



20 February 2015

# Memorandum

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## INTRODUCTION

1. This brief (**Brief**) has been prepared by the Human Rights Law Centre (**HRLC**) and the Victorian Gay & Lesbian Rights Lobby (**VGLRL**), with endorsement<sup>1</sup> from **Transgender Victoria (TGV) A Gender Agenda (AGA) and Organisation Intersex International Australia (OII)** for the Commonwealth Attorney-General's Office and Commonwealth Attorney-General's Department to inform the Australian Government's approach to the exemption of state and territory laws under the *Sex Discrimination Act 1984* (Cth) (**SDA**). A version of this Brief may also be shared with state and territory governments across the country and statutory human rights institutions at the national and state levels.
2. The Brief comprises this memorandum together with the attached **Table** that summarises the results of the research and analysis. These conclusions are summarised below at paragraphs 54 to 76 and laws have been grouped thematically and categorised according to the level of complexity. The Table also considers Commonwealth laws identified as potentially discriminatory, as this review process is also a useful opportunity to reconsider the drafting of older Commonwealth laws in light of the new protections in the SDA. The organisations would like to acknowledge the significant pro bono legal assistance generously provided by law firm Lander & Rogers that contributed to the development of this Brief, particularly the work undertaken to prepare the Table.
3. The Brief proposes a way forward for the consideration of these issues by Government. We thank the Commonwealth Government for granting only a 12 month extension to state and territory governments in 2014. We hope this limited extension (along with this Brief) will help encourage state and territory governments to identify any specific laws they wish the Commonwealth to consider for permanent exemption. Approval of on-going permanent exemptions for particular laws or another extension of 12 months should only occur following rigorous discussion and analysis of alternative options. For further detail on the proposed process and timeline see paragraphs 80 to 84
4. The Brief concerns issues that impact on lesbian, gay, bisexual, transgender, and intersex communities. We encourage the Government to consult further with representatives of these communities, particularly with representatives of transgender and intersex communities given the complexity of the issues involved.

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<sup>1</sup> The attached table has been endorsed by all organisations except OII due to resource constraints.

## SECTION A: BACKGROUND

5. The SDA currently prohibits discrimination on the basis of particular attributes including (but not limited to) a person's gender identity, sexual orientation and intersex status.<sup>2</sup> These protected attributes were introduced with multi-party support including the current Commonwealth Government. The SDA does not prohibit all discrimination on the basis of these attributes. Rather, it makes it unlawful for a person (the "discriminator") to discriminate against another person or group of people (the "victim/s") in certain, prescribed areas of public life, subject to specific permanent statutory exemptions.
6. This Brief focuses on the exemption contained in section 40B. This section provides that it is *not unlawful* to discriminate against a person or group of people on the basis of their gender identity, sexual orientation or intersex status in circumstances where the discriminator was acting "***in direct compliance with***" another law prescribed by the regulations. It is of relevance to note that this clause does not cover the protected attribute of marital or relationship status.
7. The *Sex Discrimination Regulations 1984 (Regulations)* previously prescribed *all* Commonwealth, State and Territory laws for the purposes of section 40B of the SDA for a one year period. These Regulations were amended in July 2014 to remove the reference to Commonwealth laws and extend the expiration date of the Regulations to 31 July 2015. This means, presently, any conduct which is "in direct compliance" with any state or territory legislation is not captured by the SDA. We understand the Regulations are currently under review by both Commonwealth and various State Governments.

## SCOPE OF RESEARCH

8. Against that background, we have undertaken an analysis of acts and regulations in each jurisdiction which could, potentially, operate to exempt conduct that would otherwise constitute unlawful discrimination on the basis of gender identity, sexual orientation or intersex status.
9. The acts and regulations were identified using key term searches in databases. Whilst every effort was made to identify problematic laws, we cannot guarantee that these searches comprehensively identified every problematic law in existence.

## Process

10. Our research is set out in the attached Table. Our strategy was to approach the task as broadly as possible (in the time available) by including any act or regulation which, on face value, could potentially discriminate on the basis of gender identity, sexual orientation or intersex status.
11. In the second stage of our research, we identified various instruments which, following analysis, were very unlikely to permit unlawful discrimination of this nature. For example, for reasons discussed further below, we removed references to instruments which merely use gendered language such as "he" or "she" but did not

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<sup>2</sup> Relatedly, the SDA also protected against discrimination on the basis of a person's "marital or relationship status" which may, in certain circumstances, also afford protections against discrimination for the gay, lesbian, gender diverse or intersex community, particularly where "marriage" is imposed as a necessary condition, requirement or practice to access some kind of benefit, service or opportunity. These protections are also subject to a number of exemptions, but are not specifically covered by the exemption for acts done in direct compliance with prescribed laws outlined in section 40B.

otherwise seem to draw any material distinction on the basis of sex or gender. For completeness we have retained these items in the table to indicate they were considered.

12. Wherever possible we have also included relevant commentary, such as flagging other exemptions which may apply under the SDA and brief comments about the extent to which conduct is likely to meet the threshold of things done "in direct compliance with" the law.

### **Limitations**

13. With the time and resources available, it was not possible to undertake detailed research of all statutes outside of key word searches, nor was it possible to conduct an in-depth analysis of each and every instrument referred to in the table.
14. We recognise that many of these laws give rise to complex legal questions. We also note that the surrounding policy and operational contexts are important in determining how the laws will operate and impact on individuals in practice.
15. It is possible that many of the laws referred to in the Table may, in practice, be interpreted and implemented in a non-discriminatory way. This may be revealed after further discussions with state and territory departmental officers that delve further into the policy context and the way in which the laws are operationalised.

### **DISCRIMINATION ON THE BASIS OF INTERSEX STATUS AND GENDER IDENTITY**

16. The attributes of 'gender identity' and 'intersex status' as defined in the SDA are new to Australian law. At this early stage it is difficult to predict how the Courts will interpret and analyse discriminatory conduct on the basis of these attributes. For this reason, we have sought to take an expansive approach to identifying 'gender identity' or 'intersex status' as potentially relevant attributes in Annexure C.
17. However, we thought it useful to clarify the distinctions between these two attributes and their relevance to specific communities.
18. The protection for people with intersex variations is based on bodily characteristics and unfavourable treatment because of physical sex characteristics that are neither or both wholly female and/or male.<sup>3</sup> Individuals either possess these characteristics or they do not (the latter can be described non-intersex individuals). Discrimination on the basis of intersex status is likely to arise in situations involving body searches, for example, or other processes that may not properly account for the physical variation of intersex people.
19. Policies and practices in relation to surgeries on intersex infants and fertility treatments (including pre-implantation genetic diagnosis and sex selection) are problematic for intersex people. Laws relating to female genital mutilation, for example, may impact on intersex infants. We have not included these laws in this review because these practices have already been the subject of extensive consideration by the Senate Committee on Community Affairs<sup>4</sup>. The Report

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<sup>3</sup> The complete definition in Section 4 SDA reads: the status of having physical, hormonal or genetic features that are a) neither wholly male or female; or b) a combination of female and male; or c) neither female nor male.

<sup>4</sup> Senate Community Affairs References Committee, *Involuntary or coerced sterilisation of intersex people in Australia*, October 2013 (available at

considers in detail many of the issues surrounding surgeries and other medical treatment performed on intersex infants and adults, and makes a number of recommendations for further action by Government. We recommend the Attorney-General's Department urgently undertake further work to clarify compliance with the SDA in this area.

20. In addition, some adults with intersex variations experience discrimination because their physical appearance is interpreted as sexually ambiguous or does not conform to cultural or societal expectations. For example, an intersex woman with a large clitoris may experience difficulties when accessing female-only change rooms or participating in sport. An intersex woman who is tall, with a deep voice and large hands, may experience discrimination because of these physical attributes. In this way, the sphere of conduct captured by the protection for intersex people is similar to, or intersects with, the 'gender identity' attribute, however, persons with intersex variations may or may not have physically transitioned or changed gender classification when experiencing such discrimination.
21. In comparison, 'gender identity' is directed towards an individual's self-identified sense of gender, which may or may not accord with their sex recorded at birth. The attribute is defined in the SDA to include gender related appearance, characteristics and mannerisms. This attribute was introduced primarily to protect transgender people from discrimination but could conceivably apply to prohibit behaviour in a wider range of contexts. For example, a butch lesbian would be protected from discrimination based on her masculine appearance. A transgender person is someone whose gender identity goes not unambiguously conform to that socially and culturally expected of a person with their biological or anatomical sex. A gender identity may be male, female or another description altogether. For example, 'genderqueer', 'neuter', 'androgynous' are terms that are used to describe gender identities that are neither male or female.
22. An individual's gender identity is a separate matter to their status as an intersex person, and their sexual orientation. Any person may have a gender identity that is male, female, both, or another option such as 'non-binary', 'non-specific', 'gender queer' or 'androgynous'.

## INTERPRETING REFERENCES TO SEX AND GENDER IN LEGISLATION

23. When considering whether compliance with legislation results in discrimination on the basis of gender identity and/or intersex status, it is necessary to understand how references to sex or gender are to be interpreted. This involves consideration of the acts interpretation legislation in each state and territory. In the case of specific laws, the relevant legislative context would need to be considered as a whole along with extrinsic materials. This detailed consideration has not been possible for every law considered in the Table. However, in this memorandum we have sought to identify key issues and outline some general principles to be applied.
24. In this section of our memorandum, we consider what the acts interpretation legislation in each state and territory says about interpreting words which import a particular gender. **Annexure A** summarises these provisions in each jurisdiction. **Annexure B** excerpts the key terms from each state and territory's acts interpretation legislation.

25. The majority of the interpretation acts contain a provision which says that a reference to gender should be taken to include "every other gender" or "each other gender". We discuss the implications of this in more detail below.

#### **'Every other gender' (Cth, ACT, NSW, TAS, VIC)**

26. The Acts interpretation legislation in the Commonwealth, Australian Capital Territory, New South Wales, Tasmania and Victoria provide that words indicating a gender include "every other gender". "Every other gender" was recently considered by the High Court in *NSW Registrar of Births, Deaths and Marriages v Norrie* [2014] HCA 11 (**Norrie's Case**).
27. In *Norrie's Case*, the Registrar of Births, Deaths and Marriages (**Registrar**) argued that unacceptable confusion would ensue if the *Births, Death and Marriages Registration Act 1995* (NSW) recognised more than two categories of sex or an "uncategorised" sex.
28. The High Court noted that this argument could only arise in cases where other legislation requires that a person is classified as male or female for the purpose of legal relations but then went on to say that, for the most part, the sex of individuals concerned is irrelevant to legal relations. In support of this proposition, the High Court cited section 8(a) of the *Interpretation Act 1987* (NSW) which provides that "a word or expression that indicates one or more particular genders shall be taken to indicate every other gender". The High Court noted that the chief, and possibly only, case where the sex of the parties is legally significant is marriage. As the Registrar failed to identify any statute which could not be construed so as to operate as intended in respect of a person whose sex was "non-specific", the High Court rejected the Registrar's argument.
29. The reasoning in *Norrie's Case* suggests that the phrase "every other gender" is broad enough to encompass a non-binary approach to gender. In other words, it held that not all humans fall within the category of "male" or "female" and, moreover, it is generally unnecessary for people to be ascribed to one of these categories.

#### **'Each other gender' (NT, QLD, WA)**

30. The Acts interpretation legislation in the Northern Territory, Queensland and Western Australia provide that words indicating a gender include "each other gender".
31. To our knowledge, "Each other gender" has not been considered by the courts in relation to an individual. There are some cases which consider this phrase in the context of bodies corporate and incorporate, however there is little guidance from the legislature and the courts as to how "each other gender" applies to individuals.
32. The explanatory memorandum to the bill which introduced the phrase "each other gender" into the *Interpretation Act 1984* (WA) explains that it was introduced to allow references to gender to include the "neuter" gender. However, the only example provided by the explanatory memorandum of a "neuter" person is that of a body corporate.
33. Nonetheless, *Norrie's Case* is likely to impact future decisions on this issue and, in our view, lends weight to the argument that "each other gender" is not exclusive to the male/female binary.

### **'masculine gender construed as including feminine gender and vice versa' (SA)**

34. In South Australia, the *Acts Interpretation Act 1915* (SA) provides that words importing a masculine gender are to be construed as including the feminine gender and vice versa. This is reminiscent of laws which speak of the "opposite sex", which has been interpreted to mean the contrasting categories of male and female.<sup>5</sup>
35. South Australia appears to be the least progressive of the Australian jurisdictions, in the sense that references to sex and gender in legislation are likely to be interpreted in a binary way, except where law in question lends itself to a more open interpretation.
36. For example, in *Norrie's Case*, the High Court found that, although the *Births, Deaths and Marriages Registration Act 1995* (NSW) only recognised "male" and "female" as registrable classes of sex, it was relevant that section 32A(b) also recognised that there may be ambiguities of sex. In that context, there was scope for the Registrar to acknowledge ambiguities and the Registrar was not required to register all people as either "male" or "female".

### **Interpretive principle: the specific overrides the general**

37. There is a statutory interpretation principle that where an Act contains provisions of a general nature and also contains provisions dealing with a particular subject matter, where the provisions are in conflict, the provisions of specific application prevail to the extent of the repugnancy and the general provisions will be inapplicable to the subject matter of the specific provisions.<sup>6</sup> In other words, the specific provisions in an Act override the general provisions to the extent of any inconsistency.
38. This is significant for our purposes because even though the Acts interpretation statutes contain a provision which say that a reference to gender should be taken to include "every other gender" or "each other gender", where an Act makes material and specific distinction on the basis of sex or gender - such as conferring a benefit only on a person of a particular sex - it may override the general interpretive principles. For this reason, we have focussed on laws which make a specific and material distinction on the basis of sex or gender, as opposed to merely using gendered pronouns such as "he" and "she".
39. Consider, for example, the *Correction Management Regulations 2010* (ACT) (**Corrections Regulations**) which prescribe different ages for men and women for the purposes of calculating expected hearing loss. Notwithstanding that section 145 of the *Legislation Act 2001* (ACT) provides that "*words indicating a gender include every other gender*", the Corrections Regulations makes a specific distinction between how men and women are to be treated. As such, the references to "male" and "female" are not interchangeable, in our view. It also follows that there is some ambiguity about how the Corrections Regulations would deal with a person who was neither male nor female.
40. For this reason we recommend amendments to state and territory laws to resolve this ambiguity for individuals who identify as of non-specified sex or neither male or female.

### **Impact on transgender/intersex people not yet recognised as their affirmed gender**

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<sup>5</sup> See *Bellinger v Bellinger* [2003] 2 AC 467 as cited in *Norrie's Case* at [33].

<sup>6</sup> *Refrigerated Express Lines (A'Asia) Pty Ltd v Australian Meat and Live-stock Corp* (1980) 29 ALR 333 at 347.

41. In addition to individuals with non-binary gender identities, references to sex and gender in legislation have potential to impact on transgender or intersex men or women where their legal sex (as indicated on their birth certificate) does not correspond with their gender identity (and possibly with Commonwealth Government documents which are issued in accordance with Australian Government Guidelines on the Recognition of Sex and Gender<sup>7</sup>).
42. For example, if a transgender woman, with a male sex/gender marker on their birth certificate was to apply for a position on a board where a certain number of positions were mandated only for 'women' under a particular state law, would the transgender woman be considered a woman for the purposes of that law? A specific reference to woman in this instance would displace the Acts Interpretation Act rule. A birth certificate is prima facie accepted as reflecting a person's sex. The question is whether the state law that deals with women on boards is to be interpreted as including transgender women who have not had their birth certificate altered or whether the state law could be interpreted more broadly. We would argue that best practice in these situations would be (where the law permitted) to recognise a person based on their gender identity. This is consistent with the principles of the Guidelines on the Recognition of Sex and Gender.<sup>8</sup>
43. Ultimately this legal assessment would depend on the relevant legislative context in each case, including reading the law as a whole and the extrinsic materials. However, it will certainly be open for a defendant to argue that they were acting "in direct compliance" with a state law by refusing to appoint a transgender woman to a board appointment reserved for a female.
44. For this reason, we have recommended that state and territory laws be amended to clarify that such references also apply to transgender and intersex men and women in their affirmed gender.

#### **WHAT DOES IT MEAN TO ACT "IN DIRECT COMPLIANCE WITH" LEGISLATION?**

45. As noted above, the section 40B exemption only applies to conduct that is "in direct compliance with" legislation.
46. In *Waters v Public Transport Corporation* (1991) 173 CLR 349, the court considered the defence of statutory compliance in the context of the Victorian equal opportunity legislation which, at the time, provided a defence for discriminatory conduct "if it was necessary for a person to do it in order to comply with" a provision of any other act. In that case, McHugh J said the provisions which necessitated the discrimination must be "mandatory and specific" in order to attract the defence. In other words, the defence would apply in circumstances where the discriminator could not reasonably have acted otherwise. Similar logic was followed in the case of *SUPR v Minister for Transport Services* [2006] NSWADT 83, which also considered the phrase "if it was necessary for the person to do it in order to comply with a requirement of" legislation.
47. The Federal Court also considered the defence for acts done "in direct compliance with" legislation (which is the test under the SDA) in the case of *Keech v Western Australia Metropolitan Health Services* (2010) ALR 188. In that case, the respondent employer relied on the defence to justify ceasing weekly payments under workers

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<sup>7</sup> It is important to note, all states and territories (other than the Australian Capital Territory), do not necessarily comply with the principles of recognition outlined in the Commonwealth Guidelines.

<sup>8</sup> Australian Government Guidelines on the Recognition of Sex and Gender (available at: <http://www.ag.gov.au/Publications/Documents/AustralianGovernmentGuidelinesontheRecognitionofSexandGender/AustralianGovernmentGuidelinesontheRecognitionofSexandGender.PDF>)

compensation law to the applicant. Relevantly, the workers compensation law stipulated the entitlement as follows:

*Subject to the exceptions in Schedule 5, an entitlement of a worker to weekly payments of compensation for incapacity for work resulting from an injury under this Act ceases—*

*(a) if the injury occurs on or before the date on which the worker attains the age of 64 — on attaining the age of 65; or*

*(b) if the injury occurs after the date on which the worker attains the age of 64 — on the date one year after the injury occurs.*

48. Evidently, the entitlement varied depending on the applicant's age. However, in upholding the defence for conduct "in direct compliance with" legislation, Justice Siopis said:

*In this case, the respondent acted in response to the very terms of s 56 of the Compensation Act — a section of the Act which defined the extent and term of Ms Keech's entitlement to weekly payments by reference to her age at the time that the workplace accident occurred. The Compensation Act, thereby, directly imposed on the respondent an obligation to pay Ms Keech weekly payments for the defined period. By making weekly payments to Ms Keech for the duration of that term, and for no longer than that term, the respondent acted in direct compliance with the statute.*

*I do not accept the submission made by Ms Keech that the payments made to Ms Keech were not made in direct compliance with the statute, because the respondent was at liberty to keep making the payments to Ms Keech after the statutory expiry date. That proposition ... is irrelevant...*

49. It follows from these cases that the exemption for things done "in direct compliance with" legislation will only be engaged where the legislation is mandatory and specific in requiring the discriminator to engage in the discriminatory conduct.
50. We have highlighted in the Table some circumstances in which it would be difficult for the discriminator to establish this defence. The various laws regarding equal representations on boards and committees and how they operate in relation to intersex and gender diverse people are a good example. For example, consider a situation where the law requires at least two men and two women to be appointed to a particular committee. Only in certain factual circumstances would this actually require a gender diverse or intersex person to be *excluded* from the Committee. Therefore, it is quite unlikely that the exemption would be engaged in practice. While we have flagged this as an issue in various contexts, it has not been possible to consider the full range of facts and circumstances in which the defence would or would not be engaged.

## **AREA OF PUBLIC LIFE PROTECTED UNDER THE SDA**

51. As noted in paragraph 5 above, the SDA does not prohibit discrimination in all contexts. Rather, it prohibits discrimination in certain, prescribed areas of public life.
52. Specifically, the SDA prohibits discrimination in employment and related matters; the provision of goods, services and facilities; accommodation; land; clubs; the



administration of Commonwealth laws and programs; and, requests for information.<sup>9</sup> Unless it can be shown that a discriminator was acting within one of these areas of public life, discriminatory conduct may not be captured by the SDA.

53. This raises some complex questions, particularly around the meaning of a “service”. The case law considering the meaning of a “service” under anti-discrimination legislation is ambiguous. There may be scenarios raised by the laws identified in the Table that require consideration of this issue. We recommend that an expansive approach be taken by the Government when identifying potentially problematic laws within the scope of the SDA, in light of the beneficial nature of discrimination laws and the public interest in reducing discrimination faced by vulnerable people. For example, we have assumed (and recommend that the Government assumes) all acts done by a public servant may constitute a service, when considering potentially problematic laws.

## CONCLUSIONS & ASSESSMENT

54. The Table contains an analysis of all potentially problematic laws that we have identified together with an analysis of the complexity of the reform required (allocated to categories numbered 1 to 5). The Table orders the laws by jurisdiction. However, the laws can also be broadly grouped by theme. Set out below are the thematic groupings and our assessment of the likely complexity of the reform required.

- 1 – minor technical issues
- 2 – some technical challenges
- 3 – may raise political considerations
- 4 – change recommended but may be captured under an existing exemption
- 5 – no amendment recommended but provided for noting

### Category 1 – minor technical issues

55. **Bodily Searches for individuals who are neither male nor female, and individuals with gender identity or presentation different to legal documentation** - some of these changes may need to accommodate a person who is non-specified or identifies as neither male or female in relation to bodily searches or photography by forensic procedures. In these cases, we would recommend that individuals not be required to “identify” as either male or female (which is the language in some of the law) but that they may ‘elect’ to be searched as either male or female (which is the approach currently taken in some more inclusive policies – e.g. Airport searches). In these scenarios, the principle to apply here is the individual selecting how the situation should occur and that their documentation (i.e. birth certificates, drivers license etc) not be the basis on which a decision is made.
56. **Term ‘same-sex’ doesn’t include all trans & intersex people** - for people who identify as neither male nor female, these people will not fall into the category of a “same-sex” or “opposite sex” relationship. Some laws use the term “different sex”, which generally is seen as inclusive of non-binary relationships. However where the same-sex amendments have occurred to reference only “including same-sex” a clarification may be required in Acts Interpretation Act to recognise the laws intention to include all couples, including those who are in a non-binary relationship (e.g. *Supreme Court Act 1933 (ACT)*). The use of such terms also causes confusion for couples when one or more parties is transgender and does not possess legal documentation that matches their gender identity or presentation. Such couples

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<sup>9</sup> See Division 1 (Discrimination in Work) and Division 2 (Discrimination in other areas), SDA.

would generally be inappropriately classified as opposite-sex, when in fact they are same-sex, and vice-versa.

57. **Ensure ‘woman’ or ‘female’ is inclusive of affirmed gender when making appointments** - Women who have an intersex variation and transgender women should be included in the mix of appointments that are legislated to include a minimum number of female/women positions. In line with the ‘gender identity’ definition in the SDA the identification of ‘women’ for these purposes should not be based on birth certificates that may require surgical intervention or divorce in order to obtain. In some cases the legislation requires equal representation of men and women, which makes this clarity even more necessary.

### **Category 2 – some technical challenges**

58. **Financial considerations** - predominantly these items have been graded “2” because they related to financial aspects which may involve an actuarial assessment and financial arguments may be raised by Governments in support of continuing discrimination. We recommend careful examination of these arguments. There may also be cases where these laws could fall under the exemptions in the SDA for superannuation funds, which is broadly defined and presumed to include pensions.
59. **Parental Leave** – some laws are structured as Maternity and Paternity Leave at the state level (e.g. *Payroll Tax Act 2007 No21* (NSW)). Federally this scheme ensures that same-sex partners can access maternity leave (as primary care giver) and paternity leave (if partner of the primary care giver) on an equitable basis. Such amendments at a state level may be considered controversial by Governments that do not support recognition of same-sex parents and families on an equal footing to opposite-sex couples.
60. **Change of sex** – with the exception of the ACT (where recent legislation set a benchmark for inclusiveness and non-discrimination in this area), births, deaths and marriages laws generally require surgery to be undertaken prior to the correction to the sex of a birth record. Such a requirement is a significant issue for transgender people, and in some cases intersex people who wish to change their assigned gender, and is out of step with current federal practice. While *Norrie’s case* may have enabled the registration of persons of non-specific sex in NSW, the position in other states is not clear and the surgery requirement remains even for these individuals. Similar reforms at a federal level did not generate controversy but may be resisted by conservative state governments. This means this group of reforms may sit somewhere between category 2 and category 3.

### **Category 3 – May raise political considerations**

61. While some of the laws in this are a straight forward minor amendment, the topic of the law or the issue they amend may, on a *highly conservative assessment*, require political considerations. We strongly support the amendments regardless of any political assessment.

### ***FAMILY LAWS (ART / IVF / Surrogacy / Adoption)***

62. ***Adoption Act 2009 (QLD), Adoption Act 1984 (VIC), Adoption Act 1988 (SA) (inc Adoption Regulations 2004), Adoption of Children Act (NT)*** – Beyond the self-explanatory controversy surrounding LGBTI couples adopting children, there are some minor amendments required to adoption laws regarding the manner in which

they treat people of specific gender who may have anatomy of the other gender. For example, the infertility provisions assume men have male anatomies and women have female anatomies. This may not always be the case, particularly with intersex people who may have both or neither, thus rendering them infertile.

63. **Assisted Reproductive Technology Act 2007 No 69 (NSW)** – While the NSW law was updated to include same-sex couples it may restrict access by a person who does not identify as a woman, but has female reproductive systems and wishes to use assisted reproductive technology.
64. **Assisted Reproductive Treatment Act 1988 (SA)** – Lesbians are currently unable to access ART in South Australia and this is the last remaining state to discriminate in this manner.
1. **Guardianship of Infants Act (NT)** – This Act assumes a child has a mother and a father, which is inconsistent with section 5D of the *Status of Children Act* (NT) which provides for parentage of a child born through IVF to be granted to the birth mother (consistent with Commonwealth Family Law Act). This is an administrative update, but may nevertheless cause controversy about the perceived rights of children.
65. **Maintenance Act 1965 (VIC)** – This Act links back to the use of the word adopted in the *Adoption Act 1984* (VIC), which does not permit same-sex couples to adopt.
66. **Surrogacy Act 2010 (QLD)** – This is a sensitive topic but only a minor change is required to ensure recognition of non-binary intended parents.
67. **Surrogacy Act 2012 No 34 (TAS)** – While this Act was updated to include same-sex couples, the binary concept of gender used may exclude people who do not identify as male or female. In addition, the structure of “eligible woman” may exclude lesbian couples from access to surrogacy.

#### **OTHER ITEMS**

68. **Anti-Discrimination Act 1991 (QLD)** – This is a minor amendment to ensure that intersex or gender diverse children who do not identify as male and female do not fall through the cracks. However, all issues between LGBTI people and school settings have potential to be controversial so this has been graded “3”.
69. **Anti-Discrimination Act 1991 (QLD) – Reasonable Sex Discrimination Permitted (Clubs)** – While this issue should not be controversial, concerns have been raised in the past about transgender women accessing women-only spaces. The potential for tension is heightened given this is a Queensland law.
70. **Child Employment Act 2006 (QLD) – Prohibition on nudity** – A male child with breasts may not be protected under this Act.
71. **Child Protection Act 2006 (QLD) / Child Protection Act 1993 (SA)** – While these changes strengthen protections against all children, in Queensland it is likely that suggestions of amendments to the *Child Protection Act 2006* to include intersex and transgender child generate concern among some quarters. However, we anticipate that such concern would likely dissipate once education is undertaken and it is understood that the amendments are aimed at strengthening protections.
72. **Criminal Code Act 1899 (QLD) – Unlawful Sodomy** – While age of consent laws in Queensland are both of 16 years for males and females, the sodomy law effectively increases the age of consent for gay men to 18 years. This constitutes indirect discrimination against same-sex attracted men.

#### **Category 4 – change recommended but may be captured under an existing exemption**

73. **Forced Trans Divorce** – Commonwealth Attorneys-General since Phillip Ruddock have previously stated that the *Marriage Act 1961* (Cth) only regulates the point of entry into marriage and does not regulate the situation for continued marriage after the registration. Accordingly, it may be possible that a person may legally change their sex and for their marriage to continue without issues arising under the *Marriage Act*. However, many state governments require transgender people to be single (i.e. not married) before allowing them to amended their birth certificate. This breaks up families unnecessarily by causing a person to choose between having documents in their affirmed gender or maintaining their marriage.
74. **Competitive Sports** – International research shows that physiological attributes in people are on a spectrum. Accordingly a person born a man, living as a woman taking estrogen could have lower levels of testosterone than a person born a woman with naturally occurring higher levels of testosterone produced by their body. Best practice in this area does not necessitate a exemption for sport

#### **Category 5 – no amendment recommended but provided for noting**

75. **No practical amendment identified** – The *Electoral Regulation 1993 (ACT)* permits use of the electoral roll for public health information, for example contacting ‘women’ about breast cancer screening and preventative services. While the access to information should allow a transgender or intersex person to access these services, it is not practical to assume that this information would be meaningfully obtainable from the electoral roll.
76. **No amendment required – use basis of physical attribute, not ‘identification’ as a particular sex** – In some situations, the language of the legislation refers to man or woman, but the essence of the legislation is relying upon (or in many cases referencing) a biological attribute (e.g. a person’s breasts, cervix, pregnancy, etc). In these situations the relevant Acts Interpretation Act and the *Norrie* case suggest that the law should be extended to any person with that physical attribute. However, we suggest that amendment is required when treatment of a person with a particular physical feature is tied to identification with a particular sex/gender. For example, an intersex man with breasts should be accommodated with the same sensitivity as a woman with breasts.

#### **FURTHER COMMENTS**

77. Whilst we note that the Commonwealth laws are no longer subject to the exemption, we have included the findings of our research in relation to laws that may have been potentially inconsistent with the SDA. We would be keen to discuss with the Commonwealth Attorney-General the policy approach to dealing with these laws in practice. In particular in relation to bodily searches.
78. In addition to those laws identified above, it is possible that many other laws leave open the possibility of discrimination due to the fact that they make material distinctions between men/women or male/female but fail to specifically recognise how an intersex or gender diverse person is to be treated. This potential creates a lacuna which leaves an intersex or gender diverse person vulnerable to discrimination. However, whether conduct under those laws actually leads to adverse consequences for gender diverse/intersex people, or indeed constitutes a breach of the SDA, will depend on a range of factors including how the law operates in practice. In the Table these laws have been highlighted in **BLUE**.

79. There were also a significant number of other laws under which the primary basis for the discrimination was marital status. In some cases, these laws would inadvertently fall under the exemption for things done in compliance with the *Marriage Act 1961*. In others, the position is less clear. We have highlighted these laws in **YELLOW**.

## NEXT STEPS

80. We thank you for the dialogue to date with the Commonwealth Attorney-General's Office and the Commonwealth Attorney-General's Department in relation to this issue. We look forward to continuing to assist the Commonwealth in the future. For interests of disclosure, we note our intention to share this brief with our non-government colleagues around the country, to help them engage with their state or territory governments on these matters.
81. In particular, we would appreciate the opportunity to provide input when the Government considers any case put forward by a state or territory government for a law to be prescribed. We encourage the Commonwealth Government to take a rigorous and case-by-case approach to prescribing state and territory laws. To do otherwise would undermine the new national standard and best practice established by the 2013 reforms and, as discussed below, the precedent set by the *Disability Discrimination Act 1992* (Cth).
82. We appreciate that the current Regulations expire on 31 July 2015 and that time may be required to complete negotiations with state and territory governments and for amending legislation to be developed and passed in each jurisdiction. However, we note that state and territory governments have already been permitted over 12 months to consider their position and negotiate with the Attorney-General's Department.
83. Further, we note only a very small number of laws are prescribed from the operation of the *Disability Discrimination Act 1992* (Cth), for example. We encourage the Attorney-General to adopt a similarly rigorous and time-bound approach to exemption of state and territory laws from the operation of the SDA.
84. We suggest the following timeline:

Activity	Timeframe
State and territory governments to nominate proposed laws for consideration by Commonwealth	March 2015
Laws nominated by state and territory governments to be discussed with LGBTI representatives	March to May 2015
Laws agreed between Commonwealth and state/territory governments	Agreed by 30 May 2015
Proposal and passage of regulations prescribing any identified and agreed state and territory laws	Before 31 July 2015

85. We look forward to continuing these discussions. For further information please contact:

Anna Brown (HRLC) on [anna.brown@hrlc.org.au](mailto:anna.brown@hrlc.org.au) or (03) 8636 4456

Corey Irlam (VGLRL) on [corey@vqlrl.org.au](mailto:corey@vqlrl.org.au) or 0401 738 996

## ANNEXURE A - SUMMARY OF ACTS INTERPRETATION LEGISLATION IN EACH JURISDICTION

The following table provides a summary of the position in each State and Territory.

State/Territory	Definition of gender
<b>Commonwealth</b> <i>Acts Interpretation Act 1901</i>	Includes every other gender.
<b>ACT</b> <i>Legislation Act 2001</i>	Includes every other gender.
<b>New South Wales</b> <i>Interpretation Act 1987</i>	Indicates every other gender.
<b>Victoria</b> <i>Interpretation of Legislation Act 1984</i>	Includes every other gender.
<b>Tasmania</b> <i>Acts Interpretation Act 1931</i>	Includes every other gender.
<b>Queensland</b> <i>Acts Interpretation Act 1954</i>	Includes each other gender.
<b>Northern Territory</b> <i>Interpretation Act 1978</i>	Includes each other gender.
<b>Western Australia</b> <i>Interpretation Act 1984</i>	Includes each other gender.
<b>South Australia</b> <i>Acts Interpretation Act 1915</i>	Every word of masculine gender is construed as including the feminine gender and vice versa.

