

South Australia

Statutes Amendment (Gender Identity and Equity) Bill 2015

A BILL FOR

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 2015*.

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—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—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 Consolidation Act 1935***9—Substitution of Part 3 Division 17**

Part 3 Division 17—delete Division 17 and substitute:

Division 17—Abortion**81—Attempts to procure abortion**

- (1) It is an offence if someone who is pregnant unlawfully takes poison or another noxious thing, or unlawfully uses an instrument or any other means, intending to cause a miscarriage.

Maximum penalty: Imprisonment for life.

- (2) It is an offence if person A, intending to procure person B to miscarry (whether B is pregnant or not)—
- (a) unlawfully administers to person B, or causes to be taken by person B, poison or another noxious thing; or
 - (b) unlawfully uses an instrument or any other means on person B.

Maximum penalty: Imprisonment for life.

82—Procuring drugs etc to cause abortion

It is an offence if a person unlawfully supplies or procures poison or another noxious thing, or an instrument or any other thing, to another knowing that it is intended to be unlawfully used or employed with intent to procure the other to miscarry (whether the other person is pregnant or not).

Maximum penalty: Imprisonment for 3 years.

82A—Medical termination of pregnancy

- (1) Despite anything set out in section 81 or 82, but subject to this section, a person is not guilty of an offence under either of those sections—

(a) if the pregnancy of a patient is terminated by a legally qualified medical practitioner in a case where that practitioner and 1 other legally qualified medical practitioner are of the opinion, formed in good faith after both have personally examined the patient—

(i) that the continuance of the pregnancy would involve greater risk to the life of the patient, or greater risk of injury to the physical or mental health of the patient, than if the pregnancy were terminated; or

(ii) that there is a substantial risk that, if the pregnancy were not terminated and the child were born to the patient, the child would suffer from such physical or mental abnormalities as to be seriously handicapped,

and where the treatment for the termination of the pregnancy is carried out in a hospital, or a hospital of a class, declared by regulation to be a prescribed hospital, or a hospital of a prescribed class, for the purposes of this section; or

(b) if the pregnancy of a patient is terminated by a legally qualified medical practitioner in a case where that practitioner is of the opinion, formed in good faith, that the termination is immediately necessary to save the life, or to prevent grave injury to the physical or mental health, of the patient.

- (2) Subsection (1)(a) does not refer or apply to a patient who has not resided in South Australia for a period of at least 2 months before the termination of the pregnancy.
- (3) In determining whether the continuance of a pregnancy would involve such risk of injury to the physical or mental health of a patient as is mentioned in subsection (1)(a)(i), account may be taken of the patient's actual or reasonably foreseeable environment.
- (4) The Governor may make regulations—
- (a) for requiring an opinion as referred to in subsection (1) to be certified by the legally qualified medical practitioners or practitioner concerned in such form and at or within such time as may be prescribed and for requiring the preservation and disposal of any such certificate made for the purposes of this Act; and
 - (b) for requiring a legally qualified medical practitioner who terminates a pregnancy, and the superintendent or manager of the hospital in which the termination is carried out, to give notice of the termination and such other information relating to the termination as may be prescribed to the Director-General of Medical Services; and
 - (c) for prohibiting the disclosure, except to such persons or for such purposes as may be prescribed, of notices or information given under the regulations; and
 - (d) declaring a particular hospital or a class of hospitals to be a prescribed hospital or a prescribed class of hospitals for the purposes of this section; and
 - (e) for providing for, and prescribing, any penalty, not exceeding \$200, for any contravention of, or failure to comply with, the regulations.
- (5) Subject to subsection (6), no person is under a duty, whether by contract or by any statutory or other legal requirement, to participate in any treatment authorised by this section to which the person has a conscientious objection (but in any legal proceedings the burden of proof of conscientious objection rests on the person claiming to rely on it).
- (6) Nothing in subsection (5) affects any duty to participate in treatment which is necessary to save the life, or to prevent grave injury to the physical or mental health, of a pregnant woman.
- (7) Subsection (1) does not apply to, or in relation to, a person who, with intent to destroy the life of a child capable of being born alive, by any wilful act causes such a child to die before it has an existence independent of its parent where it is proved that the act which caused the death of the child was not done in good faith for the purpose only of preserving the life of the parent.

(8) For the purposes of subsection (7), evidence that someone had at any material time been pregnant for a period of 28 weeks or more is, in the absence of proof to the contrary, proof that the person was at that time pregnant of a child capable of being born alive.

5 (9) For the purposes of sections 81 and 82, anything done with intent to procure someone to miscarry is unlawfully done unless authorised by this section.

