

South Australia

# Statutes Amendment (Gender Identity and Equity) Act 2016

An Act to amend various Acts to remove discrimination against lesbian, gay, bisexual, transgender, intersex and queer South Australians.

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### **The Parliament of South Australia enacts as follows:**

## **Part 1—Preliminary**

### **1—Short title**

This Act may be cited as the *Statutes Amendment (Gender Identity and Equity) Act 2016*.

### **2—Commencement**

This Act will come into operation on a day to be fixed by proclamation.

### 3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

## Part 2—Amendment of Acts *Interpretation Act 1915*

### 4—Amendment of section 4—Interpretation

- (1) Section 4(1)—after the definition of *the Gazette*, *the Government Gazette* or *the South Australian Government Gazette* insert:

*gender identity* means the gender-related identity, appearance or mannerisms or other gender-related characteristics of a person (whether by way of medical intervention or not), with or without regard to the person's designated sex at birth;

- (2) Section 4(1)—before the definition of *judge* insert:

*intersex status* means the status of having physical, hormonal or genetic features that are—

- (a) neither wholly female nor wholly male; or
- (b) a combination of female and male; or
- (c) neither female nor male;

### 5—Amendment of section 26—Interpretation of words relating to gender or number

- (1) Section 26(a) and (ab)—delete paragraphs (a) and (ab) and substitute:

- (a) every word implying a particular gender will be construed as including every other gender; and

- (2) Section 26(d)—delete "in either of those genders or numbers" and substitute:

implying a particular gender, or indicating a singular or plural number,

### 6—Amendment of section 36A—Gender balance in nomination of persons for appointment to statutory bodies

- (1) Section 36A(5)—before the definition of *non-government entity* insert:

*man* includes a person who identifies himself as a man regardless of the person's designated sex at birth;

- (2) Section 36A(5)—after the definition of *non-government entity* insert:

*woman* includes a person who identifies herself as a woman regardless of the person's designated sex at birth.

## **Part 3—Amendment of *Correctional Services Act 1982***

### **7—Amendment of section 23—Initial and periodic assessment of prisoners**

- (1) Section 23(3)(a)—delete paragraph (a) and substitute:
  - (a) the age, gender, gender identity, sexuality or sexual identity, and the social, medical, psychological and vocational background and history, of the prisoner; and
- (2) Section 23(4)—after "subsection (2)" insert:

, including a request that, if practicable, the assessment be made by a person of the same sex or gender identity as the prisoner

### **8—Amendment of section 37—Search of prisoners**

- (1) Section 37(2)(a)—after "sex" insert:

or gender identity
- (2) Section 37—after subsection (2) insert:
  - (2a) A prisoner may waive the requirement under subsection (2)(a) that those present during a search (other than a medical practitioner) be of the same sex or gender identity as the prisoner.

## **Part 4—Amendment of *Criminal Law (Forensic Procedures) Act 2007***

### **9—Amendment of section 3—Interpretation**

Section 3(1), definition of *intrusive forensic procedure*, (a)—delete ", in the case of a female, the breasts" and substitute:

the breast region of a female person or a transgender or intersex person who identifies as female

### **10—Amendment of section 21—Forensic procedures to be carried out humanely**

- (1) Section 21(3)—delete ", in the case of a female, the breasts" and substitute:

the breast region of a female person or a transgender or intersex person who identifies as female,
- (2) Section 21(3)—delete "the opposite" and substitute:

a different

## **Part 5—Amendment of *Domicile Act 1980***

### **11—Amendment of long title**

Long title—delete "to abolish the dependent domicile of married women and otherwise"

**12—Amendment of section 7—Capacity to have independent domicile**

Section 7(1)—delete "he" wherever occurring and substitute in each case:  
the person

**13—Amendment of section 8—Domicile of certain children**

Section 8(3)(a)—delete "in wedlock"

**Part 6—Amendment of *Equal Opportunity Act 1984***

**14—Amendment of section 5—Interpretation**

- (1) Section 5(1), definition of *chosen gender*—delete the definition
- (2) Section 5(1), definition of *domestic partner*—delete "he or she" and substitute:  
the person
- (3) Section 5(1), definition of *sexuality*—delete the definition
- (4) Section 5(5)—delete subsection (5)

**15—Amendment of section 6—Interpretative provisions**

Section 6(4)—delete "sexuality or a particular race or a person of a chosen gender"  
and substitute:

sexual orientation or gender identity or a particular race

**16—Substitution of heading to Part 3**

Heading to Part 3—delete the heading and substitute:

**Part 3—Prohibition of discrimination on ground of  
sex, sexual orientation or gender identity**

**17—Amendment of section 29—Criteria for discrimination on ground of sex,  
sexual orientation or gender identity**

- (1) Section 29(2a)—delete "chosen gender" and substitute:  
gender identity
- (2) Section 29(2a)(a)—delete "chosen gender" and substitute:  
particular gender identity
- (3) Section 29(2a)(b)(i)—delete "chosen gender" first occurring and substitute:  
particular gender identity
- (4) Section 29(2a)(b)(i)—delete "a chosen gender" second occurring and substitute:  
the particular gender identity
- (5) Section 29(2a)(c)—delete "chosen gender" wherever occurring and substitute in each  
case:  
particular gender identity

- (6) Section 29(2a)(d)—delete "chosen gender" and substitute:  
particular gender identity
- (7) Section 29(2a)(d)—delete "the sex" and substitute:  
a sex
- (8) Section 29(3)—delete "sexuality" wherever occurring and substitute in each case:  
sexual orientation