## ANNEXURE B - EXCEPTS FROM THE ACTS INTERPRETATION ACT

State/Territory	Legislation
<p><b>Commonwealth</b> <i>Acts Interpretation Act 1901</i></p>	<p><b>23 Rules as to gender and number</b> In any Act: (a) words importing a gender include every other gender; and</p>
<p><b>ACT</b> <i>Legislation Act 2001</i></p>	<p><b>145 Gender and number</b> In an Act or statutory instrument— (a) words indicating a gender include every other gender;</p> <p><b>169A References to transgender people</b> (1) A transgender person is a person who— (a) identifies as a member of a different sex by living, or seeking to live, as a member of that sex; or (b) has identified as a member of a different sex by living as a member of that sex; whether or not the person is a recognised transgender person. (2) A <b>transgender person</b> includes a person who is thought of as a transgender person, whether or not the person is a recognised transgender person. (3) A <b>recognised transgender person</b> is a person the record of whose sex is altered under the <i>Births, Deaths and Marriages Registration Act 1997</i>, part 4 or the corresponding provisions of a law of a State or another Territory.</p> <p><b>169B References to intersex people</b> An <b>intersex person</b> is a person who, because of a genetic condition, was born with reproductive organs or sex chromosomes that are not exclusively male or female.</p>
<p><b>New South Wales</b> <i>Interpretation Act 1987</i></p>	<p><b>8 Gender and number</b> In any Act or instrument: (a) a word or expression that indicates one or more particular genders shall be taken to indicate every other gender.</p>
<p><b>Victoria</b> <i>Interpretation of Legislation Act 1984</i></p>	<p><b>37 Gender and number</b> In an Act or subordinate instrument, unless the contrary intention appears— (a) words importing a gender include every other gender.</p>
<p><b>Tasmania</b> <i>Acts Interpretation Act 1931</i></p>	<p><b>24A Genders</b> (1) A word or expression that indicates one or more particular genders</p>

	<p>is taken to include every other gender.</p> <p>(2) A word in either the masculine or feminine gender includes a body corporate or unincorporate.</p>
<p><b>Queensland</b> <i>Acts Interpretation Act 1954</i></p>	<p><b>32B Gender</b> In an Act, words indicating a gender include each other gender.</p>
<p><b>Northern Territory</b> <i>Interpretation Act 1978</i></p>	<p><b>24 Gender and number</b> (1) In an Act, words indicating a gender include each other gender.</p>
<p><b>Western Australia</b> <i>Interpretation Act 1984</i></p>	<p><b>10 Gender and number</b> In any written law —</p> <p>(a) words denoting a gender or genders include each other gender.</p>
<p><b>South Australia</b> <i>Acts Interpretation Act 1915</i></p>	<p><b>26 Words importing masculine gender and singular number to include feminine and plural</b> In every Act—</p> <p>(a) every word of the masculine gender will be construed as including the feminine gender;</p> <p>(ab) every word of the feminine gender will be construed as including the masculine gender;</p> <p><b>36A Gender balance in nomination of persons for appointment to statutory bodies</b></p> <p>(1) This section applies if an Act provides for a member of a body to be appointed by the Governor or a Minister on the nomination of a non-government entity.</p> <p>(2) If the Act provides for the non-government entity to nominate a panel of persons from which the Governor or Minister is to select a person for appointment, the Act will be taken to provide that the panel—</p> <p>(a) must include at least 1 woman and 1 man; and</p> <p>(b) must, as far as practicable, be comprised of equal numbers of women and men.</p> <p>(3) If the Act does not provide for the non-government entity to nominate a panel of persons from which the Governor or Minister is to select a person for appointment, the Act will be taken to provide that—</p> <p>(a) the non-government entity must nominate a panel of persons comprised of not less than twice the number of members of the body to be appointed on the nomination of the entity plus one; and</p> <p>(b) the panel—</p>



	<ul style="list-style-type: none"><li>(i) must include at least 1 woman and 1 man; and</li><li>(ii) must, as far as practicable, be comprised of equal numbers of women and men...</li></ul>
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## TABLE OF LEGISLATIVE PROVISIONS WHICH DISCRIMINATE ON THE BASIS OF GENDER IDENTITY, SEXUAL ORIENTATION AND/OR INTERSEX STATUS\*

This Table contains an analysis of all potentially problematic laws that we have identified together with an analysis of the complexity of the reform required (allocated to categories numbered 1 to 5). The Table orders the laws by jurisdiction. However, the laws can also be broadly grouped by theme. Set out below are the thematic groupings and our assessment of the likely complexity of the reform required.

- 1 – minor technical issues
- 2 – some technical challenges
- 3 – may raise political considerations
- 4 – change recommended but may be captured under an existing exemption
- 5 – no amendment recommended but provided for noting

	Laws which discriminate primarily on the basis of marital status and, thus, also indirectly discriminate on the basis of sexual orientation (and intersex status, gender identity to a lesser extent). In some cases the exemption for things done in compliance with the <i>Marriage Act</i> applies, in other cases this is unclear.
	Laws which make a material distinction between sex/gender but do not specify how the law is to deal with a person who is intersex or gender diverse, leaving open the <i>possibility</i> of discrimination (save for laws on bodily searches which are dealt with separately).
	Other laws which may lead to overt/material discrimination, such as restricted access to a service.

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| 5. <a href="#">QUEENSLAND</a>                   |                                      |

\*This Table is based on legal research undertaken in June 2014 and does not account for legislative developments since that time.

## 1. COMMONWEALTH

Commonwealth Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
<a href="#">Anti-Terrorism Act (No. 2) 2005</a>	<p><b>33AA Questioning and search powers in relation to bearer negotiable instruments</b></p> <p>(6) The officer may, with such assistance as is reasonable and necessary, search the person if:</p> <p>(a) the person is about to leave Australia, or has arrived in Australia, or the person is about to board or leave, or has boarded or left, any ship or aircraft; and</p> <p>(b) the officer has reasonable grounds to suspect that there is on the person, or in clothing being worn by the person, a bearer negotiable instrument in respect of which a false declaration has been made;</p> <p>for the purpose of finding out whether the person has with him or her any such bearer negotiable instrument.</p> <p>(7) A customs officer may only exercise the powers under subsection (6) if the customs officer is one in respect of whom a declaration under section 219ZA of the <i>Customs Act 1901</i> is in force.</p> <p>(8) A person must not be searched under subsection (6) except by a person of the same sex.</p>	<p>Gender identity</p> <p>Intersex status</p>	No provision is made for a person who identifies as neither or both male or female, , who is intersex or transgender to elect who they would like to conduct the search.	Bodily searches	1	
<a href="#">Australian Federal</a>	<b>14D Search of arrested person</b>	Gender	No provision is made for a	Bodily	1	

Commonwealth Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
<a href="#">Police Act 1979</a>	<p>(2) If the protective service officer is not of the same sex as the arrested person, an ordinary search or a frisk search of the arrested person for the purposes of subsection (1) may be conducted by:</p> <p>(a) if a protective service officer, a member or a special member of the same sex as the arrested person is reasonably available to conduct the search—that protective service officer, member or special member; or</p> <p>(b) if paragraph (a) does not apply but a police officer or an officer of Customs (within the meaning of subsection 4(1) of the <i>Customs Act 1901</i>) who is of the same sex as the arrested person is reasonably available to conduct the search—that police officer or officer of Customs; or</p> <p>(c) otherwise—any other person who is of the same sex as the arrested person and who is requested by the protective service officer to conduct the search.</p> <p><b>14J Stopping and searching</b></p> <p>(2) The designated person may:</p> <p>(a) stop and detain the suspect for the purpose of searching for the thing; and</p> <p>(b) do any or all of the following for the</p>	<p>identity; intersex status</p>	<p>person who identifies as either or both male or female or who is intersex or transgender to elect who they would like to conduct the search.</p>	<p>searches</p>		

Commonwealth Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>purpose of searching for the thing:</p> <p>(i) if the designated person is of the same sex as the suspect—conduct an ordinary search or a frisk search of the suspect;</p> <p>(3) If the designated person is not of the same sex as the suspect, an ordinary search or a frisk search of the suspect for the purpose of searching for the thing may be conducted by:</p> <p>(a) if another designated person of the same sex as the suspect is reasonably available to conduct the search—that designated person; or</p> <p>(b) if paragraph (a) does not apply but a police officer or an officer of Customs (within the meaning of subsection 4(1) of the <i>Customs Act 1901</i>) who is of the same sex as the suspect is reasonably available to conduct the search—that police officer or officer of Customs; or</p> <p>(c) otherwise—any other person:</p> <p>(i) who is of the same sex as the suspect; and</p> <p>(ii) who is requested by the designated person to conduct the search; and</p> <p>(iii) who consents to conduct the search.</p>					

Commonwealth Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
<a href="#">Australian Security Intelligence Organisation Act 1979</a>	<p><b>25AA Conduct of ordinary or frisk search under search warrant</b></p> <p>An ordinary search or frisk search of a person that is authorised under paragraph 25(4A)(a) must, if practicable, be conducted by a person of the same sex as the person being searched.</p> <p><b>34ZB Power to conduct an ordinary search or a strip search</b></p> <p>(2) An ordinary search of the person under this section must, if practicable, be conducted by a police officer of the same sex as the person being searched.</p> <p><b>34ZC Rules for conduct of strip search</b></p> <p>(1) A strip search under section 34ZB:</p> <p>(a) must be conducted in a private area; and</p> <p>(b) must be conducted by a police officer who is of the same sex as the person being searched; and</p> <p>(c) subject to subsections (3) and (4), must not be conducted in the presence or view of a person who is of the opposite sex to the person being searched; and</p>	Gender identity; intersex status	No provision is made for a person who identifies as neither or both male and female sex, who is intersex or transgender to elect who they would like to conduct the search.	Bodily searches	1	
<a href="#">Border Protection (Validation and</a>	<b>185AA Searches of people on certain ships or aircraft</b>	Gender identity;	No provision is made for a person who identifies as	Bodily searches	1	

Commonwealth Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
<a href="#">Enforcement Powers) Act 2011</a>	<p>(5) A search under this section of a person, and the person's clothing, must be conducted by:</p> <p>(a) an officer of the same sex as the person; or</p> <p>(b) in a case where an officer of the same sex as the person is not available to conduct the search—any other person who is of the same sex and:</p> <p>(i) is requested by an officer; and</p> <p>(ii) agrees;</p> <p>to conduct the search.</p> <p><b>245FA Searches of people on certain ships or aircraft</b></p> <p>(5) A search under this section of a person, and the person's clothing, must be conducted by:</p> <p>(a) an officer of the same sex as the person; or</p> <p>(b) in a case where an officer of the same sex as the person is not available to conduct the search—any other person who is of the same sex and:</p> <p>(i) is requested by an officer; and</p> <p>(ii) agrees;</p> <p>to conduct the search</p>	intersex status	neither or both male or female , who is intersex or transgender to elect who they would like to conduct the search.			

Commonwealth Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
<a href="#">Crimes (Aviation) Act 1991</a>	<b>49 Search powers</b> (3) A person may only be searched under this section by a person who is of the same sex.	Gender identity; intersex status	No provision is made for a person who identifies as neither or both male or female , who is intersex or transgender to elect who they would like to conduct the search	Bodily searches	1	
<a href="#">Crimes Act 1914</a>	<b>3ZI Rules for conduct of strip search</b> (1) strip search: ... (b) must be conducted by a constable who is of the same sex as the person being searched; ... <b>3ZR Conduct of ordinary searches and frisk searches</b> An ordinary search or a frisk search of a person under this Part must, if practicable, be conducted by a person of the same sex as the person being searched.	Gender identity; intersex status	No provision is made for a person who identifies as neither or both male or female , who is intersex or transgender to elect who they would like to conduct the search	Bodily searches	1	
<a href="#">Defence Act 1903</a>	<b>72D Conduct of searches and limited searches</b> A search or a limited search of a person under this Part must, if practicable, be conducted by a person of the same sex as the person being searched. <b>68 Billeting and quartering</b> Members of the Defence Force may in time of war as prescribed be billeted, quartered or cantoned, but nothing in this Act shall authorize the quartering or billeting of any member of the Defence Force in any	Gender identity; intersex status	No provision is made for a person who identifies as neither or both male or female , who is intersex or transgender to elect who they would like to conduct the search  Section 68 is likely to be interpreted as meaning billeted or quartered in	Bodily searches	1	



Commonwealth Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	house solely occupied by women or by women and children.		any house of the opposite sex. This raises issues for people who identify as neither or both male and female as there is no provision enabling such a member of the defence force to elect which house they can be billeted to.			
<a href="#">Defence Force Discipline Act 1982</a>	<p><b>95A Search of persons in custody in custodial facilities</b></p> <p>(2) The search shall be conducted in accordance with the following provisions:</p> <p>(a) the search shall be conducted in the presence of at least 2 other persons who are authorized persons, or authorized members, in relation to the custodial facility;</p> <p>(b) the search shall not be conducted in the presence of a person who is not an authorized person, or an authorized member, in relation to the custodial facility;</p> <p>(c) the accused person shall not be searched by, or in presence of, a person who is not of the same sex as the accused person.</p> <p><b>101X Search warrants</b></p> <p>(7) A person shall not be searched by, or in the presence of, a person who is not of the same</p>	Gender identity; intersex status	No provision is made under s 72D for a person who is neither or both male and female, who is intersex or transgender to elect who they would like to conduct the search.	Bodily searches	1	

Commonwealth Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	sex as the first-mentioned person.					
<a href="#">Extradition Act 1988</a>	<p><b>13 Search and Seizure upon arrest</b></p> <p>(4) A person shall not be searched under subsection (2) except by a police officer of the same sex.</p>	Gender identity; intersex status	No provision is made under s 72D for a person who identifies as neither or both male or female , who is intersex or transgender to elect who they would like to conduct the search.	Bodily searches	1	
<a href="#">Social Security Act 1991</a>	<p><b>4 Family relationships definitions -- couples</b></p> <p><b>armed services widow</b> means a woman who was the partner of:</p> <p>(a) a person who was a veteran for the purposes of any provisions of the Veterans' Entitlements Act; or</p> <p>(b) a person who was a member of the forces for the purposes of Part IV of that Act; or</p> <p>(c) a person who was a member of a peacekeeping force for the purposes of Part IV of that Act; or</p> <p>(d) a person who was a member within the meaning of the Military Rehabilitation and Compensation Act for the purposes of that Act;</p> <p>immediately before the death of the person.</p> <p><b>armed services widower</b> means a man who was the partner of:</p> <p>(a) a person who was a veteran for the purposes of any provisions of the Veterans'</p>	Gender identity; intersex status	<p>Definitions of "widow" and "widower" based on binary concepts of sex/gender. <i>Norries' Case</i> and the <i>Acts Interpretation Act 1901</i> suggest that "widow" and "widower" would extend to any person who is widowed, regardless of their gender.</p> <p>However, as a distinction is drawn between a widow and a widower, if there are provisions in the Act which differentiate between the rights or liabilities of widows and widowers, it would be unclear which category would apply to a person who is neither or both a woman or a man. This may deny the widow/widower to social</p>	Financial	2	

Commonwealth Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>Entitlements Act; or</p> <p>(b) a person who was a member of the Forces for the purposes of Part IV of that Act; or</p> <p>(c) a person who was a member of a Peacekeeping Force for the purposes of Part IV of that Act; or</p> <p>(d) a person who was a member within the meaning of the Military Rehabilitation and Compensation Act for the purposes of that Act;</p> <p>immediately before the death of the person.</p> <p>See also definition of "wife pension" subsection 184(2) or (4) of the Social Security Act</p>		<p>security in the form of armed services payments, such as widow allowances.</p> <p>Note – "Couple" is defined more broadly to include same sex or different sex relationships.</p>			
<a href="#">Veterans' Entitlements Act 1986</a>	<p><b>5E Family relationships definition—couples</b></p> <p><b>widow</b> means:</p> <p>(a) a woman who was the partner of a person immediately before the person died; or</p> <p>(b) a woman who was legally married to a man, but living separately and apart from him on a permanent basis, immediately before he died.</p> <p><b>widower</b> means:</p> <p>(a) a man who was a partner of a person immediately before the person died; or</p> <p>(b) a man who was legally married to a woman, but living separately and apart from her on a permanent basis, immediately before she died.</p>	<p>Gender identity; intersex status</p>	<p>Definitions of "widow" and "widower" based on binary concepts of sex/gender.</p> <p><i>Norries' Case</i> and the <i>Acts Interpretation Act 2001</i> suggest that "widow" and "widower" would extend to any person who is widowed, regardless of their gender.</p> <p>However, as a distinction is drawn between a widow and a widower, if there are provisions in the Act which differentiate between the rights or liabilities of widows and widowers, it</p>	<p>Financial</p>	<p>2</p>	

Commonwealth Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			would be unclear which category would apply to a person who is neither or both male and female. This may deny the widow/widower to social security in the form of armed services payments, such as widow allowances.  Note – “Couple” is defined more broadly to include same sex or different sex relationships.			
<a href="#">Family Law Act 1975</a>	<p><b>43 Principles to be applied by courts</b></p> <p>(1) The Family Court shall, in the exercise of its jurisdiction under this Act, and any other court exercising jurisdiction under this Act shall, in the exercise of that jurisdiction, have regard to:</p> <p>(a) the need to preserve and protect the institution of marriage as the union of a man and a woman to the exclusion of all others voluntarily entered into for life;</p> <p><b>9P Presumptions of parentage arising from marriage</b></p> <p>(1) If a child is born to a woman while she is married, the child is presumed to be a child of</p>	Marital status  (sexual orientation)	Section 43 discriminates against same-sex relationships by disallowing marriage other than as between a man and a woman.	Family and relationship law	5	Query whether covered by s 40(2A) exemption for things done "in direct compliance with" the <i>Marriage Act</i> .

**Comment [L&R1]:** *Norrie's Case* and the *Acts Interpretation Act 1901* suggest that this section would be interpreted to extend to any person who gives birth to a child.

Commonwealth Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>the woman and her husband.</p> <p>(2) If:</p> <p>(a) at a particular time:</p> <p>(i) a marriage to which a woman is a party is ended by death; or</p> <p>(ii) a purported marriage to which a woman is a party is annulled; and</p> <p>(b) a child is born to the woman within 44 weeks after that time;</p> <p>the child is presumed to be a child of the woman and the husband or purported husband.</p> <p>(3) If:</p> <p>(a) the parties to a marriage separated at any time; and</p> <p>(b) after the separation, they resumed cohabitation on one occasion; and</p> <p>(c) within 3 months after the resumption of cohabitation, they separated again and lived separately and apart; and</p> <p>(d) a child is born to the woman within 44 weeks after the end of the cohabitation, but after the divorce of the parties;</p> <p>the child is presumed to be a child of the woman and the husband.</p>					

Commonwealth Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
<a href="#">Marriage Act 1961</a>	<p><b>5 Interpretation</b></p> <p><b>marriage</b> means the union of a man and a woman to the exclusion of all others, voluntarily entered into for life.</p> <p><b>88EA Certain unions are not marriages</b></p> <p>A union solemnised in a foreign country between:</p> <p>(a) a man and another man; or</p> <p>(b) a woman and another woman;</p> <p>must not be recognised as a marriage in Australia.</p>	<p>Sexual orientation</p> <p>Gender identity</p>	<p>The legislation discriminates against same-sex relationships and some relationships involving transgender or gender diverse people by disallowing marriage other than as between a man and a woman.</p>	<p>Family and relationship law</p>	<p>5</p>	<p>S 40(2A) exemption for things done "in direct compliance with" the <i>Marriage Act</i></p>

## 2. AUSTRALIAN CAPITAL TERRITORY

ACT Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
<a href="#">Boxing Control Act 1993</a>	<p><b>11 Professional boxers</b></p> <p>(1) A male commits an offence if he—</p> <p>(a) engages in a professional boxing contest involving a particular style of boxing; and</p> <p>(b) is not registered as a boxer of the class that is appropriate to that style.</p> <p>Maximum penalty: 50 penalty units, imprisonment for 6 months or both ...</p> <p><b>13A Female boxing contests</b></p> <p>A female commits an offence if—</p> <p>(a) she engages in a professional boxing contest; and</p> <p>(b) an approval under section 14 is not in force for the contest.</p> <p><b>14 Approval for female boxing contests</b></p> <p>(1) A female may apply to the Minister for approval to engage in a professional boxing contest ...</p>	Gender identity Intersex Status	Binary concept of gender adopted. The Act only makes provision for 'female' and 'male' boxers. Even considering Norrie's Case, given difference offences exist for males and females it is difficult to know how these offences would apply to a person that is intersex or identifies as neither or both male or female.		1	Exemption under s 42 (Sport) probably <i>not</i> applicable as the law is not about excluding persons from participation in competitive sporting activity.
<a href="#">Children and Young People Act 2008</a>	<p><b>189, (1)</b> This section applies to a transgender or intersex young detainee.</p> <p>(2) On admission to a detention place—</p> <p>(a) the young detainee may tell the director-general the sex the young detainee chooses to</p>	Gender identity Intersex status	Section 189 not discriminatory on its face, although does leave scope for a claim of indirect discrimination if young detainees are required to choose between	Bodily searches	1	

ACT Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>be identified with; or</p> <p>(b) if the young detainee fails to make a choice under paragraph (a)—the director-general may choose the sex the young detainee is to be identified with having regard to the presentation of the young detainee on admission to the place.</p> <p><b>274- Searches of people other than detainees</b></p> <p>(1) The director-general may direct a youth detention officer to conduct a <a href="#">scanning search</a>, <a href="#">frisk search</a> or <a href="#">ordinary search</a> of a person at a detention place who is not a young detainee if the director-general—</p> <p>(a) believes on reasonable grounds that the search is prudent to ensure—</p> <p>(i) the safety of anyone; or</p> <p>(ii) security or good order at the place; or</p> <p>(b) suspects on reasonable grounds that the person is carrying—</p> <p>(i) a prohibited thing; or</p> <p>(ii) anything else that creates, or is likely to create, a risk to—</p> <p>(A) the personal safety of anyone else; or</p> <p>(B) security or good order at the place.</p> <p>(2) The youth detention officer who conducts a <a href="#">frisk search</a> or <a href="#">ordinary search</a> of a person mentioned in</p>		<p>male/female binary and, failing this, the director-general was to incorrectly choose male/female for the person. However, to the extent that this constitutes indirect discrimination, it is likely to be found "reasonable" in all the circumstances, presuming that the identification pertains to appropriate accommodation etc.</p> <p>Regarding section 274, unlike the other legislative provisions that provide for searches of intersex &amp; transgender people , this provision does not appear to take into account that an individual may have a non-binary gender identity or an intersex variation.</p> <p>Section 189 and 573 may not adequately accommodate an</p>			



ACT Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>subsection (1) must—</p> <p>(a) tell the person about the search and the reasons for the search and ask for the person's cooperation; and</p> <p>(b) conduct the search in a private area or an area that provides reasonable privacy for the person.</p> <p>(3) The youth detention officer may conduct a <a href="#">frisk search</a> of the person only if—</p> <p>(a) the person is of the same sex as the officer; or</p> <p>(b) if that is not the case—another person of the same sex as the person to be searched is present while the search is being conducted.</p> <p>(4) The other person mentioned in subsection (3) (b) must not be a young detainee.</p> <p>(5) Part 7.8 (Searches—use of force) does not apply to a search under this section.</p> <p><b>573</b></p> <p>(1) This section applies to a transgender or intersex <a href="#">child</a> or <a href="#">young person in therapeutic protection</a> at a <a href="#">therapeutic protection place</a>.</p> <p>(2) On admission to a <a href="#">therapeutic protection place</a>—</p> <p>(a) the <a href="#">child</a> or <a href="#">young person</a> may tell the operating entity for the <a href="#">therapeutic protection place</a> the sex the <a href="#">child</a> or <a href="#">young person</a> chooses to be identified with; or</p> <p>(b) if the <a href="#">child</a> or <a href="#">young person</a> fails to make a choice under paragraph (a)—the operating entity may choose the sex the <a href="#">child</a> or <a href="#">young person</a> is to be identified with having regard</p>		individual with a non-binary gender identity. .			

ACT Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	to the presentation of the <a href="#">child</a> or <a href="#">young person</a> on admission to the place.					
<a href="#">Corrections Management Act 2007</a>	<p><b>79 Transgender and intersex detainees—sexual identity</b></p> <p>(1) This section applies to a transgender or intersex <a href="#">detainee</a>.</p> <p>(2) For this Act, the sex of the <a href="#">detainee</a> is taken to be—</p> <p>(a) the sex chosen under subsection (3); or</p> <p>(b) if subsection (4) applies—the sex chosen with approval under subsection (4).</p> <p>(3) On admission to a correctional centre—</p> <p>(a) the <a href="#">detainee</a> may tell the director-general the sex the <a href="#">detainee</a> chooses to be identified with; or</p> <p>(b) if the <a href="#">detainee</a> fails to make a choice under paragraph (a)—the director-general may choose the sex the <a href="#">detainee</a> is to be identified with having regard to the report obtained under subsection (5).</p> <p><b>Note</b> <i>Fail</i> includes refuse,</p> <p>(4) The director-general may, on application by the <a href="#">detainee</a>, approve a change in the sex the <a href="#">detainee</a> chooses to be identified with, having regard to the report obtained under subsection (5).</p> <p>(5) Before making a decision under subsection (3) or (4), the director-general must obtain a report by a doctor appointed under section 22 (Health practitioners—non-therapeutic functions) about the <a href="#">detainee</a>'s sexual</p>	Gender identity	<p>On its face, section 79 does not preclude a person from identifying as a sex other than male or female.</p> <p>However, there is scope for the provisions to be interpreted in a discriminatory manner i.e. if the director-general fails to recognise non-binary gender identifications.</p> <p>This may be necessary for practical reasons, as identification is likely to be relevant to the question of whether a detainee is held in a facility primarily for men or women. In the absence of specialist facilities for gender diverse people, this may be necessary.</p>	Bodily searches	1	s 43A (Requests for information and keeping of records) exemption is likely to apply in relation to entries into the register

ACT Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>identity.</p> <p>(6) The director-general must—</p> <p>(a) give the <a href="#">detainee</a> written notice of a decision by the director-general under subsection (3) or (4); and</p> <p>(b) must ensure that the <a href="#">detainee's</a> sex chosen under this section is entered in the register of <a href="#">detainees</a>.</p> <p><b>109 Searches of transgender and intersex detainees</b></p> <p>(1) This section applies if a transgender or intersex <a href="#">detainee</a> is to be subjected to a search under this part.</p> <p>(2) <u>To remove any doubt, the <a href="#">detainee's</a> sex is taken to be that entered for the <a href="#">detainee</a> in the register of <a href="#">detainees</a>.</u></p>					
<a href="#">Crimes (Child Sex Offenders) Act 2005</a>	<p><b>78(5)(c)</b></p> <p>(5) A police officer cannot, under this section, ask a registrable offender who is to be photographed to expose for that purpose—</p> <p>(a) the offender's genitals; or</p> <p>(b) the anal area of the offender's buttocks; or</p> <p>(c) <u>if the offender is female, or a transgender or intersex person who identifies as female—the offender's <a href="#">breasts</a>.</u></p>	<p>Gender identity</p> <p>Intersex status</p>	<p>Section 78(5)(c) - A transgender or intersex individual, who does not identify as female and has breasts, may be discriminated against under this section. Even taking into account <i>Norrie's Case</i> and the <i>Legislation Act 2001</i>, given the section refers to females, transgender people and intersex people, this suggests it</p>	<p>Bodily searches</p>	<p>1</p>	

ACT Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p><b>79 Right to privacy when being photographed</b></p> <p>(1) A photograph taken under section 78 must be taken—</p> <p>(a) in a place where no members of the public are present; and</p> <p>(b) by a person of the same sex as the registrable offender.</p> <p>(2) A police officer present in a place while a photograph is being taken under this section must be of the same sex as the registrable offender.</p> <p>(3) <u>If the offender is a transgender or intersex person who identifies as female, the offender is taken to be female for this section.</u></p> <p>(4) <u>If the offender is a transgender or intersex person who identifies as male, the offender is taken to be male for this section.</u></p>		<p>was not intended to apply to people of all genders. In this case, it would exclude people who do not identify with a gender. It also potentially unfairly impacts on intersex men or transgender men with breasts.</p> <p>Section 79 - a person may not identify as either sex.</p> <p>To the extent that these provisions would otherwise constitute indirect discrimination, the requirement, condition or practice to self-identify as male/female is likely to be reasonable in all the circumstances due to the scarcity of available photographers/police officers who identify as neither male/female. However, the better approach would be to specifically provide for a choice of sex/gender of the examiner.</p>			

ACT Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
<a href="#">Crimes (Forensic Procedures) Act 2000</a>	<p><b>6</b> An <i>intimate forensic procedure</i> is any of the following <i>forensic procedures</i>:</p> <p>(a) an external examination of the genital or anal area, the buttocks, or, for a female or a transgender or <u>intersex person who identifies as a female, the breasts</u>;</p> <p>(b) the taking of a sample of blood;</p> <p>(c) the taking of a sample of pubic hair;</p> <p>(d) the taking of a sample by swab or washing from the external genital or <u>anal area, the buttocks, or, for a female or a transgender or intersex person who identifies as a female, the breasts</u>;</p> <p>(e) the taking of a sample by vacuum suction, by scraping or by lifting by tape from the external genital or anal area, the buttocks, or, for <u>a female or a transgender or intersex person who identifies as a female, the breasts</u>;</p> <p>(f) the taking of a dental impression;</p> <p>(g) the taking of a photograph or video recording of, or an impression or cast of a wound from, the genital or anal area, the buttocks, or, for <u>a female or a transgender or intersex person who identifies as a female, the breasts</u>.</p> <p><b>49B Rules for carrying out forensic procedures— transgender and intersex people</b></p> <p>(1) This section applies if—</p> <p>(a) a <u>forensic procedure</u> is to be carried out on a transgender or intersex person; and</p> <p>(b) the provision under which it is carried out refers to a person of the opposite sex, or the</p>	<p>Intersex status</p> <p>Gender identity</p>	<p><i>Norrie's Case</i> and the <i>Legislation Act 2001</i> suggest that this section should be extended to apply to all people with breasts. However, given the section refers to females, transgender people and intersex people, this suggests it was not intended to apply to people of all gender. In this case, it would exclude people who do not identify as neither or both male or female.</p> <p>However, to the extent that these provisions would otherwise constitute indirect discrimination, they are likely to be reasonable in all the circumstances bearing in mind the practicalities of identifying a forensic examiner who also identifies as neither or both male or female. .</p>	<p>Bodily searches</p>	<p>1</p>	

ACT Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p style="text-align: center;">same sex.</p> <p>(2) The transgender or intersex person may elect to be identified as a male or female.</p> <p>(3) If the transgender or intersex person is a <a href="#">child</a> or <a href="#">incapable person</a>, the transgender or intersex person's <a href="#">interview friend</a> or lawyer may elect that the person be identified as a male or female.</p> <p>(4) If the election is to be identified as a male, the transgender or intersex person is taken, for this Act, to be male.</p> <p>(5) If the election is to be identified as a female, the transgender or intersex person is taken, for this Act, to be female.</p> <p>(6) If the transgender or intersex person does not make an election under subsection (2), but requires that the <a href="#">forensic procedure</a> be carried out by a male, the person is taken, for this Act, to be male.</p> <p>(7) If the transgender or intersex person's <a href="#">interview friend</a> or lawyer does not make an election under subsection (3), but requires that the <a href="#">forensic procedure</a> be carried out by a male, the transgender or intersex person is taken, for this Act, to be male.</p> <p>(8) If the transgender or intersex person does not make an election under subsection (2), but requires that the <a href="#">forensic procedure</a> be carried out by a female, the person is taken, for this Act, to be female.</p> <p>(9) If the transgender or intersex person's <a href="#">interview friend</a> or lawyer does not make an election under subsection (3), but requires that the <a href="#">forensic procedure</a> be carried out by a female, the transgender or intersex person is</p>					