Part 5—Amendment of *Criminal Law (Forensic Procedures) Act 2007*

10 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:
or the breast region of a female person or a transgender or intersex person who identifies as female,

15 (2) Section 21(3)—delete "the opposite" and substitute:
a different

Part 6—Amendment of *Domicile Act 1980*

11—Amendment of long title

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

12—Amendment of section 3—Interpretation

Section 3—after the definition of *country* insert:

25 *domestic partner* means a person who is a domestic partner within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not;

13—Amendment of section 7—Capacity to have independent domicile

Section 7(1)—delete subsection (1) and substitute:

(1) A person is capable of having an independent domicile if—
30 (a) the person has attained the age of 18 years; or
(b) the person is, or has at any time been, married or the domestic partner of another,
but not otherwise.

14—Amendment of section 8—Domicile of certain children

(1) Section 8(1)—delete subsection (1) and substitute:

(1) In this section—

child means a person under the age of 18 years who is not, and has not at any time been, married or the domestic partner of another.

(2) Section 8(3)(a)—delete "in wedlock"

Part 7—Amendment of *Equal Opportunity Act 1984***15—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 *potential pregnancy*—delete "woman" wherever occurring and substitute in each case:

person

(4) Section 5(1), definition of *sexuality*—delete the definition

(5) Section 5(5)—delete subsection (5)

16—Amendment of section 6—Interpretative provisions

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

gender identity or a particular race

17—Amendment of heading to Part 3

Heading to Part 3—delete "**chosen gender**" and substitute:

gender identity

18—Amendment of section 29—Criteria for discrimination on ground of sex, sexuality 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

19—Amendment of section 30—Discrimination against applicants and employees

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

sexuality or gender identity

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

sexuality or gender identity

20—Amendment of section 31—Discrimination against agents and independent contractors

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

sexuality or gender identity

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

sexuality or gender identity

21—Amendment of section 32—Discrimination against contract workers

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

sexuality or gender identity

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

sexuality or gender identity

22—Amendment of section 33—Discrimination within partnerships

- (1) Section 33(1)—delete "chosen gender or sexuality" and substitute:

sexuality or gender identity

- (2) Section 33(3)—delete "chosen gender or sexuality" and substitute:

sexuality or gender identity

- (3) Section 33(4)—delete "chosen gender or sexuality" and substitute:

sexuality or gender identity

23—Amendment of section 34—Exemptions

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

sexuality or gender identity

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

sexuality or gender identity

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

sexuality or gender identity

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

gender identity

24—Amendment of section 35—Discrimination by associations

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

sexuality or gender identity

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

sexuality 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(2b)—delete "chosen gender" and substitute:

gender identity

25—Amendment of section 36—Discrimination by qualifying bodies

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

sexuality or gender identity

26—Amendment of section 37—Discrimination by educational authorities

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

sexuality or gender identity

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

sexuality or gender identity

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

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

sexuality or gender identity

28—Amendment of section 39—Discrimination in provision of goods and services

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

sexuality or gender identity

5 **29—Amendment of section 40—Discrimination in relation to accommodation**

(1) Section 40(1)—delete "chosen gender or sexuality" and substitute:

sexuality or gender identity

(2) Section 40(2)—delete "chosen gender or sexuality" and substitute:

sexuality or gender identity

10 **30—Amendment of section 45—Charities**

Section 45(a)(ia)—delete "chosen gender" and substitute:

particular gender

31—Amendment of section 47—Measures intended to achieve equality

15 (1) Section 47—delete "the one sex, persons of a chosen gender, or persons of a particular sexuality" and substitute:

a particular sex, sexuality 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

20 **Part 8—Amendment of *Evidence Act 1929***

32—Repeal of section 34H

Section 34H—delete the section

Part 9—Amendment of *Family Relationships Act 1975*

33—Amendment of section 10A—Interpretation

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

different

Part 10—Amendment of *Health Practitioner Regulation National Law (South Australia) Act 2010*

30 **34—Amendment of Schedule 2—Health Practitioner Regulation National Law**

(1) Schedule 2, clause 123A(1)(f)—delete "a woman" and substitute:

someone

- (2) Schedule 2, clause 123A(2), definition of *restricted birthing practice*—delete "a woman" and substitute:

someone who is pregnant

Part 11—Amendment of *Landlord and Tenant Act 1936*

5 **35—Repeal of section 44**

Section 44—delete the section

Part 12—Amendment of *Payroll Tax Act 2009*

36—Amendment of section 53—Maternity and adoption leave

- 10 (1) Section 53(1)(a)—delete ", being leave given to a female employee in connection with her pregnancy or the birth of her child" and substitute

given to an employee who is or was pregnant where the leave is used in connection with the pregnancy or birth of the employee's child

- (2) Section 53(1)(b)—delete "him or her" and substitute:

the employee

15 **Part 13—Amendment of *Settled Estates Act 1880***

37—Repeal of sections 48, 49 and 50

Sections 48, 49 and 50—delete the sections

Part 14—Amendment of *Sexual Reassignment Act 1988*

38—Amendment of section 3—Interpretation

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

a different