immediate supervisor in the first instance.

Gender Affirmation Leave Clause

Gender Affirmation Leave

(a) Purpose

- (i) Gender affirmation leave is available to employees to enable them to be absent from duty for the purpose of undertaking activities associated with that employee's process of affirming their gender.

(b) Eligibility

- (i) Gender affirmation leave is available to an employee (other than a fixed-term casual employee) who is undergoing a process of affirming their gender.
- (ii) Employees may affirm their gender in a number of ways, including through medical, social, and legal changes. An employee is not required to be undergoing specific types of changes, including surgery, to access leave under this clause.

(c) Entitlement

- (i) An eligible employee undergoing a process of gender affirmation is entitled to the following, subject to the notice and evidence requirements of this clause:
 - (1) up to 4 weeks paid leave; and
 - (2) up to 48 weeks unpaid leave.
- (ii) Gender affirmation leave is available for the purpose of activities associated with an employee's gender affirmation including, but not limited to, any of the following:
 - (1) Medical or psychological appointments; or
 - (2) Hormonal appointments; or
 - (3) Surgery and associated appointments; or
 - (4) Appointments to alter the Employee's legal status or amend the Employee's gender on legal documentation; or
 - (5) Any other similar necessary appointment, procedure or event to give effect to the employee's transition as agreed with the employer.
- (iii) The period of leave accessed by the employee may be greater than the duration of their appointment or procedure, to facilitate travel and recovery.
- (iv) Gender affirmation leave may be taken as consecutive, single or part days as agreed with the employer.

- (v) An employee may be granted gender affirmation leave from the first day of appointment.
- (vi) An employee may access an entitlement to gender affirmation leave provided by sub-clause (c)(i) up until 52 weeks after they commence the process of affirming their gender. For clarity, nothing in this subclause prevents an employee from accessing gender affirmation leave at a point in time before they commence the process of affirming their gender or living as a member of that gender provided that the leave is accessed for the purpose outlined at subclauses (c)(ii) and (iii).
- (vii) Gender affirmation leave is non-cumulative and will not be paid out on cessation of employment

(d) Notice and Evidence Requirements

- (i) An employee wishing to access gender affirmation leave should discuss their intention to take leave with the employer as soon as reasonably practicable.
- (ii) An employee is to make an application to the employer for gender affirmation leave accompanied by supporting documentary evidence where appropriate.
- (iii) Documentary evidence may include any of the following:
 - (1) A medical certificate from a registered health practitioner or registered professional operating within their scope of practice; and/or
 - (2) A written referral, issued by a registered health practitioner, to a counsellor; and/or
 - (3) A document issued by a counsellor; and/or
 - (4) A legal or other document issued by a state, territory or federal government organisation; and/or
 - (5) A statutory declaration.

(e) Rate of payment

- (i) Gender affirmation leave is paid at the employee's normal salary rate, as defined.

(f) Effect on other entitlements

- (i) Paid gender affirmation leave will count as service for all purposes.
- (ii) The total period of gender affirmation leave without pay in excess of 20 working days within a personal leave year is regarded as leave without pay for accrual purposes, including for recreation leave and personal leave but does not break an employee's continuity of service.

(g) Casual Employees

- (i) Subject to the notice and evidence requirements in subclause (d), casual employees are entitled to not be available to attend work for the purpose of this clause.
- (ii) The employer and an employee are to agree on the period the employee is entitled to not be available to attend work.
- (iii) The employer must not fail to re-engage a casual employee because the employee has accessed the entitlement provided for in this clause. The rights of an employer to engage or not engage a casual employee are otherwise not affected.



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