ACT Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions															
	<p>taken, for this Act, to be female.</p> <p><b>59(2)</b></p> <p>(2) However, the carrying out of the following <a href="#">forensic procedures</a> need not be videorecorded:</p> <p>(a) the taking of a handprint, fingerprint, footprint or toeprint;</p> <p>(b) the taking of a photograph or video recording of a part of the body (other than the genital or anal area, the buttocks, or, for a female or a transgender or intersex person who identifies as a female, the breasts).</p>																				
<a href="#">Crimes (Forensic Procedures) Regulation 2000</a>	<p><b>Schedule 1</b></p> <table border="1"> <thead> <tr> <th>column 1</th> <th>column 2</th> <th>column 3</th> </tr> <tr> <th>item</th> <th>forensic procedure</th> <th>appropriately qualified people for procedure</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>external examination of— • genital or anal area • buttocks • breasts of female or transgender or intersex person who identifies as female</td> <td>• forensic scientist • forensic technician</td> </tr> <tr> <td>2</td> <td>taking sample of saliva or sample by buccal swab</td> <td>• forensic scientist • forensic technician • police officer</td> </tr> <tr> <td>3</td> <td>taking photograph or video recording of, or impression or cast of, wound from— • genital or anal area</td> <td>• forensic scientist • forensic technician</td> </tr> </tbody> </table>	column 1	column 2	column 3	item	forensic procedure	appropriately qualified people for procedure	1	external examination of— • genital or anal area • buttocks • breasts of female or transgender or intersex person who identifies as female	• forensic scientist • forensic technician	2	taking sample of saliva or sample by buccal swab	• forensic scientist • forensic technician • police officer	3	taking photograph or video recording of, or impression or cast of, wound from— • genital or anal area	• forensic scientist • forensic technician	Intersex status	<p><i>Norrie's Case</i> and the <i>Legislation Act 2001</i> suggest that the schedule should be extended to apply to all people with breasts. However, the fact that the schedule refers to females, transgender people and intersex people also suggests it was not intended to apply to people of all gender. In this case, it would exclude people who do not identify as neither or both female or male.</p> <p>However, to the extent that these provisions would otherwise</p>	Bodily searches	1	
column 1	column 2	column 3																			
item	forensic procedure	appropriately qualified people for procedure																			
1	external examination of— • genital or anal area • buttocks • breasts of female or transgender or intersex person who identifies as female	• forensic scientist • forensic technician																			
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3	taking photograph or video recording of, or impression or cast of, wound from— • genital or anal area	• forensic scientist • forensic technician																			

ACT Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<ul style="list-style-type: none"> <li>• buttocks</li> <li>• breasts of female or transgender or intersex person who identifies as female</li> </ul> <p>4 external examination of part of body (other than—</p> <ul style="list-style-type: none"> <li>• genital or anal area</li> <li>• buttocks</li> <li>• breasts of female or transgender or intersex person who identifies as female)</li> </ul> <p>that requires touching of body or removal of clothing</p> <p>5 taking sample of hair (other than pubic hair)</p> <p>6 taking sample from nail or from under nail</p> <p>7 taking sample by swab or washing from any external part of body (other than—</p> <ul style="list-style-type: none"> <li>• genital or anal area</li> <li>• buttocks</li> <li>• breasts of female or transgender or intersex person who identifies as a female)</li> </ul> <p>8 taking sample by vacuum suction, scraping or lifting by tape from any external part of body (other than—</p>	<ul style="list-style-type: none"> <li>• forensic scientist</li> <li>• forensic technician</li> <li>• police officer</li> </ul> <ul style="list-style-type: none"> <li>• forensic scientist</li> <li>• forensic technician</li> <li>• police officer</li> </ul> <ul style="list-style-type: none"> <li>• forensic scientist</li> <li>• forensic technician</li> </ul> <ul style="list-style-type: none"> <li>• forensic scientist</li> <li>• forensic technician</li> </ul>	<p>constitute indirect discrimination, they are likely to be reasonable in all the circumstances bearing in mind the practicalities of identifying a forensic examiner of the same sex/gender.</p>			



ACT Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<ul style="list-style-type: none"> <li>• genital or anal area</li> <li>• buttocks</li> <li>• breasts of female or transgender or intersex person who identifies as female)</li> </ul> <p>9 taking handprint, fingerprint, footprint or toeprint</p> <ul style="list-style-type: none"> <li>• forensic scientist</li> <li>• forensic technician</li> <li>• police officer</li> </ul> <p>10 taking photograph or video recording of, or impression or cast of wound from, external part of body (other than—</p> <ul style="list-style-type: none"> <li>• genital or anal area</li> <li>• buttocks</li> <li>• breasts of female or transgender or intersex person who identifies as female)</li> </ul> <p>(a) for a photograph</p> <ul style="list-style-type: none"> <li>• doctor</li> <li>• forensic scientist</li> <li>• forensic technician</li> <li>• police officer</li> </ul> <p>(b) for an impression or cast of a wound</p> <ul style="list-style-type: none"> <li>• doctor</li> <li>• forensic scientist</li> <li>• forensic technician</li> </ul> <p><b>Note</b> People mentioned in col 3 as appropriately qualified for the applicable procedure are additional to those mentioned in the Act, s 53.</p>					
<a href="#">Road Transport (Alcohol and Drugs) Act 1977</a>	<p><b>18C</b></p> <p>(1) A police officer may <a href="#">search</a> a person who is taken into custody under the following sections and may take possession of anything found in the person's possession:</p> <p>(a) section 11 (Detention for breath analysis);</p> <p>(b) section 13D (Detention for oral fluid analysis);</p>	Gender identity Intersex status	It is unclear how this provision will apply to individuals who may identify as neither or both male or female, or whose identity documents do not reflect their gender identity.	Bodily searches	1	

ACT Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>(c) section 15 (Taking blood samples from people in custody).</p> <p>(2) For the purposes of the <a href="#">search</a>, the officer may request the assistance of another police officer of the same sex as the person being <a href="#">searched</a>.</p>		<p>An intersex person may be legally recognised as one sex but feel more comfortable being searched by an officer of a different sex.</p> <p>Best practice would be for such individuals to choose the sex of their searcher.</p>			
<a href="#">Corrections Management Regulation 2010</a>	<p><b>20 Loss of hearing because of age</b></p> <p>(1) This section applies in working out the percentage of the decrease of hearing in relation to boiler-makers deafness of an injured person who is the <a href="#">prescribed age</a> or older, but does not apply to total hearing loss in either of the person's ears.</p> <p>(2) For this part, it is to be conclusively presumed that the injured person's loss of hearing to be attributed to loss of hearing because of age is 0.5 decibels for each complete year of the person's age over the <a href="#">prescribed age</a>.</p> <p>(3) In this section:  "prescribed age "means—  (a) <u>      </u> for a male—55 years old; or  (b) <u>      </u> for a female—65 years old.</p>	Age  (Intersex status,  Gender identity)	<p>Legislation adopts a binary approach to sex/gender. Which age applies for people who are intersex or identify as neither or both male or female.</p> <p>May lead to discriminatory conduct if an intersex or gender diverse person was given less beneficial treatment as a "female". However, in that case, the primary basis for the discrimination would be age rather than intersex status or gender identity.</p>	Employment	1	

ACT Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
<a href="#">Workers Compensation Act 1951</a>	<p><b>63 Loss of hearing because of age</b></p> <p>(1) This section applies in working out the percentage of the decrease of hearing in relation to boiler-makers deafness of a <b>worker</b> who is the <b>prescribed age</b> or older, but does not apply to total hearing loss in either of the <b>worker's</b> ears.</p> <p>(2) For this part, it is to be conclusively presumed that the <b>worker's</b> loss of hearing to be attributed to loss of hearing because of age is 0.5 decibels for each complete year of the <b>worker's</b> age over the <b>prescribed age</b>.</p> <p>(3) In this section:  "prescribed age "means—  (a) for a male—55 years old; or  (b) for a female—65 years old.</p>	Gender identity Intersex status	It is unclear what the prescribed age is for a person that does not identify as either male or female or is intersex.	Employment	1	
<a href="#">Supreme Court Act 1933</a>	<p><b>37U</b></p> <p>(Cth) to a <b>marital relationship</b> included a reference to a relationship between 2 people of the same sex, subject otherwise to that Act, section 4AB (Marital relationship); and</p>	Gender identity	The definition of marital relationship includes a heterosexual relationship and same sex relationship, but is not sufficiently broad to encompass a relationship in which either or both people in the relationship identify as neither or both male or female, or have legal documentation that does not match their gender identity.	Family and relationship law	1	

ACT Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			In the latter case, the couple would nevertheless be captured by the Act so discrimination may not be made out.			
<a href="#">Civil Law (Property) Act 2006</a>	<b>Dictionary</b> "Valuable consideration" includes marriage, but does not include a nominal consideration in money.	Marital status (Sexual orientation)	Valuable consideration includes marriage but excludes defacto relationships including non-heterosexual defacto relationships.  Provisions discriminate against people primarily on the basis of marital status but also indirectly on the basis of sexual orientation (because it imposes a condition or requirement that a person be "married" in order for their relationship to constitute "valuable consideration" and a majority of people who do not identify as heterosexual would not be able to comply with this.)	Financial	1	
<a href="#">Electoral</a>	<del>4 — Use of electoral roll information — public health</del>	Intersex	The legislation does	Health	5	

ACT Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
<a href="#">Regulation 1993</a>	<p>(1) — The chief health officer is a prescribed authority.</p> <p>(2) — The following are prescribed purposes:</p> <p>(a) — maintaining the cancer register under the Public Health Regulation 2000, section 46;</p> <p>(b) — contacting women to offer breast cancer screening and prevention services;</p> <p>(c) — contacting people aged 45 to 49 years for health assessment.</p> <p>(3) — The chief health officer may give roll information to another person or entity if the only use of the information authorised by the chief health officer is for a prescribed purpose under this section.</p> <p>(4) — A person or entity given roll information under subsection (3) may only use the information for a prescribed purpose under this section.</p>	<p>status</p> <p>Gender identity</p>	<p>not authorise making contact with people other than those registered as women on the electoral roll for the purposes of offering breast cancer screening and prevention services.</p> <p>Taking into account Norrie's Case, this provision could be interpreted to mean any person with breasts. However, in practice, it is unlikely that the chief health officer will contact people who are not females but who have breasts because this information would not be available on the electoral role.</p> <p>Probably not a matter of real significance as the legislation does not proscribe people from accessing these health services.</p>			
<a href="#">Civil Unions</a>	<b>6 — Civil unions — general</b>	Sexual	Makes reference to the	Not Applicable	5	Section

ACT Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
<a href="#">Act 2012</a>	<p>(1) — A civil union is a legally recognised relationship entered into under this Act.</p> <p>(2) — A civil union is different to a marriage but is to be treated for all purposes under territory law in the same way as a marriage.</p> <p><b>Note 1 Marriage</b> is defined in the <a href="#">Marriage Act 1961</a> (Cwlth), s 5 to mean the union of a man and a woman to the exclusion of all others, voluntarily entered into for life.</p> <p><b>Note 2 Territory law</b> includes the common law</p>	orientation	discriminatory definition of "marriage" but operative provisions not of themselves discriminatory.	Family and relationship law		40(2A) things done in direct compliance with the marriage act.
Cooperatives Act 2002	<p><b>Section 8 — 2 Democratic member <del>control</del></b></p> <p>Cooperatives are democratic organisations <del>controlled</del> by their members, who actively participate in setting their policies and making decisions. <del>Men and women serving as elected representatives are accountable to the membership.</del> In primary cooperatives, members have equal voting rights (1 member, 1 vote) and cooperatives at other levels are organised in a democratic manner.</p>	Intersex status	By adopting a binary conception of gender, this section discriminates against those who do not identify with either gender.	Not Applicable	5	
<a href="#">Crimes Act 1900</a>	<p><b>Section 48A — Aggravated offences — offences against pregnant women</b></p> <p>(1) This section applies to an offence against any of the following provisions:</p> <p>(a) section 15 (Manslaughter);</p> <p>(b) section 19 (Intentionally inflicting grievous bodily <a href="#">harm</a>);</p> <p>(c) section 20 (Recklessly inflicting grievous bodily <a href="#">harm</a>);</p> <p>(d) section 21 (Wounding);</p> <p>(e) section 23 (Inflicting actual bodily <a href="#">harm</a>);</p>	Gender identity Intersex status	An individual can be pregnant if they have a uterus but do not identify as female.	Not Applicable	5	

**Comment [L&R2]:** *Norrie's Case* and the *Legislation Act 2001* suggest that this section would be interpreted to mean all people serving as elected representatives are accountable to the membership.

**Comment [L&R3]:** *Norrie's Case* and the *Legislation Act 2001* suggests that this section extends to any person who is pregnant.

ACT Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>(f) section 24 (Assault occasioning actual bodily <a href="#">harm</a>);</p> <p>(g) section 29 (2) or (4) (Culpable driving of motor vehicle).</p> <p>(2) The offence is an <b>aggravated offence</b> if—</p> <p>(a) the offence was <a href="#">committed</a> against a pregnant woman; and</p> <p>(b) the commission of the offence <a href="#">caused</a>—</p> <p>(i) the <a href="#">loss</a> of, or <a href="#">serious harm</a> to, the pregnancy; or</p> <p>(ii) the death of, or <a href="#">serious harm</a> to, a <a href="#">child</a> born alive as a result of the pregnancy.</p> <p>(3) However, the offence is not an <b>aggravated offence</b> if the <a href="#">defendant</a> proves, on the balance of probabilities, that the <a href="#">defendant</a> did not know, and could not reasonably have known, that the woman was pregnant.</p> <p>(4) If the prosecution intends to prove that the offence is an aggravated offence, the relevant factors of aggravation must be stated in the charge.</p> <p>(5) To remove any doubt—</p> <p>(a) it is not necessary for the prosecution to prove that the <a href="#">defendant</a> had a fault element in relation to any <a href="#">factor of aggravation</a>; and</p> <p>(b) the title="A2002-51"&gt;Criminal Code  , chapter 2 (other than the <a href="#">applied provisions</a>) does not apply to an offence to which this section applies, whether or not it is an aggravated offence.</p> <p>(6) In this section:  "applied provisions"—see the  <a href="http://www.legislation.act.gov.au/a/2002-51">href="http://www.legislation.act.gov.au/a/2002-51"</a>  title="A2002-51"&gt;Criminal Code, section 10 (1).</p>					

ACT Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>"cause" <a href="#">loss, serious harm</a> or death—a person's <a href="#">conduct</a> <a href="#">causes loss, serious harm</a> or death if it substantially contributes to the <a href="#">loss, serious harm</a> or death.</p> <p>"factor of aggravation" means a matter mentioned in subsection (2) (a) or (b).</p> <p>"harm" to a <a href="#">child</a>—see the <a href="http://www.legislation.act.gov.au/a/2002-51">href="http://www.legislation.act.gov.au/a/2002-51"</a> <a href="#">title="A2002-51"&gt;Criminal Code, dictionary, definition of "harm"</a>.</p> <p>"harm" to a pregnancy includes maternal haemorrhage, rupture of the uterus or membranes, placental abruption, pre-term uterine contractions, fetal haemorrhage and trauma to the fetus.</p> <p>"loss" of a pregnancy means a miscarriage or stillbirth.</p> <p>"serious harm" to a <a href="#">child</a>—see the <a href="http://www.legislation.act.gov.au/a/2002-51">href="http://www.legislation.act.gov.au/a/2002-51"</a> <a href="#">title="A2002-51"&gt;Criminal Code, dictionary, definition of "serious harm"</a>.</p> <p>"serious harm" to a pregnancy means any <a href="#">harm</a> (including the cumulative effect of more than 1 <a href="#">harm</a>) that—</p> <p>(a) is likely to <a href="#">cause loss</a> of the pregnancy; or</p> <p>(b) endangers, or is likely to endanger, the natural course of the pregnancy.</p>					
<a href="#">Health Act 1993</a>	<p><b>Meaning of abortion for pt 6</b></p> <p>In this part:</p> <p>"abortion" means causing a woman's miscarriage by:</p>	<p>Intersex status</p> <p>Gender identity</p>	<p>An individual that has reproductive capabilities may not identify as female (or male).</p>	<p>Not applicable</p>	<p>5</p>	

**Comment [L&R4]:** *Norrie's Case* and *Legislation Act 2001* suggest that this section would extend to any person who has a miscarriage.



ACT Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>(a) administering a drug; or</p> <p>(b) using an instrument; or</p> <p>(c) any other means.</p>					
<a href="#">Human Cloning and Embryo Research Act 2004</a>	<p><b>Section 10(1)</b> A person commits an offence if the person <u>intentionally</u> creates a <u>human embryo</u> by a process of the fertilisation of a human egg by a human sperm outside the body of a woman, unless the person's <u>intention</u> in creating the embryo is to attempt to achieve pregnancy in a particular woman.</p> <p><b>Section 11 – Offence—creating or developing human embryo by fertilisation that contains genetic material provided by more than 2 people</b></p> <p>A person commits an offence if—</p> <p>(a) the person <u>intentionally</u> creates or develops a <u>human embryo</u> by a process of the fertilisation of a human egg by a human sperm outside the body of a woman; and</p> <p>(b) the <u>human embryo</u> contains genetic material provided by more than 2 people.</p> <p><b>Section 12 – Offence—developing human embryo outside body of woman for more than 14 days</b></p> <p>A person commits an offence if the person <u>intentionally</u> develops a <u>human embryo</u> outside the body of a woman for a period of more than 14 days, excluding any period when development is suspended.</p> <p><b>Section 14 – Offence—collecting viable human embryo from body of woman</b></p> <p>A person commits an offence if the person removes a <u>human embryo</u> from the body of a woman, intending to collect a viable</p>	<p>Intersex status</p> <p>Gender identity</p>	<p>An individual may be able to be pregnant and not identify as female.</p>	<p>Not Applicable</p>	<p>5</p>	

**Comment [L&R5]:** *Norrie's Case* and the *Legislation Act 2001* suggest that these sections extend to any person who is able to carry a human embryo.

ACT Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p><del>human embryo.</del></p> <p><del><b>Section 17(2)</b> A person commits an offence if the person intentionally places a human embryo in the body of a human, other than in a woman's reproductive tract.</del></p> <p><del><b>Section 18</b> - "prohibited embryo" means—</del></p> <p><del>(a) a human embryo created by a process other than the fertilisation of a human egg by human sperm; or</del></p> <p><del>(b) a human embryo created outside the body of a woman, unless the intention of the person who created the embryo was to attempt to achieve pregnancy in a particular woman; or</del></p> <p><del>(c) a human embryo that contains genetic material provided by more than 2 people; or</del></p> <p><del>(d) a human embryo that has been developing outside the body of a woman for a period of more than 14 days, excluding any period when development is suspended; or</del></p> <p><del>(e) a human embryo created using precursor cells taken from a human embryo or a human foetus; or</del></p> <p><del>(f) a human embryo that contains a human cell (within the meaning of section 13) whose genome has been altered in such a way that the alteration is heritable by human descendants of the human whose cell was altered; or</del></p> <p><del>(g) a human embryo that was removed from the body of a woman by a person intending to collect a viable human embryo; or</del></p> <p><del>(h) a chimeric embryo or a hybrid embryo.</del></p> <p><del>"responsible person" means—</del></p> <p><del>(a) in relation to an excess ART embryo—</del></p>					

ACT Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>(i) each person who provided the egg or sperm from which the embryo was created; and</p> <p>(ii) the woman for whom the embryo was created, for the purpose of achieving her pregnancy; and</p> <p>(iii) anyone who was the domestic partner of a person mentioned in subparagraph (i) when the egg or sperm mentioned in that subparagraph was provided; and</p> <p>(iv) anyone who was the domestic partner of the woman mentioned in subparagraph (ii) when the embryo was created; or</p> <p><i>Note</i> For the meaning of <b>domestic partner</b>, see the href="http://www.legislation.act.gov.au/a/2001-14" title="A2001-14"&gt;Legislation Act, s 169.</p> <p>(b) in relation to an embryo other than an <a href="#">excess ART embryo</a>—each person whose reproductive material, genetic material or cell was used, or is proposed to be used, in the creation or use of the embryo; or</p> <p>(c) in relation to a human egg—the woman who was the biological donor of the egg.</p> <p>"unsuitable for implantation"—a <a href="#">human embryo</a> is "unsuitable for implantation" if it—</p> <p>(a) is diagnosed by preimplantation genetic diagnosis as <a href="#">unsuitable for implantation</a>, in accordance with the <i>Ethical guidelines on the use of assisted reproductive technology in clinical practice and research</i> issued by the CEO of the NHMRC in 2007, and existing on 24 August 2007; or</p> <p><i>Note</i> These guidelines are available on the internet—see <a href="http://www.nhmrc.gov.au">http://www.nhmrc.gov.au</a></p> <p>(b) is determined to be <a href="#">unsuitable for implantation</a> in the body of a woman, in accordance with objective criteria specified in</p>					

ACT Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>guidelines issued by the CEO of the NHMRC and prescribed by the <a href="#">Research Involving Human Embryos Regulations 2003</a></p> <p><b>Section 24</b> — "excess ART embryo" means a <a href="#">human embryo</a> that —</p> <p>(a) was created, by assisted reproductive technology, for use in the assisted reproductive technology treatment of a woman; and</p> <p>(b) is excess to the needs of—</p> <p>(i) the woman for whom it was created; and</p> <p>(ii) her domestic partner (if any) when the embryo was created.</p> <p><b>Section 25</b></p> <p>"diagnostic investigation", in relation to an <a href="#">excess ART embryo</a>, means any procedure undertaken on embryos for the sole purpose of <a href="#">diagnostic investigations</a> for the direct benefit of the woman for whom it was created.</p> <p>"exempt use" — "a use of an <a href="#">excess ART embryo</a> by a person is an "exempt use" if —</p> <p>(a) the use consists only of—</p> <p>(i) storage of the <a href="#">excess ART embryo</a>; or</p> <p>(ii) removal of the <a href="#">excess ART embryo</a> from storage; or</p> <p>(iii) transport of the <a href="#">excess ART embryo</a>; or</p> <p>(iv) <a href="#">observation</a> of the <a href="#">excess ART embryo</a>; or</p> <p>(v) allowing the <a href="#">excess ART embryo</a> to succumb; or</p> <p>(b) the use is carried out by an accredited ART centre, and—</p> <p>(i) the <a href="#">excess ART embryo</a> is not suitable (based only on its biological fitness for implantation) to be placed in the body of</p>					

ACT Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>the woman for whom it was created; and</p> <p>(ii) the use forms part of <a href="#">diagnostic investigations conducted</a> in connection with the assisted reproductive technology treatment of the woman for whom the <a href="#">excess ART embryo</a> was created; or</p> <p>(c) the use is carried out by an accredited ART centre and is for the purpose of achieving pregnancy in a woman other than the woman for whom the <a href="#">excess ART embryo</a> was created; or</p> <p>(d) the use is prescribed under the regulations.</p> <p><del>Section 25B – A person commits an offence if—</del></p> <p>(a) the person undertakes research or training involving the fertilisation of a human egg by a human sperm up to, but not including, the first mitotic division, outside the body of a woman for the purposes of research or training in ART; and</p> <p>(b) the person is not authorised by a licence to undertake the research or training.</p> <p><b>Section 26 – Offence – use of embryo that is not excess ART embryo</b></p> <p>A person commits an offence if—</p> <p>(a) the person <a href="#">intentionally</a> uses, outside the body of a woman, a <a href="#">human embryo</a>—</p> <p>(i) that was created by fertilisation of a human egg by a human sperm; and</p> <p>(ii) that is not an <a href="#">excess ART embryo</a>; and</p> <p>(b) the use is not for a purpose relating to the assisted reproductive technology treatment of a woman carried out by an accredited ART centre, and the person knows or is reckless</p>					

ACT Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	about that fact.					
<a href="#">Intoxicated People (Care and Protection) Act 1984</a>	<p><b>Section 6c</b> - "frisk search," of an intoxicated person, means a <a href="#">search</a> in which light pressure is momentarily applied to the person over the person's outer clothing without contact being made with—</p> <p>(a) the person's genital or anal areas; or</p> <p>(b) for a female—the person's breasts.</p>	Intersex Gender identity	A transgender or intersex individual, who does not identify as female (or male), and has breasts, may be discriminated against under this section.	Not Applicable	5	
<a href="#">Medicines, Poisons and Therapeutic Goods Regulation 2009</a>	<p><b>Schedule 3 Part 3.1</b></p> <p>In this schedule:</p> <p><b>condition 1</b>, for a doctor prescribing or supplying a designated appendix D medicine to a <del>woman of child-bearing age</del>, means the doctor must ensure that the possibility of pregnancy by the woman has been excluded prior to commencement of treatment.</p> <p><b>condition 2</b>, for a doctor prescribing or supplying a designated appendix D medicine to a <del>woman of child-bearing age</del>, means the doctor must advise the woman to avoid becoming pregnant during, or for a period of 1 month after the completion of, treatment.</p> <p><b>condition 3</b>, for a doctor prescribing or supplying a designated appendix D medicine to a <del>woman of child-bearing age</del>, means the doctor must advise the woman to avoid becoming pregnant during, or for a period of 3 months after the completion of, treatment.</p>	Intersex status Gender identity	An individual might not identify as a woman.	Not Applicable	5	

**Comment [L&R6]:** *Norrie's Case* and *Legislation Act 2001* suggest that this section would extend to any person who has breasts.

**Comment [L&R7]:** *Norrie's Case* and *Legislation Act 2001* suggest that this section would extend to any person who is of child bearing age and able to become pregnant.

ACT Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<del><b>condition 4</b>, for a doctor prescribing or supplying a designated appendix D medicine to a woman of child bearing age, means the doctor must advise the woman to avoid becoming pregnant during, or for a period of 24 months after the completion of, treatment.</del>					
<a href="#">Parentage Act 2004</a>	<p><b>Section 6 – Presumptions arising from marriage, civil union or civil partnership</b></p> <p>(1) <del>A child born to a woman while she is married or in a civil union or civil partnership is presumed to be a child of the woman and her spouse, civil union partner or civil partner.</del></p> <p>(2) <del>A child born to a woman within 44 weeks after the death of her spouse, civil union partner or civil partner is presumed to be the child of the woman and her spouse, civil union partner or civil partner who died.</del></p> <p>(3) <del>A child born to a woman within 44 weeks after the annulment of her purported marriage is presumed to be the child of the woman and her purported spouse.</del></p> <p>(4) <del>A child born to a woman after the end of her marriage, civil union or civil partnership, but within 44 weeks after she last separated from her spouse or partner in that marriage, civil union or civil partnership, is presumed to be the child of the woman and her spouse or partner in that marriage, civil union or civil partnership.</del></p> <p><b>Section 23</b> – "birth parent", of a child, means —</p> <p>(a) the woman who gave birth to the child; or</p> <p>(b) the other person (if any) presumed under division 2.2 to be a <a href="#">parent</a> of the child.</p>	Gender identity Intersex status	An individual may give birth who does not identify as a female.	Not Applicable	5	

**Comment [L&R8]:** *Norrie's Case* and *Legislation Act 2001* suggest that this section would extend to any person who has given birth.

ACT Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	-(also word 'woman' used throughout relating to birth parent)					
<a href="#">Payroll Tax Act 2011</a>	<p><b>Section 53 – Maternity and adoption leave</b></p> <p>...</p> <p>"maternity leave", for an employee, means leave given to a female employee in relation to her pregnancy or the birth of her child (whether the leave is taken during or after the pregnancy), but does not include leave given to the employee as leave of another kind.</p> <p>...</p>	<p>Gender identity</p> <p>Intersex status</p>	An individual may give birth who does not identify as a female.	Not Applicable	5	
<a href="#">Public Health Regulation 2000</a>	<p><b>Regulation 22 –</b> In this division:</p> <p>"registrable information" means the following information about a woman and her cervical smear or cervical tissue:</p> <p>(a) her full name and any previous name;</p> <p>(b) her date of birth;</p> <p>(c) whether she is Aboriginal or a Torres Strait Islander;</p> <p>(d) her postal address;</p> <p>(e) the date the smear or tissue was taken;</p> <p>(f) the identification code of the laboratory that examined the smear or tissue;</p> <p>(g) the identification code of the health practitioner who took</p>	<p>Gender identity</p> <p>Intersex status</p>	An individual with a cervix may not identify as female.	Not Applicable	5	

**Comment [L&R9]:** *Norrie's Case* and the *Legislation Act 2001* would have effect to entitle any person who gave birth to a child an entitlement to maternity leave.

**Comment [L&R10]:** *Norrie's Case* and the *Legislation Act 2001* suggest that this regulation would extend to any person who has a cervix.



ACT Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>the smear or tissue;</p> <p>(h) her test results;</p> <p>(i) for a smear with abnormal test results—</p> <p>(i) the period of time (if any) within which the laboratory that examined the smear has advised the health practitioner who took the smear to take another smear; or</p> <p>(ii) the details of other management recommendations (that is, coloscopy plus biopsy).</p> <p><b>Regulation 23</b>—(1) The chief health officer must inform each woman from whom a cervical smear or cervical tissue is to be taken—</p> <p>(a) of her right to choose not to participate in the cervical cancer prevention program by contributing registrable information to the cervical cytology register; and</p> <p>(b) that failure to participate in the program will not affect her right to have the smear or tissue taken.</p> <p>(2) A health practitioner who takes a cervical smear or cervical tissue from a woman must attach a refusal of consent marker to the pathology request form if the woman informs the practitioner that she does not consent to registration of her registrable information.</p> <p>(3) However, a health practitioner who takes a cervical smear or cervical tissue from a woman must not attach a refusal of consent marker to the pathology request form unless the</p>					

ACT Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>woman informs the practitioner that she does not consent to registration of her registrable information.</p> <p>(4) This section only applies to a woman whose usual place of residence is in the ACT.</p> <p><b>Regulation 24 – (1) The person responsible for the day-to-day control of a laboratory must, after a woman's cervical smear or cervical tissue is examined, send the registrable information to the chief health officer, unless a refusal of consent marker is attached to the pathology request form.</b></p> <p>(2) If a person responsible for the day-to-day control of a laboratory gives registrable information to the chief health officer—</p> <p>(a) giving the information is not—</p> <p>(i) a breach of confidence; or</p> <p>(ii) a breach of professional etiquette; or</p> <p>(iii) a breach of professional ethics; or</p> <p>(iv) a breach of a rule of professional conduct; and</p> <p>(b) no civil or criminal liability is incurred only because the information is given.</p> <p><b>Regulation 26 – Use of information on cervical cytology register</b></p> <p>(1) The cervical cytology register is established for the</p>					

ACT Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>following purposes:</p> <p><del>(a) after a woman has had her cervical smear taken and the test results recorded on the register — to remind the woman (after a reasonable time following the end of a period decided by the chief health officer after the smear was taken) that she should have another smear taken, if she has failed to do so;</del></p> <p><del>(b) to establish a record of test results that links each woman on the register with her health practitioner and any laboratory that produces her test results;</del></p> <p><del>(c) to monitor test results to encourage consistency of performance between laboratories;</del></p> <p><del>(d) to provide data for the following purposes:</del></p> <p><del>(i) to assess participation in the cervical cancer prevention program;</del></p> <p><del>(ii) to assist in the design of strategies to educate women to take responsibility for having a cervical smear taken at appropriate intervals;</del></p> <p><del>(iii) to assist in the design of strategies to encourage women to be included in the register;</del></p> <p><del>(iv) for use in research programs approved under subsection (4) (a) into the alleviation and prevention of cervical cancer;</del></p> <p><del>(v) to increase public awareness by the publication of statistics;</del></p> <p><del>(vi) to assist in the compilation of comparative data by national</del></p>					

ACT Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p><del>organisations approved under subsection (4) (b).</del></p> <p><del>(2) The chief health officer must notify a woman that she is overdue to have her next cervical smear taken if—</del></p> <p><del>(a) the woman's last registered test results are normal; and</del></p> <p><del>(b) an appropriate interval, decided by the management committee, has elapsed since the end of the period mentioned in subsection (1) (a) after the taking of that smear; and</del></p> <p><del>(c) the woman has not had another smear taken.</del></p> <p><del>(3) The chief health officer must take reasonable steps to ensure that appropriate action is taken to notify the health practitioner who took the last smear from a woman, or the woman herself, that the woman's next smear is overdue if—</del></p> <p><del>(a) the woman's last registered test results are abnormal; and</del></p> <p><del>(b) the registrable information for her last cervical smear recommended a time within which the next smear should be taken, or other follow up action; and</del></p> <p><del>(c) the woman has not had a further smear taken or other recommended follow up action within a reasonable time after the time mentioned in paragraph (b).</del></p> <p><del>(4) The Minister may approve—</del></p> <p><del>(a) research programs for subsection (1) (d) (iv); and</del></p>					

ACT Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p><del>(b) national organisations for subsection (1) (d) (vi).</del></p> <p><del>(5) The Minister may only approve a research program if satisfied that disclosure of the information for the program and its use would meet the requirements of the</del></p> <p><del>title="Act 1988 No 119 (Cwlth)"&gt;Privacy Act 1988</del></p> <p><del>(Cwlth) for medical research, whether or not that Act applies to the research program of its own force.</del></p> <p><del>(6) An approval under subsection (4) is a disallowable instrument.</del></p> <p><b>Regulation 27— Disclosure of identifying information— women</b></p> <p><del>(1) A person must not, without good reason, disclose information on the cervical cytology register in such a way that the woman to whom the information relates is reasonably able to be identified, unless the woman consents in writing to the disclosure.</del></p> <p><del>Maximum penalty: 10 penalty units.</del></p> <p><del>(2) Subsection (1) does not apply to a disclosure (under <a href="#">section 26</a> (3)) of information about a woman's abnormal test results to—</del></p> <p><del>(a) a laboratory where a cervical smear or cervical tissue taken from the woman is being examined in accordance with a pathology request form; or</del></p> <p><del>(b) a health practitioner who has taken a cervical smear or cervical tissue from the woman.</del></p> <p><del>(3) On a woman's written request, the chief health officer must</del></p>					

ACT Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>disclose to her any information on the cervical cytology register that relates to her alone.</p> <p><b>Regulation 29 – Deletion of material on cervical cytology register</b></p> <p>The chief health officer must, after receiving a written request by a woman, remove from the cervical cytology register any information that could reasonably enable the woman to be identified.</p>					
<a href="#">Public Sector Management Act 1994</a>	<p><b>Section 112A – Temporary employee on maternity leave</b></p> <p>(1) The temporary employment of a woman who is absent on <a href="#">maternity leave</a> must not be terminated.</p> <p>(2) A woman who returns to temporary employment with a government agency after being absent on <a href="#">maternity leave</a> must be given preference over anyone else (other than another woman to whom this subsection applies) for employment in work for which she is qualified.</p> <p>(3) In this section:</p> <p>"maternity leave" means a period of authorised absence from duty required or permitted in relation to the birth of a baby.</p>	Gender identity Intersex status	An individual may give birth who does not identify as a female.	Not Applicable	5	

**Comment [L&R11]:** *Norrie's Case* and the *Legislation Act 2001* suggest that this section would extend maternity leave to any person who gives birth.