**18—Amendment of section 30—Discrimination against applicants and employees**

- (1) Section 30(1)—delete "chosen gender or sexuality" and substitute:  
sexual orientation or gender identity
- (2) Section 30(2)—delete "chosen gender or sexuality" and substitute:  
sexual orientation or gender identity

**19—Amendment of section 31—Discrimination against agents and independent contractors**

- (1) Section 31(2)—delete "chosen gender or sexuality" and substitute:  
sexual orientation or gender identity
- (2) Section 31(3)—delete "chosen gender or sexuality" and substitute:  
sexual orientation or gender identity

**20—Amendment of section 32—Discrimination against contract workers**

- (1) Section 32(2)—delete "chosen gender or sexuality" and substitute:  
sexual orientation or gender identity
- (2) Section 32(3)—delete "chosen gender or sexuality" and substitute:  
sexual orientation or gender identity

**21—Amendment of section 33—Discrimination within partnerships**

- (1) Section 33(1)—delete "chosen gender or sexuality" and substitute:  
sexual orientation or gender identity
- (2) Section 33(3)—delete "chosen gender or sexuality" and substitute:  
sexual orientation or gender identity
- (3) Section 33(4)—delete "chosen gender or sexuality" and substitute:  
sexual orientation or gender identity

**22—Amendment of section 34—Exemptions**

- (1) Section 34(2)—delete "chosen gender or sexuality" and substitute:  
sexual orientation or gender identity

- (2) Section 34(2)—delete "a person of a chosen gender or a person of a particular sexuality" and substitute:

sexual orientation or gender identity

- (3) Section 34(3)—delete "chosen gender or sexuality" and substitute:

sexual orientation or gender identity

- (4) Section 34(4)—delete "chosen gender" and substitute:

gender identity

### **23—Amendment of section 35—Discrimination by associations**

- (1) Section 35(1)(a)—delete "chosen gender or sexuality" and substitute:

sexual orientation or gender identity

- (2) Section 35(1)(b)—delete "chosen gender or sexuality" and substitute:

sexual orientation or gender identity

- (3) Section 35(2)(a)—delete "both men and women" and substitute:

persons of different sex

- (4) Section 35(2)(a)—delete "men and women" second occurring and substitute:

persons of different sex

- (5) Section 35(2)(b)—delete "both men and women" wherever occurring and substitute in each case:

persons of different sex

- (6) Section 35(2a)(b)—delete "chosen gender" and substitute:

particular gender identity

- (7) Section 35(2a)(c)—delete "sexuality" and substitute:

sexual orientation

- (8) Section 35(2b)—delete "chosen gender or sexuality" and substitute:

sexual orientation or gender identity

### **24—Amendment of section 36—Discrimination by qualifying bodies**

Section 36—delete "chosen gender or sexuality" and substitute:

sexual orientation or gender identity

### **25—Amendment of section 37—Discrimination by educational authorities**

- (1) Section 37(1)—delete "chosen gender or sexuality" and substitute:

sexual orientation or gender identity

- (2) Section 37(2)—delete "chosen gender or sexuality" and substitute:

sexual orientation or gender identity

**26—Amendment of section 38—Discrimination by person disposing of interest in land**

Section 38(1)—delete "chosen gender or sexuality" and substitute:  
sexual orientation or gender identity

**27—Amendment of section 39—Discrimination in provision of goods and services**

Section 39(1)—delete "chosen gender or sexuality" and substitute:  
sexual orientation or gender identity

**28—Amendment of section 40—Discrimination in relation to accommodation**

- (1) Section 40(1)—delete "chosen gender or sexuality" and substitute:  
sexual orientation or gender identity
- (2) Section 40(2)—delete "chosen gender or sexuality" and substitute:  
sexual orientation or gender identity

**29—Amendment of section 45—Charities**

- (1) Section 45(a)(ia)—delete "chosen gender" and substitute:  
particular gender identity
- (2) Section 45(a)(ii)—delete "sexuality" and substitute:  
sexual orientation

**30—Amendment of section 47—Measures intended to achieve equality**

- (1) Section 47—delete "the one sex, persons of a chosen gender, or persons of a particular sexuality" and substitute:  
a particular sex, sexual orientation or gender identity
- (2) Section 47—delete "persons of the other sex, persons who are not persons of a chosen gender or persons of another sexuality" and substitute:  
all other persons

**31—Amendment of section 85Z—Exemptions**

Section 85Z(2)—delete "sexuality" and substitute:  
sexual orientation

**Part 7—Amendment of *Evidence Act 1929***

**32—Repeal of section 34H**

Section 34H—delete the section



## **Part 8—Amendment of *Family Relationships Act 1975***

### **33—Amendment of section 10A—Interpretation**

Section 10A(1), definition of *qualifying relationship*—delete "opposite" and substitute:

different

## **Part 9—Amendment of *Guardianship of Infants Act 1940***

### **34—Repeal of section 20**

Section 20—delete the section

## **Part 10—Amendment of *Landlord and Tenant Act 1936***

### **35—Repeal of section 44**

Section 44—delete the section

## **Part 11—Amendment of *Settled Estates Act 1880***

### **36—Repeal of sections 48, 49 and 50**

Sections 48, 49 and 50—delete the sections

## **Part 12—Amendment of *Sexual Reassignment Act 1988***

### **37—Amendment of section 3—Interpretation**

Section 3, definition of *reassignment procedure*—delete "the opposite" and substitute:

a different

## **Part 13—Amendment of *Summary Offences Act 1953***

### **38—Amendment of section 81—Power to search, examine and take particulars of persons**

Section 81(3)(d)—after "sex" insert:

or gender identity

## **Part 14—Amendment of *Trustee Act 1936***

### **39—Repeal of section 22**

Section 22—delete the section