### 3. NEW SOUTH WALES

NSW Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
<a href="#">Child Protection (Offenders Registration) Act 2000 No 42</a>	<p><b>12F Power to take photographs</b></p> <p>(1) A police officer receiving a report made in person under this Part may require the registrable person:</p> <p>(a) to be photographed, or</p> <p>(b) to expose any part of the person's body to enable that part of the body to be photographed by the officer or another person authorised by the officer.</p> <p>(2) A police officer cannot, under this section, require a registrable person to expose his or her genitals, the anal area of his or her buttocks or, <u>in the case of females or transgender people who identify as females, their breasts.</u></p>	<p>Gender identity</p> <p>Intersex status</p>	<p>Binary concept of gender to linked to the sensitivity of body parts.</p> <p>Potentially discriminatory against intersex men and any individual as a sex other than female and has breasts.</p> <p><i>Norrie's Case</i> and the <i>Interpretation Act 1987</i> suggest that this section should be interpreted to mean any person with breasts. Further, section 33 of the Interpretation Act 1987 provides that the interpretation of a provision should promote the purpose or object underlying the Act - in this case, child protection. However, as the section refers to females and transgender people who identify as</p>	<p>Bodily searches</p>	<p>1</p>	

NSW Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			females, the section could be interpreted as intending to confer particularly sensitive treatment of a person's "breasts" only if she identifies as female.			
<a href="#">Court Security Act 2005 No 1</a>	<p><b>10 Power to search persons and vehicles</b></p> <p>(2) A search of a person conducted under this section must, as far as is reasonably practicable in the circumstances, comply with the following requirements:</p> <p>(f) a personal search of a person (other than a child under 12 years of age) <u>must be conducted by a security officer of the same sex as the person or, if a security officer of that sex is unavailable, by another person of that sex at the direction of a security officer,</u></p> <p><b>13A Power to require removal of face coverings</b></p> <p>(2) A security officer who requires a person to remove a face covering under this section must, as far as is reasonably practicable, ensure that the following procedures are followed:</p> <p>(d) <u>if the person is 12 years old or</u></p>	<p>Gender identity</p> <p>Intersex status</p>	<p>.</p> <p>Search under s 10(2)(f) and 13A(2)(d) allows for search by another person of same sex - may discriminate against those who are intersex, transgender or those who identify as neither or both male and female.</p> <p>There is no provision for a person to elect which security officer is to conduct the search.</p>	Bodily searches	1	



NSW Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p><u>older and requests it—the viewing of the person’s face is to be conducted by a security officer of the same sex as the person or, if a security officer of that sex is unavailable, by another person of that sex at the direction of a security officer.</u></p>					
<p><a href="#">Crimes (Forensic Procedures) Act 2000 No 59</a></p>	<p><b>3 Interpretation</b>  <i>private parts</i> means a person’s genital area, anal area or buttocks, and, in the case of a female or transgender person who identifies as a female, includes the person’s breasts.</p> <p>(7) In this Act (other than subsection (6)), a reference:</p> <p>(a) <u>to a member of the opposite sex of a person means, if the person is a transgender person, a member of the opposite sex to the sex with which the transgender person identifies, and</u></p> <p>(b) <u>to a member of the same sex as a person means, if the person is a transgender person, a member of the same sex as the sex with which the transgender person identifies.</u></p> <p><b>44 General rules for carrying out forensic procedures</b></p>	<p>Gender identity Intersex status</p>	<p>It is unclear how this provision will apply to individuals who may identify as neither or both male or female.</p> <p>An intersex person may be legally recognised as one sex but feel more comfortable being searched by an officer of a different sex.</p> <p>Best practice would be for such individuals to choose the sex of their searcher.</p>	<p>Bodily searches</p>	<p>1</p>	

NSW Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>A forensic procedure:</p> <p>(a) must be carried out in circumstances affording reasonable privacy to the suspect and except as permitted (expressly or impliedly) by any other provision of this Act, <u>must not be carried out in the presence or view of a person who is of the opposite sex to the suspect</u>, and</p> <p><b>51 Certain forensic procedures generally to be carried out by person of same sex as suspect</b></p> <p>(1) If practicable, an intimate forensic procedure (other than the taking of a sample of blood or saliva, or a dental impression) is to be carried out:</p> <p>(a) if the suspect is an adult—<u>by a person of the same sex</u> as the suspect, or</p> <p>(b) if the suspect is a child—by a person of the sex chosen by the suspect or, if the suspect does not wish to make such a choice, <u>a person of the same sex as the suspect</u>.</p> <p>(2) If practicable, a non-intimate forensic procedure for which the suspect is required to remove clothing other than his or her overcoat, coat, jacket, gloves, socks, shoes, scarf or hat is to be carried out:</p>					

NSW Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>(a) if the suspect is an adult—by a person <u>of the same sex as the suspect, or</u></p> <p>(b) if the suspect is a child—by a person of the sex chosen by the suspect or, if the suspect does not wish to make such a choice, a <u>person of the same sex as the suspect.</u></p> <p>(3) If practicable, a person asked under section 52 to help carry out a forensic procedure covered by subsection (1) or (2):</p> <p>(a) is to be:</p> <p>(i) if the suspect is an adult—<u>a person of the same sex as the suspect, or</u></p> <p>(ii) if the suspect is a child—a person of the sex chosen by the suspect or, if the suspect does not wish to make such a choice, <u>a person of the same sex as the suspect, and</u></p> <p>(b) is to be a person who is not inappropriate to help carry out the forensic procedure.</p>					

NSW Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>See also:</p> <p><b>56 Presence of police officers</b></p> <p><b>81H Presence of other people while forensic procedure is carried out on children under 10 years of age</b></p>					
<a href="#">Law Enforcement (Powers and Responsibilities) Act 2002 No 103</a>	<p><b>32 Preservation of privacy and dignity during search</b></p> <p>(6) The police officer or other person must not search the genital area of the person searched, or in the case of female or a transgender person who identifies as a female, the person's breasts unless the police officer or person suspects on reasonable grounds that it is necessary to do so for the purposes of the search.</p> <p><b>33 Rules for conduct of strip searches</b> (cf Cth Act, s 3ZI)</p> <p>(1) A police officer or other person who strip searches a person must, as far as is reasonably practicable in the circumstances, comply with the following:</p> <p>(a) the strip search must be conducted in a private area,</p> <p>(b) the strip search must not be conducted in the presence or view of a person who is of the opposite sex to the person being searched,</p>	<p>Gender identity</p> <p>Intersex status</p>	<p><i>Norrie's Case</i> and the <i>Interpretation Act 1987</i> suggest this section should be interpreted to mean any person with breasts. Further, section 33 of the <i>Interpretation Act 1987</i> provides that the interpretation of a provision should promote the purpose or object underlying the Act.</p> <p>However, as the section refers to females and transgender people who identify as females, the section could be interpreted as intending to be limited to females and transgender people who identify as females.</p>	Bodily searches	1	

NSW Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>(c) except as provided by this section, the strip search must not be conducted in the presence or view of a person whose presence is not necessary for the purposes of the search.</p> <p><b>44 Power to search aircraft for safety reasons</b></p> <p>(3) A search of a person conducted under this section must be conducted by a person of the same sex as the person being searched.</p>		<p>Sections 33 and 44 do not make provision for individuals who do not identify as either male or female to elect who they would like the strip search to be conducted by.</p> <p>Section 33 and 44 also do not make provision for intersex people to choose the sex of their searches.</p>			
<a href="#">Terrorism (Police Powers) Act 2002 No 115</a>	<p><b>5 Preservation of privacy and dignity during search</b></p> <p>(6) The police officer must not search the genital area of the person searched, <u>or in the case of female or a transgender person who identifies as a female, the person's breasts</u> unless the police officer suspects on reasonable grounds that it is necessary to do so for the purposes of the search.</p> <p>(7) A search must be conducted by a police officer <u>of the same sex</u> as the person searched or by a person of the same sex under the direction of the police officer.</p>	<p>Gender identity</p> <p>Intersex status</p>	<p><i>Norrie's Case</i> and the <i>Interpretation Act 1987</i> suggest this section should be interpreted to mean any person with breasts. Further, section 33 of the Interpretation Act 1987 provides that the interpretation of a provision should promote the purpose or object underlying the Act.</p> <p>However, as the section refers to females and transgender people</p>	Bodily searches	1	

NSW Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			who identify as females, the section could be interpreted as intending to be limited to females and transgender people who identify as females.			
<a href="#">Terrorism (Police Powers) Act 2002 No 115</a>	<p><b>6 Rules for conduct of strip searches</b></p> <p>(1) A police officer who strip searches a person must, as far as is reasonably practicable in the circumstances, comply with the following:</p> <p>(a) the strip search must be conducted in a private area,</p> <p>(b) the strip search must not be conducted in the presence or view of a person <u>who is of the opposite sex</u> to the person being searched,</p> <p>(c) except as provided by this clause, the strip search must not be conducted in the presence or view of a person whose presence is not necessary for the purposes of the search.</p>	Gender identity Intersex status	<p>It is unclear how this provision will apply to individuals who may identify as neither or both male or female, or whose identity documents do not match their gender identity.</p> <p>An intersex person may be legally recognised as one sex but feel more comfortable being searched by an officer of a different sex.</p> <p>Best practice would be for such individuals to choose the sex of their searcher.</p>	Bodily searches	1	
<a href="#">Crimes (Administration of</a>	<p><b>26 Local leave permits</b></p> <p>(1) The Commissioner may issue a permit</p>	Gender identity	Binary concept of gender adopted.	Family and relationship law	1	

NSW Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
<a href="#">Sentences) Act 1999 No 93</a>	<p>(a <i>local leave permit</i>) allowing an inmate to be absent from a correctional centre:</p> <p>(a) on such conditions and for such period as may be specified in the permit, and</p> <p>(b) for such purpose as the Commissioner considers appropriate.</p> <p>(2) Without limiting subsection (1)(b), the purposes for which a local leave permit may be issued include the following:</p> <p>(l) <u>in the case of a female inmate who is the mother of a young child or young children, enabling the inmate to serve her sentence with her child or children in an appropriate environment.</u></p>	Intersex status	<p>Provision may exclude person with child who does not or no longer identifies or is legally recognised as female.</p> <p>Although <i>Norrie's Case</i> and the <i>Interpretation Act 1987</i> suggest that this section would apply to any person who is an inmate and who gave birth to a young child, it is difficult to see how this might work administratively where there is a person who gave birth to a child as a woman but is now a man - might that person be excluded from centres that are designed to hold women for this purpose?</p>	Criminal law		
<a href="#">Landlord and Tenant (Amendment) Act 1948 No 25</a>	<p><b>62 Restriction on eviction</b></p> <p>(5) The prescribed grounds shall be: that the premises, being a dwelling-house, are owned by the lessor who, being a male, is of or over the age of <u>sixty-five years</u> or, being a female, is of or over the age of <u>sixty years</u>, that not</p>	Gender identity Intersex status	This section does not prescribe an age for a person who identifies as either or both male or female and is of uncertain application in relation to intersex people.	Financial	1	

NSW Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>more than two other dwelling-houses (exclusive of the dwelling-house in which he or she resides) are owned by the lessor if he or she is living alone or, if the lessor is living with his or her spouse, not more than two other dwelling-houses (exclusive of the dwelling-house in which they reside) are owned by them, that the income of the lessor if he or she is living alone, or, if the lessor is living with his or her spouse, his or her income together with that of his or her spouse, does not exceed the Sydney basic wage, and that the premises are required for sale with vacant possession,</p>					
<a href="#">Landlord and Tenant (Amendment) Act 1948 No 25</a>	<p><b>99 Definitions</b></p> <p><b>discharged member</b> of the Forces means a person who having been a member of the Defence Force engaged on war service during the present war or in connection with any naval, military or air operations conducted by or on behalf of the United Nations Organisation:</p> <p>(a) has been discharged from the Defence Force, or has ceased to be engaged on war service, for a period not exceeding the prescribed period, or</p> <p>(b) having been discharged from the Defence Force, or having ceased to be engaged on war service, for a period exceeding the prescribed period:</p>	<p>Sexual orientation</p> <p>Gender identity</p>	<p>Doubtful this provision is still applicable today.</p> <p>Provisions regarding female dependent appear to be discriminatory against those who may be in a same sex relationship. Eg. if male discharged member of Forces had a male partner or a partner who did not identify as either male or female.</p>	Financial	1	



NSW Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>(i) is receiving a pension from the Commonwealth, or</p> <p>(ii) is not receiving such a pension, but is receiving from the Commonwealth medical treatment of such a nature as to prevent him or her either wholly or partly from engaging in his or her occupation.</p> <p><b>112 Prohibition of eviction of dependants of members of the Forces in certain cases</b></p> <p>(1) Where a soldier's dependant is in occupation of a dwelling-house which was occupied by a member of the Forces or a member of the United Nations Forces by virtue of his or her employment, whether on terms of payment of rent or the provision of any other consideration or otherwise, it shall not be lawful for any person to evict the soldier's dependant from the dwelling-house unless:</p> <p>(a) the soldier's dependant has failed to comply with the terms and conditions (if any) on which the soldier's dependant was permitted to occupy the dwelling-house, and</p> <p>(b) the person seeking to evict the soldier's dependant has obtained the leave of the court.</p>					

NSW Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>In this section:</p> <p><b><i>soldier's dependant</i></b> means</p> <p>(a) parent of a member of the Forces or of a member of the United Nations Forces,</p> <p>or</p> <p>(b) <u>female dependant of a member of the Forces or of a member of the United Nations Forces.</u></p>					
<a href="#">Combat Sports Regulation 2009</a>	<p><b>38 Clothing at weigh-in</b></p> <p>A combatant's weight for the purposes of a professional combat sport contest is taken to include:</p> <p>(a) in the case of a male combatant—the weight of the combatant's boxing or similar shorts but no other clothing, or</p> <p>(b) in the case of a female combatant—the weight of the combatant's boxing or similar shorts and a light-weight shirt or sports-type brassiere.</p>	<p>Gender identity</p> <p>Intersex status</p>	<p>Binary concept of gender used for regulation of uniform. Excludes those identifying as neither male nor female and is of uncertain application in relation to intersex people.</p> <p>Despite the <i>Interpretation Act 1987</i> and <i>Norrie's Case</i>, there is no option provided to people who do not identify as either male or female to choose whether they prefer to have their shorts or shorts and light-weight shirt or sports-type brassiere weighed.</p>	Sport	1	Not directly covered by the s. 42 (sport) exemption as the discrimination does not pertain to participation in any competitive sporting activity per se.

NSW Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
<a href="#">Local Government and Other Authorities (Superannuation) Act 1927 No 35</a>	<p><b>15V Lump sum benefit on retirement</b></p> <p>(1) Subject to section 15Z, where a contributor (in this section referred to as <i>the former contributor</i>):</p> <p>(a) <u>being a male</u>, ceases to be employed by a council on or after the day on which he attains the age of sixty years and before he attains the age of sixty-five years,</p> <p>(b) <u>being a female</u>, ceases to be employed by a council on or after the day on which she attains the age of fifty-five years and before she attains the age of sixty-five years, or</p> <p>(c) attains the age of sixty-five years, the board shall pay to the former contributor the total amount standing to the credit of the former contributor in his or her servant's account.</p>	Gender identity Intersex status	<p>Provision does not accommodate those who identify as neither male nor female.</p> <p>Given the section differentiates between males and females, it is unclear which age applies for the retirement of a person who is neither male nor female.</p> <p>Without examining the policy basis for this differentiation, it may be that an intersex person (legally recognised as male or female) is detrimentally affected by its application.</p>	Employment	2	
<a href="#">Payroll Tax Act 2007 No 21</a>	<p><b>13A Paternity leave</b></p> <p>(1) Wages are exempt wages if they are paid or payable to an employee in respect of paternity leave, being leave given to a male employee in connection with the pregnancy of a woman with his unborn child or the birth of his child (other than sick leave, recreation leave, annual leave or any</p>	Gender identity Intersex status Sexual orientation	Query whether exemption regarding maternity/paternity leave available to female partner of pregnant person or partner who does not identify as male or female.	Employment	2	s. 31 (pregnancy, childbirth or breastfeeding) exemption may apply to s.53 in any event.

NSW Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	similar leave).		Paternity leave does not extend to individuals whose partner is having a child but whose child is not the individual's child. E.g. a lesbian woman whose partner is having a child.			
<a href="#">Duties Act 1997 No 123</a>	<p><b>104B Exemption—transfer of residential land</b></p> <p>(1) No duty is chargeable under this Chapter on a transfer, or an agreement for the sale or transfer, of residential land if:</p> <p>(a) as a result of the transfer or agreement, the property is or will be held by a married couple or de facto partners as joint tenants or as tenants in common in equal shares, and</p> <p>(b) the residential land:</p> <p>(i) is land on which there is a dwelling that, when the transfer of dutiable property occurs, is used as the principal place of residence of the married couple or de facto partners, or</p>	Marital/relationship status (Sexual orientation)	<p>Threshold of 2 years applies to de facto couples but not married couples.</p> <p>Discrimination is primarily on the basis of marital status but also indirectly discriminatory on other bases identified.</p>	Financial	2	

NSW Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>(ii) is a parcel of vacant land, or land on which there is a building under construction, and the married couple or de facto partners intend to use the residential land as the site of a dwelling to be used as their principal place of residence, and</p> <p>(c) the residential land is used solely for residential purposes and not for any other purpose (such as a commercial, industrial or professional purpose), and</p> <p>(d) both the transferor and the transferee are the married couple or one of them or the de facto partners or one of them and no other person is a party to the transfer, and</p> <p>(e) in the case of de facto partners, <u>the parties to the relationship have lived in the relationship for at least 2 years before the date of the transfer.</u></p> <p>(2) For the purposes of subsection (1) (c), the use of not more than one room on the land for a non-residential purpose is to be disregarded, if the use relates</p>					

NSW Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>to a business or undertaking that is primarily conducted elsewhere.</p> <p>(3) Land may be the subject of an exemption under this section even if it is partly held by another person who is not a part of the married couple or one of the de facto partners.</p>					
<a href="#">Transport Employees Retirement Benefits Act 1967 No 96</a>	<p><b>23 years Benefit at age 65 years after 10 service</b></p> <p>(4) Notwithstanding the provisions of subsections (1), (2) and (3), where a contributor, not being a contributor referred to in paragraph (b) or (c) of subsection (3), so elects, there shall be paid from the Fund in lieu of the whole or part, as he specifies in the election, of the lump sum benefit to which he would, but for the election, be entitled under subsection (1), (2) or (3):</p> <p>(a) <u>in the case of a male contributor:</u></p> <p>(i) a pension for himself for life from the day following his retirement, or</p> <p>(ii) a pension for himself for life from the day following his retirement and five-eighths of that pension for his widow (being his wife at the</p>	<p>Gender identity</p> <p>Intersex status</p> <p>Sexual orientation</p>	<p>Binary concept of male and female used. Provision would appear to exclude persons who identify as neither or both male/female.</p> <p>Provision also discriminates on the basis of sexual orientation - a widow (who is the wife of a male contributor) receives a pension but a de facto appears to be excluded.</p> <p>The distinction based on sex also has potential to detrimentally impact on intersex people, who may be legally recognised as one sex but possess the sex characteristics that</p>	Financial	2	May be covered by s 41A or 41B exemptions depending on whether the definition of a "superannuation fund" (which is broadly defined) is met

NSW Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>date on which the lump sum benefit becomes payable) for her life from the day following his death, or</p> <p>(b) <u>in the case of a female contributor</u>, a pension for herself for life from the day following her retirement.</p> <p>(7) Where a contributor makes an election under this section whereby a pension for the contributor, as referred to in subparagraph (i) of paragraph (a), or in paragraph (b), of subsection (4), is payable from the Fund and the contributor's age, in complete years, at the date the lump sum benefit would, but for the election, have become payable is included, in the case of a male contributor, in Schedule 4, or, in the case of a female contributor, in Schedule 6, the amount of the pension payable to the contributor shall be ascertained by multiplying the appropriate amount set out in Schedule 4, or Schedule 6, as the case may be, by the amount of the lump sum benefit and dividing the product by ten thousand.</p> <p>Other provisions: <b>Schedule 4 Conversion of lump sum of</b></p>		would justify the treatment afforded to the other sex.			

NSW Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p><b>\$10,000 Fortnightly Pension—Men</b></p> <p><b>Schedule 6 Conversion of lump sum of \$10,000 Fortnightly Pension—Women</b></p>					
<a href="#">Transport Employees Retirement Benefits Act 1967 No 96</a>	<p><b>23A Extension of rights to spouse pensions</b></p> <p>(1) This section applies to a contributor (the <i>pensioner</i>) who made an election under section 23 (4) (a) (ii) and who marries or enters into a de facto relationship after becoming entitled to a pension under this Act.</p> <p>(2) If a pensioner dies on or after the commencement of this section leaving an eligible widow or de facto partner, there is payable to the eligible widow or de facto partner:</p> <p>(a) if the deceased pensioner and eligible widow or de facto partner had been married or been in a de facto relationship for 3 years or more immediately before the pensioner's death—a pension at the rate of five-eighths of the pension the deceased pensioner was receiving, or entitled to receive, immediately before death, or</p> <p>(b) if the deceased pensioner and</p>	Marital status (Sexual orientation)	Person must have been in de facto relationship for at least 3 years whereas this is not required for married persons. Discriminatory against those in same sex relationships .	Financial	2	s 41A or 41B exemptions depending on whether the definition of a "superannuation fund" (which is broadly defined) is met



NSW Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	eligible widow or de facto partner had been married or been in a de facto relationship for less than 3 years immediately before the pensioner's death—a pension as referred to in paragraph (a), but reduced on a pro rata basis according to the proportion that the period of the marriage or relationship bears to 3 years.					
<a href="#">Assisted Reproductive Technology Act 2007 No 69</a>	Use of “woman” throughout Act in relation to ART treatment. <b>4 Definitions</b> <b>ART treatment</b> means assisted reproductive technology treatment being any medical treatment or procedure that procures or attempts to procure pregnancy <u>in a woman</u> by means other than sexual intercourse, and includes artificial insemination, in-vitro fertilisation, gamete intrafallopian transfer and any related treatment or procedure that is prescribed by the regulations.	Gender identity Intersex status	On one reading, may restrict access by a person who doesn't identify as a woman but has female reproductive systems and wishes to use ART. Not clear whether a person who does not identify as a woman but has a reproductive capacity would be treated.	Health	3	
<a href="#">Births, Deaths and Marriages Registration Act 1995 No 62</a>	<b>32B Application to alter register to record change of sex</b> (1) A person who is 18 or above: (a) whose birth is registered in New South Wales, and (b) who has undergone a sex	Gender identity Intersex status	This prevents individuals who are married and have undergone sex affirmation surgery from changing their gender and remaining	Family and relationship law Identity documents	2 & 4	s 40(5) - not unlawful to refuse to change official record of a person's sex if the person is married. Section 43A – not

NSW Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p><u>affirmation procedure</u>, and</p> <p>(c) <u>who is not married</u>.</p> <p>may apply to the Registrar, in a form approved by the Registrar, for alteration of the record of the person's sex in the registration of the person's birth.</p> <p>See also:</p> <p><b>32D Alteration of register</b></p> <p><b>32DA Application to register change of sex</b></p>		<p>married.</p> <p>It also prevents individuals who have not undergone sex affirmation surgery but who identify as another gender to change their gender on the Register, which is discriminatory on the basis of gender identity and intersex status.</p> <p>Note, Norrie's case provides that individuals can be registered as sex non-specific.</p>			discriminatory to make or keep records to be kept in a way that doesn't allow for the designation of sex other than male or female.
<a href="#">Superannuation Act 1916 No 28</a>	<p><b>10AB Contributions according to scale graduated by age etc</b></p> <p>Except where otherwise provided by this Act:</p> <p>(a) the amount of contribution to be paid by a contributor shall be based upon the number of units of pension for which the contributor contributes, upon <u>the sex of the contributor</u>, and, in the case of a woman contributor, upon whether she contributes for a pension payable at the age of 55 years or 60 years, and shall be in accordance with the tables of contributions fixed by or</p>	Gender identity Intersex status	<p>Binary concept of gender adopted given different standards are adopted for males and females.</p> <p>How do provisions apply to those not identifying as "male" or "woman" – possible that their spouses would be left out of payment of pension?</p>	Financial	4	Likely to be covered by s 41A or 41B exemptions relating to new and existing superannuation fund conditions

NSW Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>under this Act, and</p> <p>(b) the amount of contribution to be paid by the contributor in respect of:</p> <p>(i) a unit for which the contributor commences to contribute as from the contributor's entry payment day shall be based upon the age of the contributor at the contributor's entry payment day,</p> <p>(ii) a unit for which the contributor commences to contribute as from the contributor's annual adjustment day in any half-year shall be based upon the age of the contributor at the contributor's annual adjustment day in that half-year, or</p> <p>(iii) a unit for which the contributor contributes as from the contributor's exit day shall be based upon the age of the contributor at the contributor's exit day.</p> <p><b>10AG Cost of units of pension</b></p> <p>(1) For the purposes of this Division, and notwithstanding anything contained in this or any other Act, the cost of a unit of pension is, in relation to an employee:</p>		<p>Note use of terms male, woman and female throughout the Act.</p>			

NSW Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>(a) who was a contributor at 30 June 1963 and has continued to be a contributor since that date, and:</p> <p>(i) who, being a <u>woman contributor</u>, elected to contribute at the rate prescribed for retirement at the age of 55 years—\$450.90,</p> <p>(ii) who, being a <u>woman contributor</u>, elected to contribute at the rate prescribed for retirement at the age of 60 years—\$395.54, or</p> <p>(iii) <u>who is a male contributor</u>—\$396.90, or</p> <p>(b) who commenced or commences to contribute after 30 June 1963 and:</p> <p>(i) who, being a <u>woman contributor</u>, elected to contribute at the rate prescribed for retirement at the age of 55 years—\$534.40,</p> <p>(ii) who, being a <u>woman contributor</u>, elected to contribute at the rate</p>					

NSW Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>prescribed for retirement at the age of 60 years—\$468.80, or</p> <p>(iii) who <u>is a male contributor</u>—\$499.68 in respect of each of the first 2 units, and \$493.28 in respect of each subsequent unit.</p> <p>(2) Notwithstanding subsection (1), where an employee who, being a woman, elected to contribute at the rate prescribed for retirement at the age of 55 years has attained the age of 60 years on or before her entry payment day, annual adjustment day or exit day, the cost of a unit of pension for which she commences to contribute on or after that day shall, for the purposes of this Division, be the cost applicable had she elected to contribute at the rate prescribed for retirement at the age of 60 years.</p> <p>Note other provisions:</p> <p><b>30 Pensions to spouse or de facto partner on death of contributor</b></p> <p><b>31 Pension to spouse or de facto partner on death of pensioner</b></p> <p><b>32AA Extension of sec 32A to certain</b></p>					

NSW Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p><b>cases where spouses or de facto partners die contemporaneously</b></p> <p><b>40 Male pensioner sentenced to imprisonment</b></p> <p>(1) Where any male pensioner is in prison for any period in excess of one month:</p> <p>(a) his spouse or de facto partner may be paid during any such period of imprisonment pension for the spouse or de facto partner and in respect of any children of the pensioner or the spouse or de facto partner that would have been payable under sections 31 and 32D if the pensioner were dead, or</p> <p>(b) in any other case, pension may be paid in respect of any children of himself or his spouse or de facto partner in accordance with the provisions of section 33 as if the pensioner were dead.</p> <p>(2) Any amount payable to a spouse or de facto partner or in respect of children in accordance with paragraphs (a) and (b) of subsection (1) shall be deducted from any pension payable to the pensioner and the balance of such pension shall be paid to him or to such person including his spouse or de facto</p>					

NSW Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>partner, or a person on behalf of his children, as STC determines.</p> <p>(3) Any payment made by STC under the authority of this section shall:</p> <p>(a) be as valid as if made by way of pension to the pensioner, and</p> <p>(b) not exceed the amount of pension which but for his imprisonment would have been payable to the pensioner.</p> <p><b>41 Woman pensioner sentenced to imprisonment</b></p>					
<a href="#">Industrial Relations Act 1996 No 17</a>	<p>(4) <b>Adoption leave</b> is leave taken by a <u>female or male</u> employee in connection with the adoption by the employee of a child under the age of 18 years (other than a child who has previously lived continuously with the employee for a period of at least 6 months or who is a child or step-child of the employee or of the employee's spouse).</p> <p>Adoption leave consists of:</p> <p>(a) an unbroken period of up to 3 weeks at the time of the placement of the child with the employee (<b>short adoption leave</b>), and</p> <p>(b) a further unbroken period in order to be the primary care-giver of the child</p>	<p>Gender identity</p> <p>Intersex status</p> <p>Relationship status</p>	<p>Binary concept of gender used. Definition would not appear to apply to those who identify as neither female nor male. However <i>Norrie's Case</i> and <i>Interpretation Act 1987</i> suggest that adoption leave would extend to any employee in connection with the adoption of that child.</p> <p>Exception is not treated equally for children of married couples and children of</p>	Employment	5	

**Comment [L&R12]:** *Norrie's Case* and *Interpretation Act 1987* suggest that adoption leave would extend to any employee in connection with the adoption of a child.

NSW Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<i>(extended adoption leave).</i>		de facto couples, but there appears to be a justification for this i.e. that leave is not required where the adoption is a mere formality as the child has already been living in the household.			
<a href="#">Surrogacy Act 2010 No 102</a>	<p><b>30 Medical or social need for surrogacy arrangement must be demonstrated</b></p> <p>(1) The Court must be satisfied that there is a medical or social need for the surrogacy arrangement.</p> <p>(2) There is a medical or social need for a surrogacy arrangement if:</p> <p>(a) there is only one intended parent under the surrogacy arrangement and the intended parent is a man or an eligible woman, or</p> <p>(b) there are 2 intended parents under the surrogacy arrangement and the intended parents are:</p> <p>(i) a man and an eligible woman, or</p> <p>(ii) 2 men, or</p> <p>(iii) 2 eligible women.</p>	Gender identity	Binary concept of gender adopted. Definition appears to exclude from surrogacy arrangements	Family and relationship law Individuals who identify as neither or both male or female	5	



NSW Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
<a href="#">Adoption Act 2000 No 75</a>	<p><b>133A Definition of “presumptive father”</b></p> <p>In this Chapter:</p> <p><b>presumptive father</b> of an adopted person means <del>a man</del> who claims to be the birth parent of the adopted person and who:</p> <p>(a) is shown on the adopted person’s original birth certificate as the adopted person’s father, or</p> <p>(b) is a person whom the Director-General, Registrar or other information source is entitled to presume, under any law (including a law of another State, the Commonwealth or of a country outside Australia), to be the adopted person’s father.</p>	Gender identity	Discriminatory towards persons who are the presumptive father but do not wish to identify as “man”.	Not Applicable	5	
<a href="#">Conveyancing Act 1919 No 6</a>	<p><b>34 Meaning of heir (male or female) or heirs (male or female) of the body of any person</b></p> <p>(1) Where under the terms of any instrument coming into operation after the commencement of this Act any property vests in:</p> <p>(a) the heir or heirs of the body of any person, or</p> <p>(b) <del>the heir or heirs male, or the heir or heirs male of the body of any person, or</del></p> <p>(c) <del>the heir or heirs female, or the heir or heirs female of the body of any person,</del></p> <p>the property shall vest as follows:</p> <p>In case (a) in the issue of such person as</p>	Gender identity Intersex status	Binary concept of gender used in this provision.  Section 76 does not have regard to those who do not identify as male or female (which impacts upon the interpretation of section 34)	Not Applicable	5	

**Comment [L&R13]:** *Norrie’s Case* and the *Interpretation Act 1987* suggest this section would be interpreted to include any person who is shown on the adopted person’s original birth certificate (e.g. a woman who has undergone sex transfer but who fathered a child).

**Comment [L&R14]:** *Norrie’s Case* and *Interpretation Act 1987* suggest that any heir will be entitled to property in accordance with this section.

NSW Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>tenants in common per stirpes; in case (b) in the sons and issue of sons of such person as tenants in common per stirpes; and in case (c) in the daughters and the issue of daughters of such person as tenants in common per stirpes.</p> <p><b>76 Construction of implied covenants and provisions</b></p> <p>In the construction of a covenant, or proviso, or other provision implied in a deed by virtue of this or any other Act words importing the singular or plural number or <u>the masculine gender shall be read as also importing the plural or singular number or as extending to females as the case may require.</u></p>					
<a href="#">Conveyancing Act 1919 No 6</a>	<p><b>Schedule 4</b></p> <p><b>Direction as to the forms in this Schedule</b></p> <p><b>2</b> Such parties may substitute the feminine gender for the masculine, or the plural number for the singular, in the forms in the first column of this Schedule, and corresponding changes shall be taken to be made in the corresponding forms in the second column.</p>	<p>Gender identity</p> <p>Intersex status</p>	Binary concept gender adopted. Does not have regard to those persons who identify as neither feminine or masculine.	Not Applicable	5	
<a href="#">Crimes (Administration of Sentences) Act 1999 No 93</a>	<p><b>non-invasive sample</b> means any of the following samples of human biological material:</p> <p>(a) a sample of breath, taken by breath test, breath analysis or otherwise,</p> <p>(b) a sample of urine,</p>	<p>Gender identity</p> <p>Intersex status</p>	Reference to "breasts of a female or a transgender person who identifies as a female" may exclude intersex person who has breasts.	Not Applicable	5	

**Comment [L&R15]:** *Norrie's Case and Interpretation Act 1987.*

**Comment [L&R16]:** *Norrie's Case and Interpretation Act 1987 suggests that this should apply to any person who has breasts.*

NSW Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>(e) a sample of faeces,</p> <p>(d) a sample of saliva taken by buccal swab,</p> <p>(e) a sample of nail,</p> <p>(f) a sample of hair other than pubic hair,</p> <p>(g) a sample of sweat taken by swab or washing from any external part of the body other than:</p> <p>(i) the genital or anal area or the buttocks, or</p> <p>(ii) the breasts of a female or a transgender person who identifies as a female.</p>					
<a href="#">Crimes Act 1900 No 40</a>	<p><b>61H Definition of “sexual intercourse” and other terms</b></p> <p>(1) For the purposes of this Division, <b>sexual intercourse</b> means:</p> <p>(a) <del>sexual connection occasioned by the penetration to any extent of the genitalia (including a surgically constructed vagina) of a female person or the anus of any person by:</del></p> <p>(i) any part of the body of another person, or</p> <p>(ii) any object manipulated by another person, except where the penetration is carried out for proper medical purposes, or</p> <p>(b) <del>sexual connection occasioned by the introduction of any part of the penis of a person into the mouth of another person, or</del></p> <p>(c) <del>cunnilingus, or</del></p> <p>(d) <del>the continuation of sexual intercourse as</del></p>	<p>Gender identity</p> <p>Intersex status</p>	<p>Could potentially exclude from definition persons with vaginas and surgically constructed vaginas who do not identify as female.</p>	Not Applicable	5	

**Comment [L&R17]:** *Norrie's Case* and *Interpretation Act 1987* suggest that this would extend to any person who has a vagina or surgically constructed vagina.

NSW Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	defined in paragraph (a), (b) or (c)-					
<a href="#">Crimes Act 1900 No 40</a>	<p><b>91FB Child abuse material—meaning</b></p> <p>(4) The <b>private parts</b> of a person are:</p> <p>(a) a person's genital area or anal area, or</p> <p>(b) <del>the breasts of a female person.</del></p>	Gender identity Intersex status	Reference to breasts of a female person may exclude those who have breasts but do not identify as female.	Not Applicable	5	
<a href="#">Crimes Act 1900 No 40</a>	<p><b>21 Child murder by mother—verdict of contributing to death etc</b></p> <p>Whosoever, being a woman delivered of a child is indicted for its murder, shall, if the jury acquit her of the murder, and specially find that she has in any manner wilfully contributed to the death of such child, whether during delivery, or at or after its birth, or has wilfully caused any violence, the mark of which has been found on its body, be liable to imprisonment for ten years.</p> <p><b>22A Infanticide</b></p> <p>(1) Where a woman by any wilful act or omission causes the death of her child, being a child under the age of twelve months, but at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child, then, notwithstanding that the circumstances were such that but for this section the offence would have amounted to</p>	Gender identity Intersex status	Provisions may not apply to a person who gave birth to a child but does not identify as a women.	Not Applicable	5	

**Comment [L&R18]:** *Norrie's Case* and *Interpretation Act 1987* suggest that this section would apply to any person with breasts.

**Comment [L&R19]:** *Norrie's Case* and *Interpretation Act 1987* suggest that this section would apply to any person who is delivered of a child.

NSW Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>murder, she shall be guilty of infanticide, and may for such offence be dealt with and punished as if she had been guilty of the offence of manslaughter of such child.</p> <p><del>(2) Where upon the trial of a woman for the murder of her child, being a child under the age of twelve months, the jury are of opinion that she by any wilful act or omission caused its death, but that at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to such child or by reason of the effect of lactation consequent upon the birth of the child, then the jury may, notwithstanding that the circumstances were such that but for the provisions of this section they might have returned a verdict of murder, return in lieu thereof a verdict of infanticide, and the woman may be dealt with and punished as if she had been guilty of the offence of manslaughter of the said child.</del></p> <p><del>(3) Nothing in this section shall affect the power of the jury upon an indictment for the murder of a child to return a verdict of manslaughter or a verdict of not guilty on the ground of insanity, or a verdict of concealment of birth.</del></p> <p><b>82 Administering drugs etc to herself by woman with child</b></p> <p>Whosoever, being a woman with child, unlawfully administers to herself any drug or noxious thing, or unlawfully uses any</p>					

NSW Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	instrument or other means, with intent in any such case to procure her miscarriage, shall be liable to imprisonment for ten years.					
<a href="#">Guardianship of Infants Act 1916 No 41</a>	<p><b>13 Rights of surviving parent as to guardianship</b></p> <p>(1) On the death of the father of a minor, the mother, if surviving, shall, subject to the provisions of this Act, be guardian of the minor, either alone or jointly with any guardian appointed by the father.</p> <p>Where no guardian has been appointed by the father, or if the guardian or guardians appointed by the father is or are dead or refuses or refuse to act, the court may, if it thinks fit, appoint a guardian to act jointly with the mother.</p> <p>(2) On the death of the mother of a minor, the father, if surviving, shall, subject to the provisions of this Act, be guardian of the minor, either alone or jointly, with any guardian appointed by the mother.</p> <p>Where no guardian has been appointed by the</p>	Sexual orientation	Unsure if discriminatory - concerned how this provision relates to circumstances where child has two fathers/mothers?	Not Applicable	6	

**Comment [L&R20]:** *Norrie's Case* and *Interpretation Act 1987* suggest that this section would be interpreted to apply to the parents of a child, regardless of their sex or gender.

NSW Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>mother, or if the guardian or guardians appointed by the mother is or are dead or refuses or refuse to act, the court may, if it thinks fit, appoint a guardian to act jointly with the father.</p>					
<a href="#">Human Cloning for Reproduction and Other Prohibited Practices Act 2003 No 20</a>	<p><b>4 Definitions</b></p> <p><b>woman</b> means a female human</p> <p><b>14 Offence—placing of an embryo</b></p> <p>(1) A person commits an offence if the person intentionally places a human embryo in an animal.</p> <p>(2) A person commits an offence if the person intentionally places a human Embryo in the body of a human, other than in a woman's reproductive tract.</p> <p>(There are a number of offences in this Act. I haven't extracted them all)</p>	Gender identity	Potentially discriminatory in circumstances where a person may have female reproductive organs and be capable of having child but does not identify as woman.	Not Applicable	5	
<a href="#">Industrial Relations Act 1996 No 17</a>	<p><b>3 Objects</b></p> <p>(f) to prevent and eliminate discrimination in the workplace and in particular to ensure equal remuneration for men and women doing work of equal or comparable value,</p> <p><b>21 Conditions to be provided in awards on application</b></p> <p>(1) The Commission must, on application, make an award setting any of the following</p>	Gender identity Intersex status	Binary concept of gender adopted. Discriminatory to those who do not identify as either.	Not Applicable	5	

**Comment [L&R21]:** *Norrie's Case* and *Interpretation Act 1987* suggest this section would be interpreted to apply to all persons who have reproductive organs.

**Comment [L&R22]:** *Norrie's Case* and *Interpretation Act 1987* suggest that this section would be interpreted as ensuring equal remuneration for all people.

NSW Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>conditions of employment:</p> <p>(b) equal remuneration and other conditions for men and women doing work of equal or comparable value;</p>					
<a href="#">Industrial Relations Act 1996 No 17</a>	<p><b>55-What is parental leave?</b></p> <p><del>(2) <b>Maternity leave</b> is leave taken by a female employee in connection with the pregnancy, or the birth of a child following the pregnancy, of the employee.</del></p> <p>Maternity leave consists of an unbroken period of leave.</p> <p><b>70-Transfer to a safe job</b></p> <p>This section applies whenever the present work of a female employee is, because of her pregnancy or breastfeeding, a risk to the health or safety of the employee or of her unborn or new born child. The assessment of such a risk is to be made on the basis of a medical certificate supplied by the employee and of the obligations of the employer under the <a href="#">Work Health and Safety Act 2011</a>.</p>	<p>Gender identity</p> <p>Intersex status</p>	<p>Binary concept of gender adopted. Query whether discriminatory—can someone who doesn't identify as female give birth and be entitled to maternity leave?</p>	Not Applicable	5	
<a href="#">Long Service Leave (Metalliferous Mining Industry) Act 1963 No 48</a>	<p><b>Metalliferous mine</b> means any place, open cut, shaft, tunnel, drive, level or other excavation, drift, gutter, lead, vein, lode or reef wherein</p> <p>or whereby any operation is carried on for or in</p>	<p>Gender identity</p> <p>Intersex status</p>	<p>Definition of metalliferous mine includes "any place where two or more men are employed"—this definition would</p>	Not Applicable	5	

**Comment [L&R23]:** *Norrie's Case* and *Interpretation Act 1987* suggest that this section would be interpreted to apply to all persons who are pregnant or give birth to a child.

**Comment [L&R24]:** *Norrie's Case* and *Interpretation Act 1987* suggest that this section would extend to all people working in metalliferous mines.



NSW Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>connection with the purpose of obtaining any mineral substance by any mode or method, and any place adjoining thereto on which any product of the metalliferous mine, as hereinbefore defined, is stacked, stored, crushed or otherwise treated and includes:</p> <p>(a) any quarry,</p> <p><del>(b) any place where two or more men are employed in connection with prospecting operations for the purposes of the discovery or exploration of or for any mineral substance whether by drilling, boring or any other method, and</del></p> <p>(c) so much of the surface of any place and the buildings, workshops, changehouses, structures and works thereon surrounding or adjacent to the shaft, outlets or site of a metalliferous mine, as hereinbefore defined, as are occupied, together with the mine, for the purposes of or in connection with the working of the mine, or the removal from the mine of refuse, or the health, safety or</p>		<p>potentially exclude places where females or those not identifying as males are working.</p>			

NSW Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	welfare of persons employed in, at or about the mine.					
<a href="#">Privacy and Personal Information Protection Act 1998 No 133</a>	<p><b>53 Internal review by public sector agencies</b></p> <p>(7A) A public sector agency may not pay monetary compensation under subsection (7) if:</p> <p>(a) the applicant is a convicted inmate or former convicted inmate or a spouse, partner (whether of the same or the opposite sex), relative, friend or an associate of a convicted inmate or former convicted inmate, and</p> <p>(b) the application relates to conduct of a public sector agency in relation to the convicted inmate or former convicted inmate, and</p> <p>(c) the conduct occurred while the convicted inmate or former convicted inmate was a convicted inmate, or relates to any period during which the convicted inmate or former convicted inmate was a convicted inmate.</p>	<p>Intersex status</p> <p>Gender identity</p> <p>Sexual orientation</p>	Binary concept of gender—reference to spouse/partner whether of the same or opposite sex.	Not Applicable	5	
<a href="#">Public Health Act 2010 No 127</a>	<p><b>90 The Pap Test Register</b></p> <p>(4) Subject to Division 3, the Pap Test Register is to contain the following information in relation to a cervical cancer test:</p> <p>(a) <u>the identifying particulars of the woman who had the test,</u></p> <p>(b) her date of birth and ethnicity,</p> <p>(c) the date of the test,</p>	<p>Gender identity</p> <p>Intersex status</p>	<p>Binary concept of gender.</p> <p>Is it possible persons needing pap test may not identify as "women"?</p>	Not Applicable	5	

**Comment [L&R25]:** *Norrie's Case* and *Interpretation Act 1987* suggest that a spouse or partner extends to any spouse or partner regardless of their sexual orientation or gender identity.

**Comment [L&R26]:** *Norrie's Case* and *Interpretation Act 1987* suggest that the Pap Test Register would extend to any person with a cervix.

NSW Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>(d) the result of the test,</p> <p>(e) an indication of whether the test was carried out:</p> <p>(i) because the woman had symptoms that warranted investigation, or</p> <p>(ii) as a routine measure only,</p> <p>(f) the identification number of the test,</p> <p>(g) if the test consisted of a pathological or cytological examination of a specimen taken from the woman</p> <p><b>91 Use of information in Pap Test Register</b></p> <p>(2) A person acting for the purposes of this Division does not, if acting in good faith, incur any liability because of any notice or advice to a woman, or any failure to notify or advise a woman, in relation to any matter included in or otherwise concerning the Pap Test Register.</p> <p><b>92 Circumstances in which identifying particulars may be disclosed</b></p> <p><b>94 Woman may elect not to be identified in Pap Test Register</b></p> <p>Nb. there are a number of relevant provisions</p>					
<a href="#">Sporting Injuries Insurance Act</a>	<p><b>4 Interpretation</b></p> <p><b>sexual organs</b> means genitals and, in the</p>	Gender identity	Binary concept of gender adopted.	Not Applicable	5	

NSW Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
<a href="#">1978 No 141</a>	case of a woman, includes breasts.	Intersex status	Excludes person with breasts who do not identify as a woman.			
<a href="#">Status of Children Act 1996 No 76</a>	<p><b>3-Definitions</b></p> <p><del>fertilisation procedure</del> means:</p> <p>(a) <del>the artificial insemination of a woman, or</del></p> <p>(b) <del>the procedure of transferring to a woman's body an ovum (whether or not produced by her) fertilised outside her body, or</del></p> <p>(c) <del>the procedure of transferring to a woman's body an ovum (whether or not produced by her) or both the ovum and sperm to enable fertilisation of the ovum to occur in her body, or</del></p> <p>(d) <del>any other procedure for the assisted conception of children that is prescribed by the regulations.</del></p>	Gender identity Intersex status	Query – is it possible for person to become pregnant if they do not identify as a woman?	Not Applicable	5	
<a href="#">Succession Act 2006 No 80</a>	<p><b>54 Persons entitled to inspect will of deceased person</b></p> <p>(2) A person who has possession or control of a will of a deceased person must allow any one or more of the following persons to inspect or be given copies of the will (at their own expense):</p> <p>(c) <del>the surviving spouse, de facto partner (whether of the same or the opposite sex) or issue of the deceased person,</del></p>	Intersex status Gender identity Sexual orientation	Binary concept of gender adopted. Reference to spouse/partner whether of the same or opposite sex – implies sex as being only male or female.	Not Applicable	5	
<a href="#">Victims Rights and Support Act</a>	<b>18-Definitions</b>	Gender identity	Excludes those who are pregnant that do	Not Applicable	5	

**Comment [L&R27]:** *Norrie's Case* and *Interpretation Act 1987* suggest that this section would extend to any person with breasts.

**Comment [L&R28]:** *Norrie's Case* and *Interpretation Act 1987* suggest that this section would extend to any person who is able to have a fertilised ovum inserted into their body.

**Comment [L&R29]:** *Norrie's Case* and *Interpretation Act 1987* suggest that any surviving spouse or de facto partner (regardless of their sex or gender) can inspect the will of a deceased person.

**Comment [L&R30]:** *Norrie's Case* and *Interpretation Act 1987* suggest that this section would extend to the foetus of any pregnant person.

NSW Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
<a href="#">2013 No 37</a>	<b><i>grievous bodily harm</i></b> includes the destruction (other than in the course of a medical procedure) of the fetus of a pregnant woman, whether or not the woman suffers any other harm.	Intersex status	not identity as a woman.			

#### 4. NORTHERN TERRITORY

NT Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
<a href="#">Child Protection (Offender Reporting and Registration) Act</a>	<p><b>31 Power to take photographs</b></p> <p>(1) A police officer receiving a report made in person under this Part may require the reportable offender:</p> <p>(a) to be photographed; or</p> <p>(b) to expose any part of his or her body to enable that part of the body to be photographed by the police officer or a person authorised by the police officer.</p> <p>(2) A police officer cannot, under this section, require a reportable offender to expose his or her genitals, the anal area of his or her buttocks or, for females or transgender people who identify as females, their breasts.</p> <p>(3) A photograph taken under this section must be taken:</p> <p>(a) in a place where no members of the public are present; and</p> <p>(b) if practicable, by a person who is the same sex as the reportable offender.</p> <p><b>34 Reporting by remote offenders</b></p> <p>(1) If a reportable offender resides more than 100 km from the nearest police station, the reportable offender, or a person entitled to make the report on his or her behalf, need not comply</p>	Gender identity Intersex people	<p>It is possible that particular sensitivities in relation to breasts may not extend to an intersex or gender diverse person may not be protected by section 31(2) as it applies to females and transsexuals.</p> <p>Term implies binary construction of both genders, excludes people of both or neither sex. Note. "he"/"she", used frequently in the Act.</p> <p><i>Norries Case and Interpretation Act 1978</i> suggest that references to "he" and "she" should not be interpreted broadly to include intersex and gender diverse people. However, the phrase "each</p>	Bodily searches	1	

NT Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>with a time limit concerning the making of a report in person under this Part if:</p> <p>(a) he or she contacts the Commissioner before the time limit expires; and</p> <p>(b) the Commissioner agrees to allow the report to be made at a specific time that is after the time limit expires and at a specific place; and</p> <p>(c) before the time limit expires, he or she provides the Commissioner by telephone or other means acceptable to the Commissioner with the information required to be reported.</p>		<p>other gender” in the <i>Acts Interpretation Act 1978</i> has not been considered.</p>			
<p><a href="#">Court Security Act</a></p>	<p><b>8 Searches</b></p> <p>(3) A frisk search may only be performed by:</p> <p>(a) a security officer of the same sex as the person being searched; or</p> <p>(b) where a security officer of the same sex as the person being searched is not available to perform the search – by any other person of the same sex who agrees to a request by a security officer to perform the frisk search.</p>	<p>Gender identity; intersex status</p>	<p>It is unclear how this provision will apply to individuals who may identify as neither or both male or female.</p> <p>An intersex person may be legally recognised as one sex but feel more comfortable being searched by an officer of a different sex.</p> <p>Best practice would be for such</p>	<p>Bodily searches</p>	<p>1</p>	

NT Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			individuals to choose the sex of their searcher.			
<a href="#">Disability Services Act</a>	<p><b>26 Searching resident of secure care facility</b></p> <p>(1) The CEO may authorise a public sector employee of the Agency at a residential facility (the authorised employee) to search a resident of the facility (including anything found on or with the resident).</p> <p>(2) The authorised employee may search a resident only if the employee reasonably believes it is necessary to do so to prevent the resident from harming himself or herself or others.</p> <p>The authorised employee must:</p> <p>(a) be someone who is of the same gender as the resident; and</p> <p>(b) conduct the search in the presence of an adult who:</p> <p>(i) is of the same gender as the resident; and</p> <p>(ii) is nominated by the resident or, if the resident fails to do so, by the authorised employee.</p>	<p>Gender identity</p> <p>Intersex status</p>	<p>It is unclear how this provision will apply to individuals who may identify as neither or both male or female.</p> <p>An intersex person may be legally recognised as one sex but feel more comfortable being searched by an officer of a different sex.</p> <p>Best practice would be for such individuals to choose the sex of their searcher.</p>	Bodily searches	1	
<a href="#">Police Administration</a>	<p><b>4 Interpretation</b></p> <p><i>intimate procedure</i> includes the following procedures:</p>	<p>Gender identity;</p>	<p>It is unclear how this provision will apply to individuals</p>	Bodily searches	1	



NT Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
<a href="#">Act</a>	<p>(n) in the case of a female:</p> <ul style="list-style-type: none"> <li>(iii) examining the breasts;</li> <li>(iv) taking a sample from the breasts by swab or washing;</li> <li>(v) taking a sample from the breasts by vacuum suction, scraping or lifting by tape; and</li> <li>(vi) taking a photograph, or an impression or cast, of a wound to the breast.</li> </ul> <p><b>120E Search of females</b></p> <p>(1) A search of a female under this Division shall be carried out only:</p> <ul style="list-style-type: none"> <li>(a) by a female member of the Police Force;</li> <li>(b) by a medical practitioner authorised by a member to carry out the search; or</li> <li>(c) where there is neither a female member nor a medical practitioner available – by a female person authorised by a member to carry out the search.</li> </ul> <p><b>144 Search of persons in lawful custody</b></p> <p>(4) Any search carried out pursuant to subsection (1) shall, wherever practicable, be carried out by a member of the same sex as the person</p>	intersex status	<p>who may identify as neither or both male or female.</p> <p>An intersex person may be legally recognised as one sex but feel more comfortable being searched by an officer of a different sex.</p> <p>Best practice would be for such individuals to choose the sex of their searcher.</p>			

NT Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	searched.					
<a href="#">Prisons (Correctional Services) Act</a>	<p><b>52 Meeting of male and female prisoners</b> Male and female prisoners in a prison must meet only on such terms and conditions as the Director thinks fit.</p> <p><b>53 Children may be accommodated</b></p> <p>(1) The Director may allow a female prisoner who gives birth to a child or who has children under the age of 5 years, to have that child or those children accommodated with her in a prison.</p> <p>(2) The Director must provide adequate accommodation for the children of a female prisoner allowed under this section to have her children accommodated with her in a prison.</p> <p><b>59 Director may order search</b></p> <p>(3) A male prisoner must be searched only by a male officer and a female prisoner must be searched only by a female officer.</p>	Gender identity; intersex status	<p>It is unclear how this provision will apply to individuals who may identify as neither or both male or female.</p> <p>An intersex person may be legally recognised as one sex but feel more comfortable being searched by an officer of a different sex.</p> <p>Best practice would be for such individuals to choose the sex of their searcher.</p> <p>A person may be pregnant, or have given birth to a child, but not identify or be legally recognised as a "female"</p>	Bodily searches Criminal	1	
<a href="#">Terrorism (Emergency Powers) Act</a>	<p><b>4 Preservation of privacy and dignity during search</b></p> <p>(6) The police officer must not search:</p>	Gender identity; intersex status	People who do not identify as female may have breasts and be deprived of	Bodily searches	1	

NT Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>(a) the genital area of the person searched; or</p> <p>(b) the breasts of a female or of a transgender person who identifies as a female,</p> <p>unless the police officer suspects on reasonable grounds that it is necessary to do so for the purposes of the search.</p>		the protection of this provision.			
<a href="#">Domestic and Family Violence Act</a>	<p><b>11 Intimate personal relationship</b></p> <p>(4) An intimate personal relationship may exist whether the 2 persons are the same or the opposite sex.</p>	Gender identity	Definition excludes relationships where at least one person identifies neither or both male or female.	Family and relationship law.	1	
<a href="#">Administrators Pensions Act</a>	<p><b>4. Pension payable</b></p> <p>(1) Subject to sections 6 and 7, there is payable to a person who became the Administrator at any time after the commencement of the Administrators Pensions Amendment Act 1999 and who:</p> <p>(d) held that office for a period of not less than 5 years – an annual pension for life equal to 60% of the annual basic salary payable to him or her immediately before he or she ceased to hold that office;</p> <p>(e) held that office for a period of less than 5 years:</p>	Gender identity; intersex status	Legislation adopts a binary concept of gender for determining eligibility for pension and eligibility for spouse or de facto pension.	Financial	2	s 41A or 41B exemptions depending on whether the definition of a "superannuation fund" (which is broadly defined) is met

NT Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>(i) if the Commissioner within the meaning of the Public Sector Employment and Management Act is satisfied that his or her ceasing to hold the office arose from a mental or physical incapacity to perform the duties of that office; or</p> <p>(ii) if he or she ceased to hold that office for reasons other than voluntary retirement or the expiration of the period of his or her appointment,</p> <p>an annual pension for life equal to 60% of the annual basic salary payable to him or her immediately before he or she ceased to hold that office; or</p> <p>(f) held that office for a period of less than 5 years due to voluntary retirement or the expiration of the period of his or her appointment – an annual pension for life equal to A% of the annual basic salary payable to him or her immediately before he or she ceased to hold that office, where:</p> <p>(years served as Administrator )</p> <p><math>A\% = 60\% \times ( 5 )</math>,</p> <p>and with a part year being taken into account as a fraction of a whole year calculated on the basis of days.</p>					

NT Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p><b>5 Pension of spouse or de facto partner</b></p> <p>(1) Subject to sections 6 and 7, where an Administrator in office, or a former Administrator receiving or entitled to receive a pension under this Act, dies leaving a surviving spouse or de facto partner (the surviving partner), there is payable to the surviving partner for life a pension at two-thirds of the rate of pension:</p> <p>(a) that would have been payable to the Administrator had he or she retired immediately before the date of his or her death and been eligible to receive a pension under this Act; or</p> <p>(b) payable to the former Administrator (disregarding any amount of reduction of pension pursuant to section 7) immediately before the date of his or her death,</p> <p>as the case may be.</p>					
<a href="#">Adoption of Children Act</a>	<p><b>3 Interpretation</b></p> <p><b>spouse</b> means a person who is married or who is living in a traditional Aboriginal marriage in relation to the man or woman to whom he or she is married or with whom he or she entered into the traditional Aboriginal marriage.</p> <p><b>traditional Aboriginal marriage</b> means a relationship between an Aboriginal man and woman that is recognised as a traditional marriage by the community or group to which either Aboriginal belongs.</p>	Indirect discrimination on the grounds of sexual orientation	The legislation discriminates against relationships between LGBTI people by limiting the definition of spouse (and the ability to enter into a joint adoption) to a person who is	Family and relationship law	3	

NT Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>(4) For the purposes of this Act, a reference to 2 persons or a couple in relation to a joint adoption of a child under this Act is a reference to:</p> <p>(a) a man and woman who are married; or</p> <p>(b) an Aboriginal man and woman who are living together in a traditional Aboriginal marriage.</p> <p><b>14 Adoption by one person</b></p> <p>(1) Subject to this section, the Court shall not make an order for the adoption of a child in favour of one person (not being a person to whom section 15 applies) unless:</p> <p>(c) the child is under the guardianship of the Minister; and</p> <p>(d) it is satisfied that, in the opinion of the Minister, exceptional circumstances exist that make it desirable to do so.</p> <p>(2) A person referred to in subsection (1) does not include a person who is married or has entered into a traditional Aboriginal marriage and who is not living separately and apart from his or her spouse.</p> <p><b>77. Witnessing of consent</b></p> <p>A person shall not subscribe his or her name as a witness to the signature of a person to an instrument of consent to the adoption of a child unless:</p> <p>(a) he or she is satisfied as to the identity of</p>		<p>married or living in a traditional Aboriginal marriage as between a man and a woman.</p> <p>The legislation prevents de facto couples (other than persons living in a traditional aboriginal marriage) from adopting a child as a couple.</p> <p>The legislation potentially prevents persons identifying as neither or both male or female, from witnessing documents by referring only to "he or she". This would depend on the interpretation of "each other gender".</p>			

NT Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>the person signing the consent;</p> <p>(b) he or she takes such steps as are prescribed to satisfy himself that the person signing the instrument understands the effect of the consent; and</p> <p>(c) the instrument bears the date on which he or she subscribed his or her name as a witness.</p> <p><b>MAXIMUM PENALTY: 40 PENALTY UNITS.</b></p>					
<a href="#">Guardianship of Infants Act</a>	<b>mother and father</b>	Sexual orientation Gender identity	Act tends to assume a child has a mother and father. Unclear how this would operate in relation to families where the parents are of the same sex or include a person that identifies as neither or both male or female.  This is inconsistent with <a href="#">Status of Children Act S5DA</a> where partners of birth mothers are recognised as	Family and relationship law	3	

NT Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			parents			
<a href="#">Births, Deaths and Marriages Registration Act</a>	<p><b>Part 4A Registration of change of sex</b></p> <p><b>28A Definitions</b></p> <p>In this Part:</p> <p><b>recognition certificate</b> means a certificate that:</p> <p>(a) is issued under a law that recognises that a person who has undergone sexual reassignment surgery may have changed sex; and</p> <p>(b) is issued in respect of a person who, having undergone sexual reassignment surgery, has changed sex; and</p> <p>(c) states the sex of that person as so changed.</p> <p><b>sexual reassignment surgery</b> means a surgical procedure involving the alteration of a person's reproductive organs carried out:</p> <p>(a) to assist a person to be considered to be a member of the opposite sex; or</p> <p>(b) to correct or eliminate ambiguities relating to the sex of the person.</p> <p><b>28B Application to register change of sex</b></p> <p>(1) An adult:</p> <p>(a) whose birth is entered in the Register;</p>	<p>Gender identity</p> <p>Intersex status</p>	<p>Prohibits a person who is married from changing his or her sex in the register.</p> <p>It also prevents individuals who have not undergone sex affirmation surgery but who identify as another gender to change their gender on the Register, which is discriminatory on the basis of gender identity and intersex status.</p> <p>Note, Registrar has confirmed registration as sex non-specific is already permitted in Northern Territory.</p>	<p>Family and relationship law</p> <p>Identity documents.</p>	<p>2 &amp; 4</p>	<p>s 40(5) - not unlawful to refuse to change official record of a person's sex if the person is married.</p> <p>s 43A - allows records to be kept in a way that doesn't allow for the designation of sex other than male or female.</p>



NT Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>and</p> <p>(b) <u>who has undergone sexual reassignment surgery; and</u></p> <p>(c) <u>who is not married;</u></p> <p>may apply to the Registrar, in a form approved by the Registrar, to register a change of the person's sex.</p>					
<a href="#">Anti-Discrimination Act</a>	<p><b>4 Interpretation</b></p> <p><b>man</b> means a member of the male sex irrespective of age.</p> <p><b>woman</b> means a member of the female sex irrespective of age.</p> <p><b>54 Pregnancy or childbirth</b></p> <p>Nothing in this Act makes it unlawful for a person to discriminate against a man on the ground of sex by reason only of the fact that that person grants to a woman rights or privileges in connection with pregnancy or childbirth.</p> <p><b>56 Sport</b></p> <p>(1) A person may restrict participation in a competitive sporting activity:</p> <p>(a) to either men or women, if the restriction is reasonable having regard to the strength, stamina or physique requirements of the activity; or</p> <p>(b) to people who can effectively compete;</p>	Gender identity	<p>Query whether the <i>Interpretation Act 1978</i> applies to negate differences between "man" and "woman".</p> <p>Protections against discrimination in relation to pregnancy and childbirth may not extend to people who are neither or both male or female that are pregnant.</p> <p>Permits discrimination in certain competitive sporting activities against people who are neither or both male or female.</p>	Health Sport	4	Section 31 (Pregnancy, childbirth or breastfeeding) Section 42 (Sport)

NT Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>or</p> <p>(c) to people of a specified age or age group; or</p> <p>(d) to people with a general or specific impairment.</p> <p>(2) Subsection (1)(a) does not apply to a sporting activity for children who have not attained 12 years of age.</p> <p>(3) In this section, competitive sporting activity does not include:</p> <p>(a) the coaching of people engaged in a sporting activity; or</p> <p>(b) the umpiring or refereeing of a sporting activity; or</p> <p>(c) the administration of a sporting activity; or</p> <p>(d) a prescribed sporting activity.</p>					
<a href="#">Status of Children Act</a>	<p><b>5DA Rule relating to parentage – female de facto partners</b></p> <p>(1) Where a woman who is the de facto partner of another woman undergoes, with the consent of the other woman, a fertilization procedure as a result of which she becomes pregnant, the other woman is, for all purposes of the law of the Northern Territory, to be presumed to be a</p>	<p>Gender identity</p> <p>Intersex status</p>	Consider scenario involving female with partner who identifies as a gender other than female but is nonetheless able to become pregnant (eg. trans or	Family and relationship law	5	

NT Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>parent of:</p> <p>(a) the unborn child; and</p> <p>(b) a child born as a result of the pregnancy.</p> <p>(2) A presumption of law that arises by virtue of subsection (1) is irrebuttable.</p> <p>(3) In a proceeding in which the operation of subsection (1) is relevant, a woman's consent to the carrying out of a fertilization procedure in respect of her de facto partner is to be presumed, but that presumption is rebuttable.</p>		intersex man, gender diverse individual).			
<a href="#">First Home Owner Grant Act</a>	<p>(3) An applicant is ineligible for a first home owner grant if the applicant or the applicant's spouse or de facto partner:</p> <p>(a) could have successfully applied for a first home owner grant under this Act or a corresponding law in respect of an earlier transaction to which he or she was a party but did not do so; or</p> <p>(b) could, assuming that he or she had then been an Australian citizen or a permanent resident, have successfully applied for a first home owner grant under this Act or a corresponding law in respect of an earlier transaction to which he or she was a party.</p>	Gender Identity	<p>Use of "he" and "she" implies binary construction of both genders, excludes people who are both or neither male or female.</p> <p>Note. Legislation generally uses the term "person", which is not defined.</p>	Financial	5	
<a href="#">Adult Guardianship</a>	<b>4. Best interests of represented person to be promoted</b>	Gender identity	Use of "he" and "she" implies binary construction of both	Not Applicable Family and	5	

**Comment [L&R31]:** *Norrie's Case* and *Interpretation Act 1978* suggest that references to "he" and "she" should not be interpreted broadly to include intersex and gender diverse people. However, the phrase "each other gender" in the *Acts Interpretation Act 1978* has not been considered.

NT Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
<a href="#">Act</a>	<p>(2) However, if the represented person has made an advance care statement, the function, power, authority, discretion, jurisdiction or duty must be exercised or performed so as to give effect to the statement even if doing so is not in the represented person's best interests, unless:</p> <p>(a) the represented person, having capacity to do so, states that he or she does not want effect to be given to that statement; or</p> <p>(b) a circumstance mentioned in section 23(2)(a) to (e) of the Advance Personal Planning Act exists</p>		<p>genders, excludes people who are both or neither male or female.</p> <p>Note. Legislation generally uses the term "person", which is not gender specific.</p>	relationship law		
<a href="#">Aged and Infirm Persons' Property Act</a>	<p><b>18 Manager is a trustee</b></p> <p>(1) Subject to this Act and, where the Public Trustee is the manager of a protected estate, subject to the Public Trustee Act, the manager of a protected estate is a trustee.</p> <p>(2) However, if the protected person has made an advance care statement (as defined in section 3 of the Advance Personal Planning Act), the manager must exercise and perform his or her powers and duties so as to give effect to the statement even if doing so is not in the protected person's best interests, unless:</p> <p>(a) the protected person, having capacity to do so, states that he or she does not want effect to be given to that statement; or</p>	Gender Identity	<p>Use of "he" and "she" implies binary construction of both genders, excludes people who are both or neither male or female.</p> <p>Note. Legislation generally uses the term "person", which is not defined.</p>	Not Applicable Financial	5	

**Comment [L&R32]:** *Norrie's Case* and *Interpretation Act 1978* suggest that references to "he" and "she" should not be interpreted to exclude intersex and gender diverse people. Note, however, the phrase "each other gender" in the *Acts Interpretation Act 1978* has not been considered.

**Comment [L&R33]:** *Norrie's Case* and *Interpretation Act 1978* suggest that references to "he" and "she" should not be interpreted to exclude intersex and gender diverse people. Note, however, the phrase "each other gender" in the *Acts Interpretation Act 1978* has not been considered.

NT Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	(b) a circumstance mentioned in section 23(2)(a) to (e) of the Advance Personal Planning Act exists					
<a href="#">Alcohol Mandatory Treatment Act</a>	<p><b>113 Right of appearance and representation</b></p> <p>(1) An affected person:</p> <p>(a) may represent himself or herself at a hearing; or</p> <p>(b) may appoint a legal practitioner to represent the affected person at the proceeding.</p>	Gender Identity	<p>Use of "he" and "she" implies binary construction of both genders, excludes people who are both or neither male or female.</p> <p>Note. Legislation generally uses the term "person", which is not defined.</p>	Not Applicable	5	
<a href="#">Law Reform (Miscellaneous Provisions) Act</a>	Legislation adopts use of <i>he, his</i> .	Gender identity; intersex status	<p>Use of "he" and "she" implies binary construction of both genders, excludes people who are neither or both male or female.</p> <p>Note. Legislation generally uses the term "person", which is not defined.</p>	Not Applicable	5	

**Comment [L&R34]:** *Norrie's Case* and *Interpretation Act 1978* suggest that references to "he" and "she" should not be interpreted broadly to include intersex and gender diverse people. However, the phrase "each other gender" in the *Acts Interpretation Act 1978* has not been considered.

**Comment [L&R35]:** *Norrie's Case* and *Interpretation Act 1978* suggest that references to "he" and "she" should not be interpreted broadly to include intersex and gender diverse people. However, the phrase "each other gender" in the *Acts Interpretation Act 1978* has not been considered.

## 5. QUEENSLAND

Queensland Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
<a href="#">Child Protection (Offender Reporting) Act 2004</a>	<p><b>31 Power to take photographs</b></p> <p>(1) A police officer receiving a report made in person under this part may require the reportable offender—</p> <p>(a) to be photographed; or</p> <p>(b) to expose any part of the offender's body to enable that part of the body to be photographed by the officer or a person authorised by the officer.</p> <p>(2) However, a police officer cannot require a reportable offender to expose—</p> <p>(a) the offender's genitals; or</p> <p>(b) the anal area of the offender's buttocks; or</p> <p>(c) if the offender is a female or a transgender person who identifies as a female—the offender's breasts.</p>	Intersex status Gender Identity	A person who does not identify as female but has breasts may not fall within the protection afforded by section 31(2)(c).	Bodily searches	1	
<b>Crime and Misconduct Act 2001</b>	<p><b>100 General provisions about searches of persons</b></p> <p>(2) Unless an immediate search is necessary, the person conducting the search must be either—</p> <p>(a) an authorised commission officer of the same sex as the person to be searched; or</p> <p>(b) if there is no authorised commission officer of the same sex available to search the person, someone acting at the direction of an authorised commission officer and of the same sex as the person to be searched; or</p> <p>(c) a doctor acting at the direction of an</p>	Gender identity Intersex status	It is unclear how this provision will apply to individuals who may identify as neither or both male or female, or whose identity documents do not match their gender identity.  An intersex person may be	Bodily searches	1	

Queensland Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>authorised commission officer.</p> <p>Example—</p> <p>An immediate search by a person of the opposite sex may be necessary because the person searched has a concealed firearm or knife.</p>		<p>legally recognised as one sex but feel more comfortable being searched by an officer of a different sex.</p> <p>Best practice would be for such individuals to choose the sex of their searcher.</p>			
<p><b>Crime and Misconduct Act 2001</b></p>	<p><b>106 Protecting the dignity of persons during search</b></p> <p>(2) The search must be conducted in a way providing reasonable privacy for the person.</p> <p>Example for subsection (2)—</p> <p>Reasonable privacy may be provided by conducting the search in a way that ensures, as far as reasonably practicable, the person being searched can not be seen by anyone of the opposite sex and by anyone who does not need to be present.</p>	<p>Gender identity</p> <p>Intersex status</p>	<p>It is unclear how this provision will apply to individuals who may identify as neither or both male or female, or whose identity documents do not reflect their gender identity.</p> <p>An intersex person may be legally recognised as one sex but feel</p>	<p>Bodily searches</p>	<p>1</p>	

Queensland Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			<p>more comfortable being searched by an officer of a different sex.</p> <p>Best practice would be for such individuals to choose the sex of their searcher.</p>			
<b>Crime and Misconduct Act 2001</b>	<p><b>108 If video cameras monitor place where person is searched</b></p> <p>(1) If a video camera monitors the area where the person is searched, the authorised commission officer must, unless the person viewing the monitor is an authorised commission officer of the same sex as the person being searched—</p> <p>(a) ensure the camera is turned off; or</p> <p>(b) conduct the search out of view of the camera.</p>	<p>Gender identity</p> <p>Intersex status</p>	<p>People who identify as neither or both male or female or have legal documentation that does not match their gender identity may fall outside the protection afforded by section 108.</p>	Bodily searches	1	
<a href="#">Crime and Misconduct Act 2001</a>	<p><b>105 Removal of clothing for search</b></p> <p>An authorised commission officer conducting the search of a person under this Act may require a person to remove all items of clothing or all items of outer clothing from—</p> <p>(a) if the person is a female—the upper or lower part of</p>	<p>Gender identity</p> <p>Intersex status</p>	<p>A person who is not legally recognised as female may nevertheless have breasts</p>	Bodily searches	1	

**Comment [L&R36]:** Because this provision allows for greater exposure of female persons, rather than additional protections, it has been removed.



Queensland Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>the body; or</p> <p>(b) if the person is a male—the lower part of the body.</p>		and should be afforded the protection of s. 105(a).			
<a href="#">Criminal Code Act 1899</a>	<p><b>679A Search of aircraft</b></p> <p>(1) If it appears to the person in command of an aircraft that there are reasonable grounds for suspecting that any offence involving the safety of the aircraft has been, is being, is about to be, or may be, committed on board or in relation to the aircraft it shall be lawful for the person and for any person acting by the person's authority with such assistance as the person or such person may think necessary to search or cause to be searched—</p> <p>(a) the aircraft and any person luggage and freight on board the aircraft; and</p> <p>(b) any person who is about to board the aircraft and any luggage or freight that is about to be placed on board the aircraft;</p> <p>and seize—</p> <p>(c) anything whether animate or inanimate and whether living or dead as to which there are reasonable grounds for believing that it will of itself or by or on scientific examination, afford evidence as to the commission of any offence; or</p> <p>(d) anything as to which there are reasonable grounds for believing that it is intended to be used for the purpose of committing any offence;</p> <p>and take it before a justice to be dealt with according</p>	<p>Gender identity</p> <p>Intersex status</p>	Section 679A does not protect intersex persons or persons who identify with \as neither male or female for the purpose of searches.	Bodily searches	1	

Queensland Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	to law. (2) A female shall not be searched under this section except by a female.					
<a href="#">Police Powers and Responsibilities Act 2000</a>	<b>517 Help with, and use of force for, performing forensic procedure</b> (3) If the forensic procedure is an intimate forensic procedure, the person asked to help must be— (a) a person of the same sex as the person who is to undergo the procedure; or (b) another doctor, dentist or forensic nurse examiner; unless a person mentioned in paragraph (a) or (b) can not reasonably be called on.	Gender identity Intersex status	Binary concept of gender for performing a forensic procedure.	Bodily searches	1	
<a href="#">Police Powers and Responsibilities Act 2000</a>	<b>Schedule 6 Dictionary</b> <b>DNA sample</b> means— (a) a sample of a person's hair, including roots of the hair, other than hair from— (i) the genital or anal area; or (ii) the buttocks; or (iii) if the person is a female—the breasts; or (b) a sample obtained by swabbing a person's mouth. <b>identifying particulars</b> , of a person, means any of the following— ... (g) a measurement of any part of the person's body, other than the person's genital or anal area, buttocks	Gender identity Intersex status	A person who is not legally recognised as female but but has breasts may be excluded from the special protections offered by these provisions	Bodily searches	1	

Queensland Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>or, for a female, breasts.</p> <p><b>intimate forensic procedure</b> means all or any of the following procedures—</p> <p>(a) a procedure performed on a person's external genital or anal area, buttocks or, for a female, breasts, that involves—</p> <p>(i) an external examination of the relevant part of the body; or</p> <p>(ii) taking a sample from the relevant part of the body, by swab, washing, vacuum suction, scraping, or by lifting by tape; or</p> <p>(iii) photographing the relevant part of the body; or</p> <p>(iv) making an impression or cast from the relevant part of the body; or</p> <p>(v) measuring the relevant part of the body;</p> <p>(b) a procedure performed on a person that involves—</p> <p>(i) an internal examination of a body cavity; or</p> <p>(ii) taking a sample of the person's hair from—</p> <p>(A) the genital or anal area; or</p> <p>(B) the buttocks; or</p> <p>(C) if the person is a female—the breasts; or</p> <p>...</p>					
<a href="#">Police Powers and Responsibilities</a>	<p><b>502 When forensic examiner may be asked to perform forensic procedure</b></p> <p>(2) The police officer may ask a forensic nurse</p>	<p>Gender identity</p> <p>Intersex</p>	<p>It is unclear how this provision will apply to</p>	<p>Bodily searches</p>	<p>1</p>	

Queensland Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
<a href="#">Act 2000</a>	examiner to perform the forensic procedure only if the forensic nurse examiner is the same sex as the person who is to undergo the procedure.	status	<p>individuals who may identify as neither or both male or female, or whose identity documents do not reflect their gender identity.</p> <p>An intersex person may be legally recognised as one sex but feel more comfortable being searched by an officer of a different sex.</p> <p>Best practice would be for such individuals to choose the sex of their searcher.</p> <p>not available.</p>			
<a href="#">Police Powers and Responsibilities Act 2000</a>	<p><b>551 Police officer may ask entrant to remove outer garment etc.</b></p> <p>(1) This section applies if—</p> <p>(a) a police officer reasonably considers it necessary to make a request under subsection (2) in relation to an entrant or the entrant's belongings, whether or not the</p>	Gender identity Intersex status	It is unclear how this provision will apply to individuals who may identify as neither or both male or female, or those whose	Bodily searches	1	

Queensland Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>entrant or belongings have been subjected to electronic screening; and</p> <p>(b) the police officer tells the entrant the reasons for making the request.</p> <p>...</p> <p>(3) A police officer may touch a garment the entrant is wearing only if the police officer is the same sex as the entrant.</p>		<p>identity documents do not reflect their gender identity.</p> <p>An intersex person may be legally recognised as one sex but feel more comfortable being searched by an officer of a different sex.</p> <p>Best practice would be for such individuals to choose the sex of their searcher.</p>			
<a href="#">Police Powers and Responsibilities Act 2000</a>	<p><b>568 Police officer or authorised person may ask entrant to remove outer garment etc.</b></p> <p>(1) This section applies if—</p> <p>(a) a police officer or authorised person (security official) reasonably considers it necessary to make a request under subsection (2) in relation to an entrant or the entrant’s belongings, whether or not the entrant or belongings have been subjected to electronic screening; and</p>	<p>Gender identity</p> <p>Intersex status</p>	<p>It is unclear how this provision will apply to individuals who may identify as neither or both male or female, or whose identity documents do not reflect their gender identity.</p>	<p>Bodily searches</p>	<p>1</p>	

Queensland Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>(b) the security official tells the entrant the reason for making the request.</p> <p>...</p> <p>(3) An official may touch a garment the entrant is wearing only if the official is the same sex as the entrant.</p>		<p>An intersex person may be legally recognised as one sex but feel more comfortable being searched by an officer of a different sex.</p> <p>Best practice would be for such individuals to choose the sex of their searcher.</p>			
<a href="#">Police Powers and Responsibilities Act 2000</a>	<p><b>624 General provision about searches of persons</b></p> <p>(2) Unless an immediate search is necessary, the person conducting the search must be either—</p> <p>(a) a police officer of the same sex as the person to be searched; or</p> <p>(b) if there is no police officer of the same sex available to search the person—someone acting at the direction of a police officer and of the same sex as the person to be searched; or</p> <p>(c) a doctor acting at the direction of a police officer.</p>	<p>Gender identity</p> <p>Intersex status</p>	<p>It is unclear how this provision will apply to individuals who may identify as neither or both male or female, or whose identity documents do not reflect their gender identity.</p> <p>An intersex person may be legally recognised as one sex but feel more</p>	<p>Bodily searches</p>	<p>1</p>	

Queensland Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			<p>comfortable being searched by an officer of a different sex.</p> <p>Best practice would be for such individuals to choose the sex of their searcher.</p>			
<a href="#">Police Powers and Responsibilities Act 2000</a>	<p><b>632 If video cameras monitor place where person is searched</b></p> <p>(1) If a video camera monitors the area where the person is searched (place of search), the police officer must, unless the person viewing the monitor is a police officer of the same sex as the person being searched—</p> <p>(a) ensure the camera is turned off; or</p> <p>(b) conduct the search out of view of the camera.</p> <p>(2) However, if, for safety or operational reasons, a video camera used to monitor the place of search can not be turned off without turning off a video camera used to monitor another place, the monitor for the video camera for the place of search must, if it is reasonably practicable, be turned off or used to monitor another place while the person is being searched.</p>	<p>Gender identity</p> <p>Intersex status</p>	<p>It is unclear how this provision will apply to individuals who may identify as neither or both male or female, or whose documents do not reflect their gender identity.</p> <p>An intersex person may be legally recognised as one sex but feel more comfortable being searched by an officer of a different sex.</p>	Bodily searches	1	

Queensland Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			Best practice would be for such individuals to choose the sex of their searcher.			
<a href="#">Police Powers and Responsibilities Act 2000</a>	<p><b>644 Watch-house officer may ask entrant to remove outer garment etc.</b></p> <p>(1) This section applies if—</p> <p>(a) a watch-house officer reasonably considers it necessary to make a request under subsection (2) in relation to an entrant or the entrant’s belongings, whether or not the entrant or belongings have been subjected to electronic screening; and</p> <p>(b) the watch-house officer tells the entrant the reasons for making the request.</p> <p>(3) A watch-house officer may touch a garment the entrant is wearing only if the watch-house officer is the same sex as the entrant.</p>	<p>Gender identity</p> <p>Intersex status</p>	<p>=</p> <p>It is unclear how this provision will apply to individuals who may identify as neither or both male or female, or whose identity documents do not reflect their gender identity.</p> <p>An intersex person may be legally recognised as one sex but feel more comfortable being searched by an officer of a different sex.</p> <p>Best practice would be for such individuals to choose the sex of their</p>	<p>Bodily searches</p>	<p>1</p>	



Queensland Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			searcher.			
<a href="#">State Buildings Protective Security Act 1983</a>	<p><b>21C Examination by person of same sex</b></p> <p>(1) A senior protective security officer may, under section 21B(2)(b), touch the garments worn by an entrant only if the officer is the same sex as the entrant.</p> <p>(2) If the senior protective security officer is not the same sex as the entrant—</p> <p>(a) the officer may arrange for another security officer of the same sex as the entrant or, if no other security officer is available, an adult person of the same sex as the entrant, to exercise the power at the direction of the senior protective security officer; and</p> <p>(b) the other security officer or person may exercise the power.</p>	<p>Gender identity</p> <p>Intersex status</p>	<p>It is unclear how this provision will apply to individuals who may identify as neither or both male or female, or whose identity documents do not reflect their gender identity.</p> <p>An intersex person may be legally recognised as one sex but feel more comfortable being searched by an officer of a different sex.</p> <p>Best practice would be for such individuals to choose the sex of their searcher.</p>	Bodily searches	1	

Queensland Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
<a href="#">Criminal Code Act 1899</a>	<p><b>227A Observations or recordings in breach of privacy</b></p> <p>(1) A person who observes or visually records another person, in circumstances where a reasonable adult would expect to be afforded privacy—</p> <p>(a) without the other person’s consent; and</p> <p>(b) when the other person—</p> <p>...</p> <p>(ii) is engaging in a private act and the observation or visual recording is made for the purpose of observing or visually recording a private act; commits a misdemeanour.</p> <p>Maximum penalty—2 years imprisonment.</p> <p><b>207A Definitions for this chapter</b></p> <p><i>private act, for a person, means—</i></p> <p>(c) another activity when the person is in a state of undress;</p> <p><i>state of undress, for a person, means—</i></p> <p>(a) the person is naked or the person’s genital or anal region is bare or, if the person is female, the person’s breasts are bare; or</p> <p>(b) the person is wearing only underwear; or</p> <p>(c) the person is wearing only some outer garments so that some of the person’s underwear is not covered by an outer garment.</p>	Gender identity Intersex status	A person who has breasts but does not identify or is legally recognised as female may not be afforded the same protection offered by section 207A	Criminal	1	
<a href="#">Criminal Code Act 1899</a>	<p><b>311 Killing unborn child</b></p> <p>(1) Any person who, when a female is about to be</p>	Gender identity	The child of an individual who is not legally	Criminal	1	

Queensland Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>delivered of a child, prevents the child from being born alive by any act or omission of such a nature that, if the child had been born alive and had then died, the person would be deemed to have unlawfully killed the child, is guilty of a crime, and is liable to imprisonment for life.</p> <p>(2) Any person who unlawfully assaults a female pregnant with a child and destroys the life of, or does grievous bodily harm to, or transmits a serious disease to, the child before its birth, commits a crime.</p> <p>Maximum penalty—imprisonment for life.</p>	Intersex status	recognised as female may not be covered by section 311.			
<a href="#">Criminal Code Act 1899</a>	<p><b>313 Killing unborn child</b></p> <p>(1) Any person who, when a female is about to be delivered of a child, prevents the child from being born alive by any act or omission of such a nature that, if the child had been born alive and had then died, the person would be deemed to have unlawfully killed the child, is guilty of a crime, and is liable to imprisonment for life.</p> <p>(2) Any person who unlawfully assaults a female pregnant with a child and destroys the life of, or does grievous bodily harm to, or transmits a serious disease to, the child before its birth, commits a crime.</p> <p>Maximum penalty—imprisonment for life.</p>	Gender identity Intersex status	An individual who does not identify as a female but who is pregnant, or an individual who is of intersex status and is pregnant may not be covered by this section.	Criminal	1	
<a href="#">Criminal Code Act 1899</a>	<p><b>314 Concealing the birth of children</b></p> <p>Any person who, when a woman is delivered of a child, endeavours, by any secret disposition of the dead body of the child, to conceal the birth, whether the child died before,</p>	Gender identity Intersex status	A person not legally recognised as female but is pregnant may	Criminal	1	

Queensland Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	at, or after, its birth, is guilty of a misdemeanour, and is liable to imprisonment for 2 years.		not be covered by this section.			
<a href="#">Criminal Code Act 1899</a>	<b>577 Charge of homicide of child</b> However, upon an indictment charging a person with the murder of any person, or with unlawfully killing any person, if upon the evidence it appears that the person alleged to have been killed was a child of which a female had recently been delivered, the accused person may be convicted of an offence defined in section 313 or 314, if any offence under either of those sections is established by the evidence.	Gender identity Intersex status	A person who is not legally recognised as female who gave birth to a child may not be covered by this section.	Criminal	1	
<a href="#">Prostitution Regulation 2000</a>	<b>3 Definitions</b> <b>sexual organs</b> means the following - (a) for a female—the vagina and the mons veneris; (b) for a male—the penis, scrotum, testicles and mons pubis. <b>oral sex</b> means the bringing into contact of any part of the sexual organs or anus of a person with any part of the mouth of another person.	Gender identity Intersex status	Binary meaning of oral sex for the purpose of the <i>Prostitution Regulation 2000</i> and the <i>Prostitution Act 1999</i> .	Criminal	1	
<a href="#">Research Involving Human Embryos and Prohibition of Human Cloning for Reproduction Act 2003</a>	<b>Schedule Dictionary</b> <b>woman</b> means a female human.	Gender identity Intersex status	"Woman" is restricted to females and it is unclear how this would apply to intersex people and gender diverse people.	Criminal	1	
<a href="#">Research Involving</a>	<b>unsuitable for implantation</b> , in relation to a human embryo,	Gender	An individual may be able to	Criminal	1	

**Comment [L&R37]:** *Norrie's Case* and *Interpretation Act 1978* suggest that references to "he" and "she" should not be interpreted broadly to include intersex and gender diverse people. However, the phrase "each other gender" in the *Acts Interpretation Act 1978* has not been considered.

The above three rows have been removed because the identification of a "female" does not appear to be a central and relevant characteristic for the offences.

Queensland Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
<a href="#">Human Embryos and Prohibition of Human Cloning for Reproduction Act 2003</a>	means a human embryo that—  (b) is determined to be unsuitable for implantation in the body of a woman, in accordance with objective criteria specified in guidelines issued by the CEO of the NHMRC under the National Health and Medical Research Council Act 1992 (Cwlth) and prescribed under a regulation for the purposes of this paragraph.	identity  Intersex status	be pregnant and not identify or be legally recognised as female.			
<a href="#">Research Involving Human Embryos and Prohibition of Human Cloning for Reproduction Act 2003</a>	<b>32 Licence is subject to conditions</b>  (1) A licence is subject to the condition that before an excess ART embryo or human egg is used, or any other embryo is created or used, as authorised by the licence—  (a) each responsible person in relation to the excess ART embryo, human egg or other embryo must have given proper consent to that creation or use; and  ...  (8) For the purposes of applying the condition referred to in subsection (1)(a)—  (a) a licence may provide that the guidelines referred to in the definition proper consent apply in a modified form in relation to the use, under the licence, of excess ART embryos that are unsuitable for implantation; and  (b) if a licence so provides, the guidelines as modified by the licence have effect in relation to the giving of consent for the use, under the licence, of the excess ART embryos.	Gender identity  Intersex status	"Unsuitable for implantation" means in the body of a woman. An individual may be able to be pregnant and not identify or be legally recognised as female.	Criminal	1	

Queensland Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
<a href="#">Research Involving Human Embryos and Prohibition of Human Cloning for Reproduction Act 2003</a>	<p><b>8 Offence—creating a human embryo for a purpose other than achieving pregnancy in a woman</b></p> <p>(1) A person commits an offence if the person intentionally creates a human embryo by a process of the fertilisation of a human egg by a human sperm outside the body of a woman, unless the person's intention in creating the embryo is to attempt to achieve pregnancy in a particular woman.</p> <p>Maximum penalty—15 years imprisonment.</p> <p>(2) A defendant does not bear the burden of proving any matter in subsection (1).</p>	<p>Gender identity</p> <p>Intersex status</p>	<p>A person who creates a human embryo inside an individual who is able to become pregnant but who does not identify as a woman or who is intersex may be in breach of this provision.</p> <p>However, it is unclear how this would lead to a breach of the SDA.</p>	Criminal	1	
<a href="#">Research Involving Human Embryos and Prohibition of Human Cloning for Reproduction Act 2003</a>	<p><b>9 Offence—creating or developing a human embryo by fertilisation that contains genetic material provided by more than 2 persons</b></p> <p>A person commits an offence if—</p> <p>(a) the person intentionally creates or develops a human embryo by a process of the fertilisation of a human egg by a human sperm outside the body of a woman; and</p> <p>(b) the human embryo contains genetic material provided by more than 2 persons.</p> <p>Maximum penalty—15 years imprisonment.</p>	<p>Gender identity</p> <p>Intersex status</p>	<p>A person who creates a human embryo inside an individual who is able to become pregnant but who does not identify as a woman or who is intersex may be in breach of this provision.</p> <p>However, it is unclear how this would lead to a breach of the</p>	Criminal	1	

Queensland Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			SDA.			
<a href="#">Research Involving Human Embryos and Prohibition of Human Cloning for Reproduction Act 2003</a>	<p><b>10 Offence—developing a human embryo outside the body of a woman for more than 14 days</b></p> <p>A person commits an offence if the person intentionally develops a human embryo outside the body of a woman for a period of more than 14 days, excluding any period when development is suspended.</p> <p>Maximum penalty—15 years imprisonment.</p>	Gender identity Intersex status	<p>A person who develops a human embryo inside an individual who is able to become pregnant but who does not identify as a woman or who is intersex may be in breach of this provision.</p> <p>However, it is unclear how this would lead to a breach of the SDA.</p>	Criminal	1	
<a href="#">Research Involving Human Embryos and Prohibition of Human Cloning for Reproduction Act 2003</a>	<p><b>12 Offence—collecting a viable human embryo from the body of a woman</b></p> <p>A person commits an offence if the person removes a human embryo from the body of a woman, intending to collect a viable human embryo.</p> <p>Maximum penalty—15 years imprisonment.</p>	Gender identity Intersex status	<p>A person who removes a human embryo from an individual who is able to become pregnant but who does not identify as a woman or who is intersex may escape liability under this</p>	Criminal	1	

Queensland Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			provision. However, it is unclear how this would lead to a breach of the SDA.			
<a href="#">Research Involving Human Embryos and Prohibition of Human Cloning for Reproduction Act 2003</a>	<p><b>15 Offence—placing of an embryo</b></p> <p>(2) A person commits an offence if the person intentionally places a human embryo in the body of a human, other than in a woman’s reproductive tract.</p> <p>Maximum penalty—15 years imprisonment.</p>	Gender identity Intersex status	<p>A person who places a human embryo inside an individual who is able to become pregnant but who does not identify as a woman or who is intersex may be in breach of this provision.</p> <p>However, it is unclear how this would lead to a breach of the SDA.</p>	Criminal	1	
<a href="#">Research Involving Human Embryos and Prohibition of Human Cloning for Reproduction Act 2003</a>	<p><b>16 Offence—placing a prohibited embryo</b></p> <p>(1) A person commits an offence if the person intentionally places an embryo in the body of a woman knowing that, or reckless as to whether, the embryo is a prohibited embryo.</p> <p>Maximum penalty—15 years imprisonment.</p> <p>(2) In this section—</p>	Gender identity Intersex status	A human embryo created or developed inside or removed from an individual who is able to become pregnant but who does not	Criminal	1	



Queensland Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p><b>prohibited embryo</b> means—</p> <p>(b) a human embryo created outside the body of a woman, unless the intention of the person who created the embryo was to attempt to achieve pregnancy in a particular woman; or</p> <p>(d) a human embryo that has been developing outside the body of a woman for a period of more than 14 days, excluding any period when development is suspended; or</p> <p>(g) a human embryo that was removed from the body of a woman by a person intending to collect a viable human embryo; or</p>		<p>identify as a woman or who is intersex is a prohibited embryo.</p> <p>However, it is unclear how this would lead to a breach of the SDA.</p>			
<a href="#">Research Involving Human Embryos and Prohibition of Human Cloning for Reproduction Act 2003</a>	<p><b>23 Offence—use of excess ART embryo</b></p> <p>(1) A person commits an offence if the person intentionally uses an excess ART embryo, unless—</p> <p>(a) the use by the person is authorised by a licence; or</p> <p>(b) the use by the person is an exempt use within the meaning of subsection (2).</p> <p>Maximum penalty—5 years imprisonment.</p> <p><b>22 Meaning of excess ART embryo</b></p> <p>(1) In this part—</p> <p><b>excess ART embryo</b> means a human embryo that—</p> <p>(a) was created, by assisted reproductive technology, for use in the assisted reproductive technology treatment of a</p>	<p>Gender identity</p> <p>Intersex status</p>	<p>A person who uses an excess ART embryo of an individual who is of intersex status or who is able to become pregnant but who does not identify as a woman does not commit an offence under this section.</p> <p>However, it is unclear how this would lead to a breach of the</p>	Criminal	1	

Queensland Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>woman; and</p> <p>(b) is excess to the needs of—</p> <p>(i) the woman for whom it was created; and</p> <p>(ii) her spouse (if any) at the time the embryo was created.</p>		SDA.			
<a href="#">Research Involving Human Embryos and Prohibition of Human Cloning for Reproduction Act 2003</a>	<p><b>23B Offence—certain activities involving use of human eggs</b></p> <p>A person commits an offence if—</p> <p>(a) the person undertakes research or training involving the fertilisation of a human egg by a human sperm up to, but not including, the first mitotic division, outside the body of a woman for the purposes of research or training in ART; and</p> <p>(b) the person is not authorised by a licence to undertake the research or training.</p> <p>Maximum penalty—5 years imprisonment.</p>	<p>Gender identity</p> <p>Intersex status</p>	<p>A person may commit an offence under this section if the person undertakes research or training involving the fertilisation of a human egg by a human sperm inside the body of an individual who is intersex or who is able to become pregnant but does not identify as a woman.</p> <p>However, it is unclear how this would lead to a breach of the SDA.</p>	Criminal	1	
<a href="#">Research</a>	<p><b>24 Offence—use of embryo that is not an excess</b></p>	Gender	A person may	Criminal	1	

Queensland Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
<a href="#">Involving Human Embryos and Prohibition of Human Cloning for Reproduction Act 2003</a>	<p><b>ART embryo</b></p> <p>A person commits an offence if—</p> <p>(a) the person intentionally uses, outside the body of a woman, a human embryo—</p> <p>(i) that was created by fertilisation of a human egg by a human sperm; and</p> <p>(ii) that is not an excess ART embryo; and</p> <p>(b) the use is not for a purpose relating to the assisted reproductive technology treatment of a woman carried out by an accredited ART centre, and the person knows or is reckless as to that fact.</p> <p>Maximum penalty—5 years imprisonment.</p>	<p>identity</p> <p>Intersex status</p>	<p>commit an offence under this section if the person uses a human embryo inside the body of an individual who is intersex or who is able to become pregnant but does not identify as a woman regardless of the purpose.</p> <p>However, it is unclear how this would lead to a breach of the SDA.</p>			
	<p><b>71GZG Transfer to a safe job</b></p> <p>(1) This section applies whenever the present work of a female employee is, because of her pregnancy or breastfeeding, a risk to the health or safety of the employee or of her unborn or newborn child.</p> <p>(2) The assessment of the risk is to be made on the basis of—</p> <p>(a) a doctor's certificate given by the employee to the employer; and</p> <p>(b) the employer's duties under the Work Health and Safety Act 2011.</p>	<p>Gender identity</p> <p>Intersex status</p>	<p>An individual who does not identify as a female but who gave birth to a child, or an individual who is of intersex status and gave birth to a child may not be covered by this section.</p>	Employment	1	

Queensland Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>(3) The employer must temporarily adjust the employee's working conditions or hours of work to avoid exposure to the risk.</p> <p>(4) If an adjustment is not feasible or can not reasonably be required to be made, the employer must transfer the employee to other appropriate work that—</p> <p>(a) will not expose her to the risk; and</p> <p>(b) is, as nearly as possible, comparable in status and remuneration to that of her present work.</p> <p>(5) If a transfer is not feasible or can not reasonably be required to be made, the employer must grant the employee maternity leave, or any available paid sick leave, for as long as a doctor certifies it is necessary to avoid exposure to the risk.</p>					
<a href="#">Industrial Relations Act 1999</a>	<p><b>32 Return to work after parental leave etc.</b></p> <p>(1) This section applies to—</p> <p>(a) an employee who returns to work after parental leave; or</p> <p>(b) a female employee who returns to work after special maternity leave or sick leave under section 37.</p> <p>(2) The employee is entitled to be employed in—</p> <p>(a) the position held by the employee immediately before starting parental leave; or</p> <p>(b) if the employee worked part-time because of the pregnancy before starting maternity</p>	<p>Gender identity</p> <p>Intersex status</p>	<p>An individual who does not identify as a female but who gave birth to a child, or an individual who is of intersex status and gave birth to a child may not be covered by this section.</p>	Employment	1	

Queensland Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>leave—the position held by the employee immediately before starting part-time work; or</p> <p>(c) if the employee was transferred to a safe job under section 36 before starting maternity leave—the position held by the employee immediately before the transfer.</p> <p>(3) If the position no longer exists but there are other positions available that the employee is qualified for and is capable of performing, the employee is entitled to be employed in a position that is, as nearly as possible, comparable in status and remuneration to that of the employee's former position.</p> <p>(4) An employer must make a position to which an employee is entitled available to the employee.</p> <p>(5) If a long term casual employee's hours were reduced because of the pregnancy before starting maternity leave, the employer must restore the employee's hours to hours equivalent to those worked immediately before the hours were reduced.</p>					
<a href="#">Industrial Relations Act 1999</a>	<p><b>36 Transfer to a safe job</b></p> <p>(1) This section applies whenever the present work of a female employee is, because of her pregnancy or breastfeeding, a risk to the health or safety of the employee or of her unborn or newborn child.</p> <p>...</p> <p>(3) The employer must temporarily adjust the employee's working conditions or hours of work to avoid exposure to the risk.</p>	<p>Gender identity</p> <p>Intersex status</p>	An individual who does not identify as a female but who is pregnant, or an individual who is of intersex status and who is pregnant may not be covered	Employment	1	

Queensland Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>(4) If an adjustment is not feasible or can not reasonably be required to be made, the employer must transfer the employee to other appropriate work that—</p> <p>(a) will not expose her to the risk; and</p> <p>(b) is, as nearly as possible, comparable in status and remuneration to that of her present work.</p> <p>(5) If a transfer is not feasible or can not reasonably be required to be made, the employer must grant the employee maternity leave, or any available paid sick leave, for as long as a doctor certifies it is necessary to avoid exposure to the risk.</p>		by this section.			
<a href="#">Industrial Relations Act 1999</a>	<p><b>71GZF Return to work after parental leave etc.</b></p> <p>(1) This section applies to—</p> <p>(a) an employee who returns to work after parental leave; or</p> <p>(b) a female employee who returns to work after special maternity leave or sick leave under section 71GZC.</p> <p><b>71GZC Special maternity leave and sick leave</b></p> <p>(1) This section applies if, before an employee starts maternity leave—</p> <p>(a) the employee's pregnancy terminates before the expected date of birth, other than by the birth of a living child; or</p> <p>(b) the employee suffers illness related to her pregnancy.</p> <p>(2) For as long as a doctor certifies it to be necessary,</p>	Gender identity Intersex status	An individual who does not identify as a female but who gave birth to a child, or an individual who is of intersex status and gave birth to a child may not be covered by this section.	Employment	1	

Queensland Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>the employee is entitled to the following types of leave—</p> <p>(a) unpaid leave (special maternity leave);</p> <p>(b) paid sick leave, either instead of, or as well as, special maternity leave.</p>					
<a href="#">Child Protection Act 1999</a>	<p><b>21A Unborn Child</b></p> <p>(1) This section applies if, before the birth of a child, the chief executive reasonably suspects the child may be in need of protection after he or she is born.</p> <p>(2) The chief executive must take the action the chief executive considers appropriate including, for example—</p> <p>(a) having an authorised officer investigate the circumstances and assess the likelihood that the child will need protection after he or she is born; or</p> <p>(b) offering help and support to the pregnant woman.</p> <p>(3) If the child is an Aboriginal or Torres Strait Islander child, the chief executive or an authorised officer must consult with a recognised entity for the child for the purpose of—</p> <p>(a) assessing the likelihood that the child may be in need of protection after he or she is born; and</p> <p>(b) offering help and support to the pregnant woman.</p> <p>(4) However, subsection (3) applies only if the pregnant woman agrees to the consultation taking place.</p>		As per the above cell, it is unclear whether the same protections would be extended to a person who was not a woman but was still a pregnant mother	Family and relationship law	1	

Queensland Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	(5) The purpose of this section is to reduce the likelihood that the child will need protection after he or she is born (as opposed to interfering with the pregnant woman's rights or liberties).					
<a href="#">Public Health Act 2005</a>	<p><b>251 Definitions for pt 3</b></p> <p><b>woman</b> means a female person.</p> <p><b>written</b> or <b>in writing</b>, in relation to a consent by or request from a woman, means a consent or request signed by the woman.</p> <p><b>maternal death</b>, of a woman, means the death of the woman, from any cause, while she is pregnant or within 365 days after the end of her pregnancy</p>	Gender identity Intersex status	<p>Woman means a female person which predominantly affects the rights of women in relation the Pap Smear Register in the <i>Public Health Act 2005</i> and the <i>Public Health Regulation 2005</i>.</p> <p>Unclear how this provision would impact on intersex and gender diverse people.</p>	Heath	1	Potentially covered by section 32 exemption - services for members of one sex
<b>Crime and Misconduct Act 200</b>	<p><b>230 Appointment of part-time commissioners</b></p> <p>(4) At least 1 of the part-time commissioners must be a woman.</p>	Gender identity Intersex status	Binary concept of gender for membership of the Crime and Misconduct Commission.	Memberships/ appointments	1	
<a href="#">Crime and Misconduct Act</a>	<p><b>278 Membership of reference committee</b></p> <p>(1) The reference committee consists of the following</p>	Gender identity	Binary concept of gender for membership of	Memberships/ appointments	1	



Queensland Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
<a href="#">2001</a>	<p>members—</p> <p>...</p> <p>(f) 2 persons appointed by the Governor in Council as community representatives (each of whom is an appointed member), of whom 1 at least must have a demonstrated interest in civil liberties and 1 at least must be a female.</p>	Intersex status	the Crime Reference Committee.			
<a href="#">Judges (Pensions and Long Leave) Act 1957</a>	<p><b>8 Pension of spouse on death of retired judge</b></p> <p>(1) If a retired judge dies leaving a spouse, the spouse is entitled to a pension at a rate equal to 50% of the judge's notional pension.</p> <p>(2) However—</p> <p>(a) if the spouse is a husband or wife, the spouse is entitled to a pension under subsection (1) only if his or her marriage to the retired judge happened before the judge's retirement; and</p> <p>(b) if the spouse is a registered partner, the spouse is entitled to a pension under subsection (1) only if the spouse entered into the registered relationship with the retired judge before the judge's retirement; and</p> <p>(c) if the spouse is a de facto partner, the spouse is entitled to a pension under subsection (1) only if—</p> <p>(i) the spouse was a spouse of the retired judge both when the judge retired and when the judge died; and</p>	Marital status (sexual orientation)		Financial	2	May be covered by section 41A or 41B exemptions depending on whether the scheme meets the definition of a "superannuation fund"

Queensland Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>(ii) the retired judge and the spouse had lived together as a couple—</p> <p>(A) for a continuous period of at least 2 years ending on the death; or</p> <p>(B) for a shorter period ending on the death, if the circumstances of the de facto relationship of the judge and the spouse evidenced a clear intention that the relationship be a long term, committed relationship; and</p> <p>...</p>					
<a href="#">Anti-Discrimination Act 1991</a>	<p><b>98 Reasonable sex discrimination permitted</b></p> <p>It is not unlawful for a club to discriminate on the basis of sex by limiting access to any benefit, arising from membership, that is provided by the club if:</p> <p>(a) it is not practicable for males and females to enjoy the benefit at the same time; and</p> <p>(b) either -</p> <p>(i) access to the same or an equivalent benefit is supplied for the use of males and females separately; or</p> <p>(ii) access arrangements offer males and females a reasonably equivalent opportunity to enjoy the benefit.</p>	<p>Gender identity</p> <p>Intersex status</p>	<p>Binary concept of gender when determining whether it is lawful for a club to discriminate on the basis of sex.</p>	Clubs	3	<p>May not fall within any of the s 40 exemptions under the SDA because the provisions of the <i>Anti Discrimination Act</i>, are not mandatory, specific and without room for discretion.</p>
<a href="#">Criminal Code</a>	<b>208 Unlawful sodomy</b>	Gender	Section 208	Criminal	3	

Queensland Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
<a href="#">Act 1899</a>	<p>(1) A person who does, or attempts to do, any of the following commits a crime—</p> <p>...</p> <p>(b) permits a male person under 18 years to sodomise him or her;</p> <p>Maximum penalty—14 years imprisonment.</p> <p><b>c.f. 215 Carnal knowledge with or of children under 16</b></p> <p>(1) Any person who has or attempts to have unlawful carnal knowledge with or of a child under the age of 16 years is guilty of an indictable offence.</p> <p>(2) If the child is of or above the age of 12 years, the offender is guilty of a crime, and is liable to imprisonment for 14 years.</p> <p>(3) If the child is under the age of 12 years, the offender is guilty of a crime, and is liable to imprisonment for life or, in the case of an attempt to have unlawful carnal knowledge, to imprisonment for 14 years.</p> <p>(4) If the child is not the lineal descendant of the offender but the offender is the child's guardian or, for time being, has the child under the offender's care, the offender is guilty of a crime, and is liable to imprisonment for life or, in the case of an attempt to have unlawful carnal knowledge, to imprisonment for 14 years.</p> <p>(4A) If the child is a person with an impairment of the mind, the offender is guilty of a crime, and is liable to imprisonment for life.</p> <p>(5) If the offence is alleged to have been committed in respect of a child of or above the age of 12 years, it is a defence to prove that the accused person believed, on reasonable grounds, that the child was of or above the age</p>	<p>identity</p> <p>Intersex status</p> <p>Sexual Orientation</p>	<p>does not contemplate a situation where a person permits an intersex person with a penis or a person with a penis who identifies as a female to sodomise him or her.</p> <p>The age of consent for anal sex (sodomy) is 18 years, and for all other sexual acts is 16 years. This indirectly discriminates against gay persons.</p> <p>It is defence under 215(5) to engaging in sexual activities with a person under the legal age to prove that the accused person believed, on reasonable grounds, that the</p>			

Queensland Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>of 16 years.</p> <p>(5A) If the offence is alleged to have been committed with the circumstance of aggravation mentioned in subsection (4A), it is a defence to the circumstance of aggravation to prove that the accused person believed on reasonable grounds that the child was not a person with an impairment of the mind.</p>		<p>child was of or above the age of 16 years and the child was of or above the age of 12 years. This defence does not apply to acts of sodomy.</p> <p>This indirectly discriminates against gay couples.</p> <p>However, it is unclear the circumstances in which a breach of the SDA may be triggered. This is because, under the SDA, discrimination is only unlawful in certain areas of public life. For example, it would need to be established that the police or department of prosecution had discriminated in the provision of "services" when</p>			

Queensland Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			deciding to investigate or prosecute such a crime.			
<a href="#">Anti-Discrimination Act 1991</a>	<p><b>41 Single sex, religion, etc. educational institution</b></p> <p>An educational authority that operates, or proposes to operate, an educational institution wholly or mainly for students of a particular sex or religion, or who have a general or specific impairment may exclude—</p> <p>(a) applicants who are not of the particular sex or religion; or</p> <p>(b) applicants who do not have a general, or the specific, impairment.</p>	Gender identity Intersex status	A student who is intersex or who identifies with a particular gender but whose physical features are that of another gender is likely to be discriminated against under section 41.	Education	3	<p>May not fall within any of the s 40 exemptions under the SDA because the provisions of the <i>Anti Discrimination Act</i>, are not mandatory, specific and without room for discretion.</p> <p>s 37 exemption would apply where the school was established for religious purposes.</p>
<a href="#">Child Employment Act 2006</a>	<p><b>8A Prohibition on nudity and sexually provocative clothing</b></p> <p>(1) An employer must not require or permit a child to work—</p> <p>(a) while the child is nude; or</p> <p>(b) while the child is clothed or covered in another way so—</p>	Intersex status	Special protection in relation to a child's breasts is only extended to female children. This protection potentially does not extend to	Employment	3	

Queensland Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<ul style="list-style-type: none"> <li>(i) the child's sexual organs or anus are visible; or</li> <li>(ii) if the child is a female who is at least 5 years—her breasts are visible.</li> </ul> <p>Maximum penalty—100 penalty units.</p>		intersex/gender diverse children with breasts.			
<a href="#">Adoption Act 2009</a>	<p><b>Schedule 3</b> <b>infertility</b> means -</p> <ul style="list-style-type: none"> <li>(a) for a woman— <ul style="list-style-type: none"> <li>(i) an inability, for a reason beyond her control, to conceive; or</li> <li>(ii) a genetically transmitted disorder giving rise to a significant risk that, if she had a child, the child would not survive or the child's health would be seriously impaired; or</li> <li>(iii) a condition giving rise to a significant risk that, if she fell pregnant, the child would not be carried until the child could be delivered alive; or</li> <li>(iv) a condition giving rise to a significant risk that, if she fell pregnant, she would not survive or her health would be seriously impaired; or</li> </ul> </li> <li>(b) for a man— <ul style="list-style-type: none"> <li>(i) an inability, for a reason beyond his control, to cause a woman to conceive; or</li> </ul> </li> </ul>	Gender identity Intersex status	Binary concept of gender for infertile persons.  Query the practical ramifications for this in relation to a person who is intersex or gender diverse.	Family and relationship law	3	

Queensland Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	(ii) a genetically transmitted disorder giving rise to a significant risk that, if he fathered a child, the child would not survive or the child's health would be seriously impaired.					
<a href="#">Adoption Act 2009</a>	<p><b>76 Eligibility for inclusion in register</b></p> <p>(1) A person is eligible to have his or her name entered or remain in the expression of interest register if—</p> <p>(d) for a woman, the person is not pregnant; and</p> <p>...</p> <p>(g) the person has a spouse who—</p> <p>(i) is also eligible under paragraphs (a) to (f); and</p> <p>(ii) is not the same gender as the person; and</p> <p>(iii) has been the person's spouse for at least 2 years...</p>	Sexual orientation Gender identity Intersex status	Eligibility to be entered onto the adoption register excludes an otherwise eligible person who has a spouse of the same gender.	Family and relationship law	3	Failure to register a person as eligible because of a non-heterosexual relationship would satisfy the test of something done "in direct compliance with" as there is no discretion.
<a href="#">Adoption Act 2009</a>	<p><b>89 Selection to meet needs of particular child</b></p> <p>(7) However—</p> <p>(a) the chief executive may select a person listed in the expression of interest register who does not have a conforming expression of interest only if the person agrees to being selected; and</p> <p>(b) the chief executive may select a person who is not listed in the expression of interest register only if—</p> <p>(i) the person agrees to being selected;</p>	Sexual orientation Gender identity Intersex status	In assessing both the placement needs of an adoptive child and the suitability of a person who is not listed in the expression of interest register, the chief executive can only select the person if,	Family and relationship law	3	Failure to select a person because of a non-heterosexual relationship would satisfy the test of something done "in direct compliance with" as there is no discretion.

Queensland Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>and</p> <p>(ii) the person is an adult; and</p> <p>(iii) the person is an Australian citizen or has a spouse who is an Australian citizen; and</p> <p>(iv) the person is resident or domiciled in Queensland; and</p> <p>(v) for a person who has a spouse—</p> <p>(A) the spouse is not the same gender as the person; and</p> <p>(B) the person and the spouse are living together.</p>		amongst other things, if the person has a spouse, the spouse is not the same gender as the person.			
<a href="#">Adoption Act 2009</a>	<p><b>92 Who may apply</b></p> <p>(1) A person may apply to the chief executive to arrange an adoption by the person of a stated child if—</p> <p>...</p> <p>(h) the person's spouse is not the same gender as the person;</p> <p>...</p>	<p>Sexual orientation</p> <p>Gender identity</p> <p>Intersex status</p>	This is discriminatory against people in non-heterosexual relationships.	Family and relationship law	3	
<a href="#">Child Protection Act 1999</a>	<p><b>Schedule 3 Dictionary</b></p> <p><b>woman</b> includes any female.</p>	<p>Gender identity</p> <p>Intersex status</p>	Depending on the courts' interpretation of "woman includes any female", the clauses under the <i>Child Protection Act</i> that use the	Family and relationship law	3	



Queensland Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			<p>word "woman" could potentially be discriminatory against people of intersex status or females who have undergone a reassignment.</p> <p>These clauses are listed below.</p> <p>Unclear how this would be interpreted in light of section 32B of the <i>Acts Interpretation Act 1954 (Qld)</i> but likely that the specific nature of the definition "woman" would override the general interpretive principle.</p>			
<a href="#">Child Protection Act 1999</a>	<p><b>159C What is relevant information</b></p> <p>(1) In this chapter—</p> <p><b>relevant information</b> means—</p> <p>(a) in relation to giving information to the chief executive or an authorised officer—</p>		<p>Nb. Section 159C is found in Chapter 5A, the purpose of which is to provide for service providers to appropriately</p>	Family and relationship law	3	

Queensland Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>information that the holder of the information reasonably believes may—</p> <p>(iv) help the chief executive in offering help and support to a pregnant woman under section 21A; or</p> <p>(b) in relation to giving information to another service provider—information that the holder of the information reasonably believes may help the service provider to—</p> <p>(iii) help the chief executive to offer help and support to a pregnant woman under section 21A; or</p> <p>(2) Relevant information may be information about—</p> <p>(a) a relevant child, the child's family or someone else; or</p> <p>(b) a pregnant woman or her unborn child.</p>		and effectively meet the protection and care needs of children and promote their wellbeing by exchanging relevant information, while protecting the confidentiality of the information.			
<a href="#">Surrogacy Act 2010</a>	<p><b>14 Meaning of medical or social need for a surrogacy arrangement and eligible woman</b></p> <p>(1) For an application for a parentage order—</p> <p>(a) if there is 1 intended parent under the surrogacy arrangement—there is a medical or social need for the surrogacy arrangement if the intended parent is a man or an eligible woman; or</p> <p>(b) if there are 2 intended parents under the surrogacy arrangement—there is a medical or social need for the surrogacy arrangement if the intended parents are—</p> <p>(i) a man and an eligible woman; or</p>	<p>Gender identity</p> <p>Intersex status</p>	<p>Binary concept of gender in relation to the intended parents under a surrogacy arrangement. Fails to recognise situations where there are two intended parents of which one is intersex or neither</p>	<p>Family and relationship law</p>	<p>3</p>	

Queensland Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<ul style="list-style-type: none"> <li>(ii) 2 men; or</li> <li>(iii) 2 eligible women.</li> </ul> <p>(2) An eligible woman is a woman who—</p> <ul style="list-style-type: none"> <li>(a) is unable to conceive; or</li> <li>(b) if able to conceive— <ul style="list-style-type: none"> <li>(i) is likely to be unable, on medical grounds, either to carry a pregnancy or to give birth; or</li> <li>(ii) either— <ul style="list-style-type: none"> <li>(A) is unlikely to survive a pregnancy or birth; or</li> <li>(B) is likely to have her health significantly affected by a pregnancy or birth; or</li> </ul> </li> <li>(iii) is likely to conceive— <ul style="list-style-type: none"> <li>(A) a child affected by a genetic condition or disorder, the cause of which is attributable to the woman; or</li> <li>(B) a child who is unlikely to survive a pregnancy or birth; or</li> <li>(C) a child whose health is likely to be significantly affected by a pregnancy or birth.</li> </ul> </li> </ul> </li> </ul>		male/female			
<a href="#">Anti-Discrimination Act 1991</a>	<p><b>30 Single sex accommodation</b></p> <p>(1) It is not unlawful for a person to discriminate on the basis of sex against another person with respect to a</p>	Gender identity	The use of the phrases "each sex" and	Accommodation	4	May not fall within any of the s 40 exemptions

Queensland Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>matter that is otherwise prohibited under subdivision 1 if the other person is required to live in accommodation supplied by the first person and—</p> <p>(a) the accommodation is not equipped with separate sleeping accommodation for people of each sex; and</p> <p>(b) the accommodation is already occupied by a person or people of one sex and is not occupied by anyone of the opposite sex; and</p> <p>(c) the supply of separate sleeping accommodation for people of each sex would impose unjustifiable hardship on the first person.</p>	Intersex	<p>"opposite sex" suggest a binary concept of gender. For a person who does identifies as neither or both male and female or who is intersex, there is the potential for section 30 to permit discrimination in a broader range of circumstances than faced by people who identify as male or female. (E.g. circumstances may arise where separate accommodation is provided for men and women but an employer refuses to employ somebody on the basis that they do not have accommodation appropriate for an intersex or gender diverse</p>			<p>under the SDA because the provisions of the <i>Anti Discrimination Act</i>, are not mandatory, specific and without room for discretion.</p>

Queensland Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			person).			
<a href="#">Births, Deaths and Marriages Registration Act 2003</a>	<p><b>s 22: When a sexual reassignment may be noted</b></p> <p>The reassignment of a person's sex <u>after sexual reassignment surgery</u> may be noted in the person's entry in the register of births or adopted children register only if the person is <u>not married</u>.</p> <p><b>s 23 Application to note a reassignment of sex</b></p> <p>...</p> <p>(4) The application must be—</p> <p>(a) in the approved form; and</p> <p>(b) accompanied by—</p> <p>(i) statutory declarations, by 2 doctors, <u>verifying that the person the subject of the application has undergone sexual reassignment surgery; or</u></p> <p>(ii) a recognition certificate; and</p> <p>(d) accompanied by other documents prescribed under a regulation.</p> <p><b>Schedule 2 Dictionary</b></p> <p><b>sexual reassignment surgery</b> means a surgical procedure involving the alteration of a person's reproductive organs carried out—</p> <p>(a) to help the person to be considered to be a member of the opposite sex; or</p> <p>(b) to correct or eliminate ambiguities about the sex of the person.</p>	Gender identity Intersex	<p>The provisions prevent a person from applying to register their change of sex if they are married, which is discriminatory on both a gender identity level but also sexual orientation - it prevents a married person who changes sex from remaining married if they wish to do so (but exemption applies)</p> <p>It also prevents individuals who have not undergone sex affirmation surgery but who identify as another gender to change their gender on the Register, which is discriminatory</p>	Family and relationship law Identity documents	2 & 4	<p>s 40(5) - not unlawful to refuse to change official record of a person's sex if the person is married.</p> <p>s 43A - allows records to be kept in a way that doesn't allow for the designation of sex other than male or female.</p>

Queensland Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			<p>on the basis of gender identity and intersex status.</p> <p>If the statute is to be interpreted so as to not allow the registration of sex non-specific individuals (i.e. if it can be distinguished from Norrie's case) then it also discriminates against individuals who would prefer that designation.</p>			
<a href="#">Anti-Discrimination Act 1991</a>	<p><b>111 Sport</b></p> <p>(1) A person may restrict participation in a competitive sporting activity -</p> <p>(a) to either males or females, if the restriction is reasonable having regard to the strength, stamina or physique requirements of the activity; or</p> <p>(b) to people who can effectively compete; or</p> <p>(c) to people of a specified age or age group; or</p> <p>(d) to people with a specific or general impairment.</p>	<p>Gender identity</p> <p>Intersex status</p>	<p>Binary concept of gender when restricting participation in a competitive sporting activity. Discriminatory against people who do not identify as male or female or who are intersex.</p>	Sport	4	s 42 (sport)

**Comment [L&R38]:** Removed because this falls within the existing exemption under the SDA.

Queensland Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>...</p> <p>(3) Subsection (1) does not stop participation in a competitive sporting activity being restricted on the basis of gender identity, if the restriction is reasonable having regard to the strength, stamina or physique requirements of the activity.</p> <p><b>gender identity</b> means that the person:</p> <p>(a) identifies, or has identified, as a member of the opposite sex by living or seeking to live as a member of that sex; or</p> <p>(b) is of indeterminate sex and seeks to live as a member of a particular sex.</p>					
<a href="#">Criminal Code Act 1899</a>	<p><b>1—Definitions</b></p> <p><del><b>penis</b> includes a surgically constructed penis, whether provided for a male or female.</del></p> <p><del><b>vagina</b> includes a surgically constructed vagina, whether provided for a male or female.</del></p> <p><del><b>vulva</b> includes a surgically constructed vulva, whether provided for a male or female.</del></p> <p><del><b>woman</b> includes any female.</del></p>		Binary concept of gender throughout the <i>Criminal Code Act 1899</i> .	Criminal	5	
<a href="#">Criminal Code Act 1899</a>	<p><b>229E—Meaning of prostitution</b></p> <p>(1) A person engages in prostitution if the person engages, or offers to engage, in the provision to another person, under an arrangement of a commercial character, of any of the following activities—</p> <p>(a) sexual intercourse;</p>	Gender identity Intersex status	Binary concept of prostitution in relation to prostitution.	Criminal	5	

**Comment [L&R39]:** *Norrie's Case* and *Interpretation Act 1978* suggest that references to "he" and "she" should not be interpreted broadly to include intersex and gender diverse people. However, the phrase "each other gender" in the *Acts Interpretation Act 1978* has not been considered.

This act has been removed as it is unclear how these definitions would cause discrimination in light of the comments above.

**Comment [L&R40]:** *Norrie's Case* and *Interpretation Act 1978* suggest that references to "he" and "she" should not be interpreted broadly to include intersex and gender diverse people. However, the phrase "each other gender" in the *Acts Interpretation Act 1978* has not been considered.

This provision has been removed because no distinctions are made on the basis of sex/gender.

Queensland Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>(b) — masturbation;</p> <p>(c) — oral sex;</p> <p>(d) — any activity, other than sexual intercourse, masturbation or oral sex, that involves the use of 1 person by another for his or her sexual satisfaction involving physical contact.</p> <p>(3) — Subsection (1) applies equally to males and females.</p>					
<a href="#">Criminal Code Act 1899</a>	<p><b>224 — Attempts to procure abortion</b></p> <p>Any person who, with intent to procure the miscarriage of a woman, whether she is or is not with child, unlawfully administers to her or causes her to take any poison or other noxious thing, or uses any force of any kind, or uses any other means whatever, is guilty of a crime, and is liable to imprisonment for 14 years.</p>	Gender identity Intersex status	An individual who does not identify as a female but who gave birth to a child, or an individual who is of intersex status and gave birth to a child may not be covered by this section.	Criminal	5	
<a href="#">Criminal Code Act 1899</a>	<p><b>225 — The like by women with child</b></p> <p>Any woman who, with intent to procure her own miscarriage, whether she is or is not with child, unlawfully administers to herself any poison or other noxious thing, or uses any force of any kind, or uses any other means whatever, or permits any such thing or means to be administered or used to her, is guilty of a crime, and is liable to imprisonment for 7 years.</p>	Gender identity Intersex status	An individual who does not identify as a female but who gave birth to a child, or an individual who is of intersex status and gave birth to a child may not be covered by	Criminal	5	



Queensland Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			this section.			
<a href="#">Criminal Code Act 1899</a>	<p><b>226— Supplying drugs or instruments to procure abortion</b></p> <p>Any person who unlawfully supplies to or procures for any person anything whatever, knowing that it is intended to be unlawfully used to procure the miscarriage of a woman, whether she is or is not with child, is guilty of a misdemeanour, and is liable to imprisonment for 3 years.</p>	Gender identity Intersex status	An individual who does not identify as a female but who gave birth to a child, or an individual who is of intersex status and gave birth to a child may not be covered by this section.	Criminal	5	
<a href="#">Criminal Code Act 1899</a>	<p><b>314— Concealing the birth of children</b></p> <p>Any person who, when a woman is delivered of a child, endeavours, by any secret disposition of the dead body of the child, to conceal the birth, whether the child died before, at, or after, its birth, is guilty of a misdemeanour, and is liable to imprisonment for 2 years.</p>	Gender identity Intersex status	An individual who does not identify as a female but who gave birth to a child, or an individual who is of intersex status and gave birth to a child may not be covered by this section.	Criminal	5	
<a href="#">Criminal Code Act 1899</a>	<p><b>566 Particular indictments</b></p> <p>In an indictment against a man for an offence committed by him with respect to his wife's separate property, the property may be alleged to be the property of the wife.</p>	Marital status (sexual orientation)	Section 566 does not extend to unmarried couples or non-heterosexual couples. However,	Criminal	5	

**Comment [L&R41]:** *Norrie's Case* and *Interpretation Act 1978* suggest that references to "he" and "she" should not be interpreted broadly to include intersex and gender diverse people. However, the phrase "each other gender" in the *Acts Interpretation Act 1978* has not been considered.

The above four rows have been removed because the identification of a "woman" does not appear to be a central and relevant characteristic for the offences.

Queensland Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			unlikely to fall within the purview of the SDA			
<a href="#">Child Employment Act 2006</a>	<p><del>8C — Prohibition on inappropriate roles and situations</del></p> <p><del>(A) — AN EMPLOYER MUST NOT REQUIRE OR PERMIT A CHILD TO WORK IN A ROLE OR SITUATION THAT IS INAPPROPRIATE FOR THE CHILD, HAVING REGARD TO THE CHILD'S AGE, EMOTIONAL AND PSYCHOLOGICAL DEVELOPMENT, MATURITY AND SENSITIVITY.</del></p> <p><del>Maximum penalty — 100 penalty units.</del></p> <p><del>(2) — Without limiting subsection (1), the child may not —</del></p> <p><del>(d) — be present while another person is —</del></p> <p><del>(ii) — clothed or covered in another way so —</del></p> <p><del>(A) — the person's sexual organs or anus are visible; or</del></p> <p><del>(B) — if the person is a female who is at least 5 years — her</del></p>	Gender identity Intersex status	<p>Section 8C excludes a situation where a non-female's breasts are visible.</p> <p>However, no discriminatory impact for an intersex/gender diverse person..</p>	Employment	5	

Queensland Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<del>breasts are visible.</del>					
<a href="#">Industrial Relations Act 1999</a>	<p><b>140D—Modern awards objectives</b></p> <p>(1) <del>In exercising its chapter 5A powers, the commission must ensure modern awards, together with the Queensland Employment Standards, provide a minimum safety net of employment conditions that is fair and relevant.</del></p> <p>(2) <del>For subsection (1), the commission must have regard to the following—</del></p> <p style="padding-left: 40px;"><del>(d) the need to ensure equal remuneration for male and female employees for work of equal or comparable value...</del></p>	Gender identity Intersex status	Binary concept of gender in relation to equal remuneration.	Employment	5	
<a href="#">Industrial Relations Act 1999</a>	<p><b>59—Definition for pt 5</b></p> <p>In this part—</p> <p><b>equal remuneration for work of equal or comparable value</b> means equal remuneration for men and women employees for work of equal or comparable value.</p>	Gender identity Intersex status	Binary concept of gender in relation to equal remuneration.	Employment	5	
<a href="#">Industrial Relations Act 1999</a>	<p><b>71P—Definition for pt 4</b></p> <p>In this part—</p> <p>equal remuneration for work of equal or comparable value means equal remuneration for men and women employees for work of equal or comparable value.</p>	Gender identity Intersex status	Binary concept of gender in relation to equal remuneration.	Employment	5	
<a href="#">Industrial Relations Act 1999</a>	<p><b>Schedule 5—Dictionary</b></p> <p><b>discrimination</b> means discrimination—</p> <p>(a) that would contravene the <i>Anti-Discrimination Act 1991</i>; or</p>	Gender identity Intersex status	Discrimination does not include discrimination on the basis of intersex status or	Employment	5	

**Comment [L&R42]:** *Norrie's Case* and *Interpretation Act 1978* suggest that references to "male" and "female" should not be interpreted broadly to include intersex and gender diverse people. However, the phrase "each other gender" in the *Acts Interpretation Act 1978* has not been considered.

Moreover, this provision and the ones following are aimed at gender equality and do not lead to the conclusion that intersex or gender diverse are not entitled to equal remuneration under modern award.

Queensland Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>(b) — on the basis of sexual preference; or</p> <p>(c) — on the basis of family responsibilities.</p> <p><b>pay equity</b> means equal remuneration for men and women workers for work of equal or comparable value.</p>		<p>gender identity.</p> <p>Binary concept of gender in relation to equal remuneration.</p>			
<a href="#">Industrial Relations Act 1999</a>	<p><b>3 — Principal object of this Act</b></p> <p>The principal object of this Act is to provide a framework for industrial relations that supports economic prosperity and social justice by —</p> <p>...</p> <p>(d) — ensuring equal remuneration for men and women employees for work of equal or comparable value.</p>	<p>Gender identity</p> <p>Intersex status</p>	<p>Binary concept of gender in relation to equal remuneration.</p>	Employment	5	
<a href="#">Industrial Relations Regulation 2011</a>	<p><b>7D — Information to accompany certified agreement — Act, s 71ME</b></p> <p>(1) — For section 71ME(b) of the Act, a certified agreement must be accompanied by an affidavit containing the following information —</p> <p>...</p> <p>(f) — the number of male and female employees to be covered by the agreement...</p>	<p>Gender identity</p> <p>Intersex status</p>	<p>Binary concept of gender in relation to modern industrial instruments.</p>	Employment	5	
<a href="#">Adoption Act 2009</a>	<p><b>159 — Eligibility</b></p> <p>(1) — The chief executive must be satisfied a person to be selected as a prospective adoptive parent is still eligible.</p> <p>(2) — For subsection (1), a person is still eligible if —</p> <p>(a) — for a person selected for assessment from</p>	<p>Gender identity</p> <p>Intersex status</p>	<p>This is potentially favourable towards a person who is pregnant but does not identify</p>	Family and relationship law	5	

Queensland Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>the expression of interest register — the person is still eligible to have his or her name entered or remain in the expression of interest register under section 76; or</p> <p>(b) — for a person selected for assessment under section 89 — the person still complies with section 89(7)(b)(ii) to (v).</p> <p>(3) — For subsection (2)(a), a woman does not become ineligible to have her name remain in the expression of interest register under section 76 on the ground of being pregnant unless she is at least 14 weeks pregnant.</p>		as a woman as that person may fall outside of the limitations in 159(3).			
<a href="#">Adoption Act 2009</a>	<p><b>146 — Other grounds for removal</b></p> <p>(1) — The chief executive must remove a person's name from the suitable adoptive parents register if —</p> <p>(a) — for a person who was selected for assessment from the expression of interest register — the person is not eligible to have his or her name remain in the expression of interest register under section 76; or</p> <p>(b) — for a person selected for assessment under section 89 — the person is not a person mentioned in section 89(7)(b)(ii) to (v).</p> <p>...</p> <p>(7) — For subsection (1)(a), a woman does not become ineligible to have her name remain in the expression of interest register under section 76 on the ground of being pregnant unless she is at least 14 weeks pregnant.</p>	Gender identity Intersex status	This is potentially favourable towards a person who is pregnant but does not identify as a woman or is not classified as a woman (e.g. having undergone gender re-assignment procedures).	Family and relationship law	5	

Queensland Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
<a href="#">Adoption Act 2009</a>	<p><b>80—Other removal from register</b></p> <p>(1) The chief executive must remove a person's name from the expression of interest register if—</p> <p>(a) the person or person's spouse is not eligible to have his or her name remain in the register; or</p> <p>(b) the person has not complied with a requirement under section 112 to pay a prescribed fee or part of a prescribed fee relating to an assessment of the person...</p> <p>(7) For subsection (1)(a), a woman does not become ineligible to have her name remain in the register on the ground of being pregnant unless she is at least 14 weeks pregnant.</p>	Gender identity Intersex status	This is potentially favourable towards a person who is pregnant but does not identify as a woman or is not classified as a woman (e.g. having undergone gender re-assignment procedures).	Family and relationship law	5	
<a href="#">Adoption Act 2009</a>	<p><b>183—Requirements for making interim order</b></p> <p>(1) The court may make an interim order only if it is satisfied of the following matters—</p> <p>...</p> <p>(e) for a female prospective adoptive parent, she is not pregnant...</p>	Gender identity Intersex status	For local adoptions, the Childrens Court can only make an interim order for the adoption of a child if, amongst other factors, for a female prospective adoptive parent, she is not pregnant. This is potentially discriminatory against a person	Family and relationship law	5	

Queensland Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			who is pregnant but does not identify as a woman or is not classified as a woman (e.g. having undergone gender re-assignment procedures).			
<a href="#">Adoption Act 2009</a>	<p><b>196— Requirements for making interim order</b></p> <p>The court may make an interim order only if it is satisfied of the following matters—</p> <p>...</p> <p>(h) — for a female prospective adoptive parent, she is not pregnant.</p>	<p>Gender identity</p> <p>Intersex status</p>	<p>For intercountry adoptions, the Childrens Court can only make an interim order for the adoption of a child if, amongst other things, for a female prospective adoptive parent, she is not pregnant. This is potentially discriminatory against a person who is pregnant but does not identify as a woman or is not classified as a woman (e.g.</p>	<p>Family and relationship law</p>	<p>5</p>	

Queensland Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			having undergone gender re-assignment procedures).			
<a href="#">Births, Deaths and Marriages Registration Act 2003</a>	<p><b>Division 5 — Transitional provisions for Surrogacy Act 2010</b></p> <p><b>63 — Application to alter or add parentage details as result of amendments to the Status of Children Act 1978</b></p> <p>(1) — This section applies if —</p> <p>(a) — a woman (the mother) has undergone a fertilisation procedure within the meaning of the <i>Status of Children Act 1978</i>, as a result of which she became pregnant and gave birth to a child; and</p> <p>(b) — by application of a presumption in that Act the mother's partner is presumed to be a parent of the child; and</p> <p>(c) — the child's birth was registered before the commencement of this section.</p> <p>(2) — An application may be made to the registrar for the addition of information in the register of births about the identity of the mother's partner as a parent of the child.</p> <p>(3) — The registrar must include the additional information in the register of births if the registrar is satisfied in relation to the matters mentioned in subsections (4) and (5).</p> <p>(4) — The registrar must not include additional information</p>	<p>Gender identity</p> <p>Intersex status</p>	<p>Section 63 imports a binary concept of gender through the use of the words "woman", "mother" and "father".</p> <p>However, the operative term in this provision is "partner" which is gender-neutral.</p>	<p>Family and relationship law</p>	<p>5</p>	



Queensland Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p><del>in the child's birth entry about the identity of the mother's partner as a parent of the child unless—</del></p> <p><del>(a) — the application is made jointly by the mother and the mother's partner; and</del></p> <p><del>(b) — if the child's birth entry already includes information that identifies a person as the father of the child—</del></p> <p><del>(i) — the Supreme Court has made an order for the removal of the particulars from the birth entry that identifies the father of the child; and</del></p> <p><del>(ii) — the registrar removes those particulars from the birth entry; and</del></p> <p><del>(c) — the application is accompanied by a statutory declaration made by the mother and the mother's partner stating that —</del></p> <p><del>(i) — they were in a de facto relationship at the time the mother underwent the procedure mentioned in subsection (1)(a); and</del></p> <p><del>(ii) — the mother's partner consented to the procedure that resulted in the pregnancy.</del></p>					
<a href="#">Criminal Code Act 1899</a>	<p><b>51 — Nomination and appointment of local commissioners — for conference</b></p> <p><del>(3) — In nominating or appointing the local commissioners for a conference, the local registry coordinator and commissioner must—</del></p> <p>...</p>	<p>Gender identity</p> <p>Intersex status</p>	<p>Binary concept of gender for purpose of appointment of local commissions.</p> <p>However, the</p>	<p>Memberships/ appointments</p>	<p>5</p>	

**Comment [L&R43]:** The legislation appears to be aimed at gender balance and does not lead to the conclusion that intersex or gender diverse people would be excluded from being a commissioner.

Queensland Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>(b) <del>having regard to the matter to which the agency notice relates, consider whether the local commissioners should be male or female; and</del></p> <p>(c) <del>if practicable and appropriate in the circumstances, ensure that 1 of the local commissioners is female.</del></p>		<p>legislation appears to be aimed at gender balance and does not lead to the conclusion that intersex or gender diverse people would be excluded from being a commissioner.</p>			
<p><a href="#">Family Responsibilities Commission Act 2008</a></p>	<p><b>14 — Selection of local commissioners</b></p> <p>(6) <del>In selecting persons for recommendation to the Governor in Council for appointment as local commissioners for a welfare reform community area, the Minister must —</del></p> <p>...</p> <p>(b) <del>have regard to the need to have both male and female local commissioners for conferences.</del></p>	<p>Gender identity</p> <p>Intersex status</p>	<p>Binary concept of gender for purpose of appointment of local commissions.</p>	<p>Memberships/ appointments</p>	5	

**Comment [L&R44]:** *Norrie's Case* and *Interpretation Act 1978* suggest that references to "male" and "female" should not be interpreted broadly to include intersex and gender diverse people. However, the phrase "each other gender" in the *Acts Interpretation Act 1978* has not been considered.

## 6. SOUTH AUSTRALIA

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
<a href="#">Evidence Act 1929</a>	<p><b>66A(5)</b>  <i>member of a fighting force</i> includes any man or woman who is a member of a naval, military or air force of any country, and any person who, as a representative or employee of any charitable, religious or other organisation for promoting the welfare of members of any such force, is attached to any such force;</p> <p><b>67G(1)</b>  <i>private act</i> means -</p> <p>(a) a sexual act; or</p> <p>(b) an act involving an intimate bodily function such as using a toilet; or</p> <p>(c) an activity involving nudity or exposure or partial exposure of sexual organs, pubic area, buttocks or female breasts ...</p>	<p>Intersex status</p> <p>Gender identity</p>	<p>As a binary conception of gender is employed, individuals who do not identify as male or female may be discriminated against.</p> <p>Description of breasts as female does not include an individual who may not identify as a female but may have breasts.</p>		1	
<a href="#">Juries Act 1927</a>	<p><b>60A Jury may consist of men or women only</b></p> <p>(1) If at the trial of any issue the court is of the opinion that, by reason of the nature of the evidence to be given or the issue to be tried -</p> <p>(a) the jury should consist of men only; or</p>	<p>Intersex status</p> <p>Gender identity</p>	<p>As a binary conception of gender is employed, individuals who do not identify as male or female may be</p>		1	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>(b) the jury should consist of women only, the court may, despite any other provision of this Part, order that the jury for the trial of that issue be empanelled accordingly.</p> <p>(2) An order under subsection (1) may be made upon application by one of the parties to the trial or by the court on its own initiative.</p>		<p>discriminated against.</p> <p>Query whether this is a significant issue of concern for intersex/gender diverse people?</p>			
	<p><b>1 Conduct of personal searches</b></p> <p><b>1 Interpretation</b></p> <p>(2) The gender of a person searched will be taken to be the gender that the person outwardly appears to the police officer conducting the search to be, but if the person states that he or she is of a particular gender, then the gender of the person will be taken to be that stated.</p>	<p>Gender identity</p> <p>Intersex status</p>	<p>Making this determination by perception may lead to detriments suffered by those whose outward appearance may not be interpreted consistently with their gender identity. Such an approach also has potential to cause discomfort for intersex people.</p> <p>Best practice would be to enable the individual to</p>	Bodily searches	1	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			choose the sex of the officer conducting the search.			
<a href="#">Aircraft Offences Act 1971</a>	<p><b>18(2)</b></p> <p>(2) <u>A female shall not be searched</u> under subsection (1) of this section <u>except by a female.</u></p>	<p>Intersex status</p> <p>Gender identity</p>	An individual who is not legally recognised and/or identify as a female but who has female genital organs or breasts may be excluded from this protection.	Bodily searches	1	
<a href="#">Correctional Services Act 1982</a>	<p><b>10(3)</b></p> <p>At least one of the members of <a href="#">the Advisory Council</a> must be <u>a woman and at least one must be a man.</u></p> <p><b>37(2)(a)</b></p> <p>(2) The following provisions apply to the search of a <a href="#">prisoner</a>:</p> <p>(a) those present at any time during the search when the <a href="#">prisoner</a> is naked, except a medical practitioner, must be of the <u>same sex</u> as the <a href="#">prisoner</a>;</p>	<p>Intersex status</p> <p>Gender identity</p>	<p>It is unclear how this provision will apply to individuals who may identify as neither or both male or female, or whose identity documents do not reflect their gender identity.</p> <p>An intersex person may be</p>	<p>Bodily searches</p> <p>Memberships/ appointments</p>	1	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>(b) at least two persons, apart from the <a href="#">prisoner</a>, must be present at all times during the search when the <a href="#">prisoner</a> is naked;</p> <p>(c) for the purposes of the search, the <a href="#">prisoner</a> may be required -</p> <ul style="list-style-type: none"> <li>(i) to open his or her mouth;</li> <li>(ii) to strip;</li> <li>(iii) to adopt particular postures;</li> <li>(iv) to do anything else reasonably necessary for the purposes of the search,</li> </ul> <p>and if the <a href="#">prisoner</a> does not comply with such a requirement reasonable force may be applied to secure compliance.</p> <p><b>55(3)</b></p> <p>The membership of <a href="#">the Board</a> must include -</p> <p>(a)</p> <ul style="list-style-type: none"> <li>(i) a judge of the Supreme Court; or</li> <li>(ii) a District Court judge; or</li> <li>(iii) a person who has retired from the office of judge of the Supreme Court or District Court judge; or</li> <li>(iv) a legal practitioner of at least seven years standing who has, in the opinion of the Governor, extensive knowledge of, and experience in, the criminal justice</li> </ul>		<p>legally recognised as one sex but feel more comfortable being searched by an officer of a different sex.</p> <p>Best practice would be for such individuals to choose the sex of their searcher.</p>			

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>system; or</p> <p>(v) a person who has, in the opinion of the Governor, extensive knowledge of, and experience in, the science of criminology, penology, or any other related science; and</p> <p>(b) a legally qualified medical practitioner who has, in the opinion of the Governor, extensive knowledge of, and experience in, the practice of psychiatry; and</p> <p>(c) a person who has, in the opinion of the Governor, extensive knowledge of, and experience in, criminology, sociology or any other related science; and</p> <p>(d) a person who has, in the opinion of the Governor, extensive knowledge of, or experience in, matters related to the impact of crime on <a href="#">victims</a> and the needs of <a href="#">victims</a> of crime in relation to the criminal justice system; and</p> <p>(e) a former police officer; and</p> <p>(f) a person of Aboriginal descent; and</p> <p>(g) <a href="#">both women and men</a>.</p>					
<a href="#">Criminal Law (Forensic Procedures) Act 2007</a>	<p><b><i>intrusive forensic procedure</i></b> means -</p> <p>(a) a <a href="#">forensic procedure</a> that involves exposure of, or contact with, the genital or anal area, the buttocks <u>or, in the case of a</u></p>	<p>Intersex Gender identity</p>	<p>It is unclear how this provision will apply to individuals who may identify as</p>	<p>Bodily searches</p>	<p>1</p>	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p><del>female, the breasts</del>; or</p> <p>(b) a <a href="#">forensic procedure</a> involving intrusion into a person's mouth; or</p> <p>(c) the taking of a sample of blood, but does not include a <a href="#">simple identity procedure</a>;</p> <p><b>21(3)</b></p> <p>(3) If reasonably practicable, a <a href="#">forensic procedure</a> that involves exposure of, or contact with, the genital or anal area, the buttocks or, <u>in the case of a female, the breasts must not be carried out by a person of the opposite sex</u> (other than at the request of the person on whom the <a href="#">forensic procedure</a> is to be carried out).</p>		<p>neither or both male or female, or a trans person whose identity documents differ from their gender identity.</p> <p>An intersex person may be legally recognised as one sex but feel more comfortable being searched by an officer of a different sex.</p> <p>Best practice would be for such individuals to choose the sex of forensic officer.</p>			
<a href="#">Family and Community Services Regulations 2009</a>	<p><b>10(2)(a)</b></p> <p>(2) The following provisions apply to the search of a resident of a training centre:</p> <p>(a) those present at any time during the</p>	<p>Intersex status</p> <p>Gender identity</p>	<p>It is unclear how this provision will apply to individuals who may identify as neither or both</p>	Bodily searches	1	



South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	search when the resident is naked (except a medical practitioner) must be of the same sex as the resident;		<p>male or female, or a person who may identify as a gender that differs from their identity documents.</p> <p>An intersex person may be legally recognised as one sex but feel more comfortable being searched by an officer of a different sex.</p> <p>Best practice would be for such individuals to choose the sex of their searcher.</p>			
<a href="#">Fisheries Management Act 2007</a>	<p><b>82(3)</b></p> <p>A search must be conducted by a person of the <u>same sex</u> as the person being searched unless it is not reasonable or practicable to do so in the circumstances of the search.</p>	<p>Gender identity</p> <p>Intersex status</p>	<p>It is unclear how this provision will apply to individuals who may identify as neither or both male or female,</p>	<p>Bodily searches</p>	<p>1</p>	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			<p>or whose identity documents may not reflect their gender identity.</p> <p>An intersex person may be legally recognised as one sex but feel more comfortable being searched by an officer of a different sex.</p> <p>Best practice would be for such individuals to choose the sex of their searcher.</p>			
<a href="#">Independent Commissioner Against Corruption Act 2012</a>	<p><b>31(11)</b> A search must be conducted by a person of the <u>same sex</u> as the person being searched unless it is not reasonable or practicable to do so in the circumstances of the search.</p>	<p>Intersex status Gender identity</p>	<p>It is unclear how this provision will apply to individuals who may identify as neither or both male or female, or whose identity</p>	<p>Bodily searches</p>	<p>1</p>	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			<p>documents may not reflect their gender identity.</p> <p>An intersex person may be legally recognised as one sex but feel more comfortable being searched by an officer of a different sex.</p> <p>Best practice would be for such individuals to choose the sex of their searcher.</p>			
Protective Security Act 2007	<p><b><u>17 Powers relating to security of protected place</u></b></p> <p>(5) The following provisions apply to a physical search of a person carried out under subsection (2)</p> <p>(b) except in circumstances where it is not practicable -</p> <p>(ii) the search <u>of the person must be carried out by a protective security officer of the same sex as the</u></p>	Gender identity or intersex status	It is unclear how this provision will apply to individuals who may identify as neither or both male or female, or whose identity documents do not reflect their	Bodily searches	1	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p style="text-align: center;"><u>person</u>;</p> <p><b><u>20 Power to search persons detained by protective security officers</u></b></p> <p>(2) The following provisions apply to a search under this section:</p> <p>(b) in searching the person (as opposed to the person's possessions) -</p> <p>(iv) except in circumstances where it is not practicable, at least 2 persons (apart from the person being searched) must be present at all times and the person carrying out the search <u>must be of the same sex as the person being searched</u>; and</p>		<p>gender identity.</p> <p>An intersex person may be legally recognised as one sex but feel more comfortable being searched by an officer of a different sex.</p> <p>Best practice would be for such individuals to choose the sex of their searcher.</p>			
Sheriff's Act 1978	<p><b><u>Division 3 Powers of Search</u></b></p> <p>(4) The following provisions apply to a physical search of a person carried out under this section:</p> <p>...(ii) the search of the person must be carried out by an officer of the <u>same sex as the person</u>;</p>	Gender identity or intersex status	<p>It is unclear how this provision will apply to individuals who may identify as neither or both male or female, or whose identity documents do not reflect their gender identity.</p> <p>An intersex</p>	Bodily searches	1	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			<p>person may be legally recognised as one sex but feel more comfortable being searched by an officer of a different sex.</p> <p>Best practice would be for such individuals to choose the sex of their searcher.</p>			
<p>Summary Offences Act 1953</p>	<p><a href="#">81 Power to search, examine and take particulars of persons</a></p> <p>(3) The following further provisions apply to an intimate search:</p> <p>(d) except where it is not reasonably practicable to do so, an intimate search must be carried out by a person of the same sex as the detainee (unless the detainee requests otherwise);</p>	<p>Gender identity Intersex status</p>	<p>It is unclear how this provision will apply to individuals who may identify as neither or both male or female, or whose identity documents do not reflect their gender identity.</p> <p>An intersex person may be legally</p>	<p>Bodily searches</p>	<p>1</p>	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			<p>recognised as one sex but feel more comfortable being searched by an officer of a different sex.</p> <p>Best practice would be for such individuals to be offered a choice in the first instance.</p>			
<p>Terrorism (Police Powers) Act 2005</p>	<p><b>3 Rules for conduct of searches</b></p> <p>(1) The following rules must be complied with, as far as is reasonably practicable, in the conduct of a search of a person or things in the possession of or under the control of a person:</p> <p>(e) the search, if a search of the person, must be conducted by a person of the same gender as the person (unless the search is conducted by a medical practitioner or nurse and the person consents to it being conducted by a medical practitioner or nurse not of the same gender);</p> <p>...</p> <p>(2) The following additional rules must be complied with, as far as is reasonably practicable, in the</p>	<p>Gender identity</p> <p>Intersex status</p>	<p>It is unclear how this provision will apply to individuals who may identify as neither or both male or female, or whose identity documents do not reflect their gender identity.</p> <p>An intersex person may be legally recognised as one sex but feel</p>	<p>Bodily searches</p>	<p>1</p>	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>conduct of a strip search:</p> <p>...</p> <p>(c) the search must not involve more visual inspection of the person's body than is reasonably necessary for the purposes of the search and, in particular, visual inspection of the breasts of a female, the genital area, anal area and buttocks must be kept to a minimum;</p> <p>(d) the search must not be conducted in the presence or view of -</p> <p>(i) a person who is not of the same gender as the person being searched...</p> <p>except as follows:</p> <p>(iii) a search may be conducted in the presence of a medical practitioner or nurse not of the same gender if the person consents;</p>		<p>more comfortable being searched by an officer of a different sex.</p> <p>Best practice would be for such individuals to choose the sex of their searcher.</p> <p>The sensitivity around breasts should apply to any person with breasts.</p>			
Serious and Organised Crime (Control) Act 2008	<p><b>35 Criminal associations</b></p> <p>(1) A person who associates, on not less than 6 occasions during a period of 12 months, with a person who is -</p> <p>(a) a member of a declared organisation; or</p> <p>(b) the subject of a control order, is guilty of an offence.</p> <p>(3) A person who -</p>	Marital status (Sexual orientation)	<p>Provision outlaws 'criminal associations' but exempts any association between 'close family members'.</p> <p>The definition of</p>	Criminal	1	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>(a) has a criminal conviction (against the law of this State or another jurisdiction) of a kind prescribed by regulation; and</p> <p>(b) associates, on not less than 6 occasions during a period of 12 months, with another person who has such a criminal conviction,</p> <p>is guilty of an offence.</p> <p>(6) The following forms of associations will be disregarded for the purposes of this section unless the prosecution proves that the association was not reasonable in the circumstances:</p> <p>(a) associations between <u>close family members</u>;</p> <p>(11) For the purposes of this section -</p> <p>(b) a person is a close family member of another person if -</p> <p>(i) 1 is a spouse or former spouse of the other or is, or has been, in a close personal relationship with the other; or</p> <p>(ii) 1 is a parent or grandparent of the other (whether <u>by blood or by marriage</u>); or</p> <p>(iii) 1 is a brother or sister of the other (whether <u>by blood or by marriage</u>); or...</p>		<p>'close family members' captures defacto relationships but does not capture the parents or siblings of a defacto partner (whereas parents, brothers and sisters -in-law are caught). This discriminates against same-sex couples who are unable to get married.</p> <p>Unclear how this may result in a breach of the SDA.</p>			
Summary	<a href="#">66A Senior police officer may issue consorting</a>	Marital status	Provision allows	Criminal	1	



South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
Offences Act 1953	<p><b><u>prohibition notice</u></b></p> <p>(1) A senior police officer may issue a notice prohibiting a person (the recipient) from consorting with a specified person or specified persons if the officer is satisfied that -</p> <p>(a) —</p> <p>(i) the recipient is subject to a control order under the Serious and Organised Crime (Control) Act 2008; or</p> <p>(ii) the specified person or each specified person -</p> <p>(A) has, within the preceding period of 3 years, been found guilty of 1 or more prescribed offences; or</p> <p>(B) is reasonably suspected of having committed 1 or more prescribed offences within the preceding period of 3 years; and</p> <p>(b) the recipient has been habitually consorting with the specified person or specified persons; and</p> <p>(c) the issuing of the notice is appropriate in the circumstances.</p> <p>(2) However, a consorting prohibition notice -</p> <p>(a) does not prohibit associations <u>between close family members</u>; and</p> <p>(2) For the purposes of this Part -</p> <p>(b) a person is a close family member of</p>	(sexual orientation)	<p>for police to issue consorting prohibition notice, but exempts any consorting between 'close family members'.</p> <p>The definition of 'close family members' captures defacto relationships but does not capture the parents or siblings of a defacto partner (whereas parents, brothers and sisters -in-law are caught). This discriminates against same-sex couples who are unable to get married.</p>			

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>another person if -</p> <p>(i) 1 is a spouse or former spouse of the other or is, or has been, in a close personal relationship with the other; or</p> <p>(ii) 1 is a parent or grandparent of the other (whether <u>by blood or by marriage</u>); or</p> <p>(iii) 1 is a brother or sister of the other (whether <u>by blood or by marriage</u>); or</p> <p>(iv) 1 is a guardian or carer of the other</p>					
Summary Procedure Act 1921	<p><a href="#">78 Non-association and place-restriction orders</a></p> <p>(2) On a complaint, the Court may make a non-association order or a place restriction order (or both) in respect of the defendant if -</p> <p>(a) the defendant has, within the period of 2 years immediately preceding the making of the complaint, been convicted (in this State or elsewhere) of a prescribed offence; and</p> <p>(b) the Court is satisfied that it is reasonably necessary to do so to ensure that the defendant does not commit any further prescribed offences</p> <p><a href="#">79 Non-association and place restriction orders not to restrict certain associations or activities</a></p> <p>(1) The persons specified in a non-association order as persons with whom the defendant must not associate may not include any member of the defendant's close family.</p> <p><a href="#">In this Division -</a></p>	Marital status (sexual orientation)	<p>Provision allows for court to issue non-association order, but specifies that such an order may not include any member of the defendant's close family.</p> <p>The definition of 'close family' captures defacto relationships but does not capture the children, parents or siblings of a</p>	Criminal	1	Section 40(1)(d) exemption for things done in direct compliance with an order of a court

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p><b>close family</b>, in relation to a defendant, means the following people:</p> <ul style="list-style-type: none"> <li>(a) the defendant's spouse, or former spouse, or a person in a close personal relationship with the defendant;</li> <li>(b) the defendant's parents and grandparents (<u>whether by blood or by marriage</u>);</li> <li>(c) the defendant's children and grandchildren (<u>whether by blood or by marriage</u>);</li> <li>(d) the defendant's brothers and sisters (<u>whether by blood or by marriage</u>);</li> </ul>		<p>defacto partner (whereas parents, brothers and sisters and children -in-law are caught). This discriminates against same-sex couples who are unable to get married.</p>			

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
Victims of Crime Act 2001	<p><b>17 Eligibility to make claim</b></p> <p>(2) A person is eligible to claim statutory compensation for grief suffered in consequence of the commission of a homicide if the person is -</p> <p>(a) a spouse or domestic partner of the deceased victim; or</p> <p>(b) where the deceased victim was a child - a parent of the deceased victim.</p> <p><i>domestic partner</i> means a person who is a domestic partner within the meaning of the <i>Family Relationships Act 1975</i>, whether declared as such under that Act or not;</p> <p><b>20 Orders for compensation</b></p> <p>(b) in the case of an award of compensation for grief—if both the spouse and the domestic partner of a person killed by homicide, or both parents of a child killed by homicide, have applied for such compensation, the aggregate of the amounts awarded to them by way of such compensation will not exceed \$10 000.</p> <p><b>FAMILY RELATIONSHIPS ACT 1975</b></p> <p><b>11A Domestic partners</b></p> <p>A person is, on a certain date, the "domestic partner" of another person if he or she is, on that date, living with that person in a close personal relationship and—</p> <p>(a) he or she -</p> <p>(i) has so lived with that other person continuously for the period of 3 years immediately preceding that date; or</p> <p>(ii) has during the period of 4 years immediately preceding that date so lived with that other</p>	<p>Marital status</p> <p>(sexual orientation)</p>	<p>Indirectly discriminates against non-heterosexual couples as they cannot marry and must live together for a prescribed period of time before they are eligible to make a claim under the <i>Victims of Crime Act 2001</i>.</p>	Criminal	1	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
<a href="#">Fair Work Act 1994</a>	<p><b>5(3)</b></p> <p><b>3 Maternity leave to start 6 weeks before birth</b></p> <p>A female <a href="#">employee</a> who has given notice of her intention to take parental leave for the birth of a <a href="#">child</a> must start the leave 6 weeks before the expected date of birth unless a medical practitioner has certified that the <a href="#">employee</a> is fit to work closer to the expected date of birth.</p>	<p>Intersex status</p> <p>Gender identity</p>	<p>Maternity leave is phrased as a women's entitlement which may be used to discriminate against an individual who does not identify as a female, but who has reproductive capacity.</p> <p>In order for this to occur, however, an employer would need to refuse an intersex/gender diverse person maternity 6 weeks before the birth and raise a defence such conduct was "in direct compliance with" section 3 which would may be difficult</p>	Employment	1	

**Comment [CBI45]:** Although the provisions refer to "men" and "women", they do not appear to actually authorise discrimination against people who are intersex / gender diverse

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			to establish.			
Payroll Tax Act 2009	<p><b>53 Maternity and adoption leave</b></p> <p>(1) Wages are exempt wages if they are paid or payable to an employee in respect of—</p> <p>(a) maternity leave, being <u>leave given to a female employee in connection with her pregnancy or the birth of her child</u> (other than sick leave, recreation leave, annual leave or any similar leave); or</p>	Gender, gender identity or intersex status	<p>This section is sexist (discriminates against men taking parental leave) but also discriminate against gender diverse individuals.</p> <p>A person may be pregnant or have given birth to a child but not identify or be classified as a woman (e.g. having undergone gender re-assignment procedures) - they would be excluded from this definition.</p>	Employment	1	
<a href="#">TAFE SA Regulations 2012</a>	<p><b>19 Maternity leave</b></p> <p>(1) Subject to these regulations, the chief executive will grant a female prescribed employee who is pregnant maternity leave for a period commencing at any time after the issue of a medical certificate</p>	Gender identity Intersex status	Excludes non-females from maternity leave.	Employment	1	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	confirming the employee's pregnancy and ending no later than the close of the TAFE year in which the first anniversary of the birth falls.					
<a href="#">Work Health and Safety Regulations 2012</a>	<p><b>394 Meaning of <i>lead risk work</i></b></p> <p>In this Part -</p> <p><b><i>lead risk work</i></b> means work carried out in a lead process that is likely to cause the blood lead level of a worker carrying out the work to exceed -</p> <p>(a) for a female of reproductive capacity— 10µg/dL (0.48µmol/L); or</p> <p>(b) in any other case—30µg/dL (1.45µmol/L).</p>	Intersex status Gender identity	An individual who does not identify as a female may have reproductive capacity.	Employment	1	
Criminal Law Consolidation Act 1935	<p><b>81 Attempts to procure abortion</b></p> <p>(1) Any woman who, being with child, with intent to procure her own miscarriage, unlawfully administers to herself any poison or other noxious thing, or unlawfully uses any instrument or other means whatsoever with the like intent, shall be guilty of an offence and liable to be imprisoned for life.</p> <p>(2) Any person who, with intent to procure the miscarriage of any woman, whether she is or is not with child, unlawfully administers to her, or causes to be taken by her, any poison or other noxious thing, or unlawfully uses any instrument or other means whatsoever with the like intent, shall be guilty of an offence and liable to be</p>	Intersex status Gender identity	An individual may be pregnant or give birth but not identify as female.  However, difficult to conceive of how this may authorise conduct which would otherwise be discriminatory	Family and relationship law	1	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>imprisoned for life.</p> <p><b>82 Procuring drugs etc to cause abortion</b></p> <p>Any person who unlawfully supplies or procures any poison or other noxious thing, or any instrument or thing whatsoever, knowing that it is intended to be unlawfully used or employed with intent to procure the miscarriage of any woman, whether she is or is not with child, shall be guilty of an offence and liable to be imprisoned for a term not exceeding three years.</p>		under the SDA.			
Law of Property Act 1936	<p><a href="#">60 Class ascertainment</a></p> <p>For the purpose of ascertaining whether the membership of a class is presently ascertainable and, if so, the membership of the class:</p> <p>(b) the possibility that a <u>male or female</u> over the age of 55 years might become the adoptive parent of a child is to be ignored; and</p> <p>(c) the possibility that a <u>female</u> over the age of 55 years might bear a child is to be ignored; and</p>	Gender identity or intersex status	Clause implies binary construction of gender, excludes those who don't fall within such definitions. Unclear what the impact of this may be. In light of <i>Norrie's</i> case the distinction between male and female may be deemed irrelevant.	Family and relationship law	1	
<a href="#">Prohibition of Human Cloning for Reproduction</a>	Use of 'woman' and 'female' throughout.	Gender identity or intersex status	Generally - references to 'woman' and 'female' which	Family and relationship law	1	



South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
<a href="#">Act 2003</a>			<p>imply a binary construction of gender.</p> <p>Unclear whether this would have any discriminatory impacts or whether any otherwise discriminatory conduct would be excused on the basis of "direct compliance" with this law.</p>			
<a href="#">Research involving Human Embryos Act 2003</a>	Use of 'woman' throughout	Gender identity or intersex status	<p>Generally - references to 'woman' and 'female' which imply a binary construction of gender: '<i>body of the woman</i>', '<i>treatment of the woman</i>', '<i>achieving pregnancy in a woman</i>'.</p> <p>Discriminatory impacts</p>	Family and relationship law	1	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			unclear.			
Sexual Reassignment Act 1988	<p><b><u>Part 1 Preliminary</u></b></p> <p><b><i>reassignment procedure</i></b> means a medical or surgical procedure (or a combination of such procedures) to alter the genitals and other sexual characteristics of a person, <u>identified by birth certificate as male or female, so that the person will be identified as a person of the opposite sex</u> and includes, in relation to a child, any such procedure (or combination of procedures) to correct or eliminate ambiguities in the child's sexual characteristics;</p>	Gender identity Intersex status	<p>This prevents individuals who are married and have undergone sex affirmation surgery from changing their gender and remaining married.</p> <p>It also prevents individuals who have not undergone sex affirmation surgery but who identify as another gender to change their gender on the Register.</p> <p>If the statute is to be interpreted so as to not allow the registration of sex non-specific individuals (i.e. if it can be distinguished</p>	Family and relationship law Identity documents	2 & 4	<p>s 40(5) - not unlawful to refuse to change official record of a person's sex if the person is married.</p> <p>s 43A – not discriminatory to make or keep records to be kept in a way that doesn't allow for the designation of sex other than male or female.</p>

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			from Norrie's case) then it also discriminates against individuals who would prefer that designation.			
Landlord and Tenant Act 1936	<p><b>44 Exemption of sewing machines etc</b></p> <p>It shall not be lawful to distrain any sewing machine, typewriting machine, or mangle, the property of or under hire to any <u>female person</u>, whether belonging to the tenant or otherwise, for any rent claimed in respect of the premises or place in which such sewing machine, typewriting machine, or mangle may be: Provided that any such person shall not be entitled to have more than one sewing machine, one typewriting machine, and one mangle protected from distress under this section.</p>	Sex (Gender identity or intersex status)	<p>Problematic mainly because it is sexist and irrelevant.</p> <p>Use of the word "female" implies binary construction of gender, excludes those who don't fall within such definitions.</p>	Financial	1	
Law of Property Act 1936	<p><u>Various</u></p> <p><b>82 Request by married woman, infant, or person under disability</b></p> <p><b>92 Status of married women</b></p> <p><b>93 Property of married women</b></p> <p><b>94 Abolition of husband's liability for wife's torts</b></p>	Marital status/sex (Gender, sexual orientation, gender identity or intersex status)	Laws are primarily problematic because they discriminate on the basis of sex. Also, they do not incorporate	Financial	1	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>and antenuptial contracts, debts and obligations</p> <p>95 Joint liability of husband and wife</p> <p>95A Husband and wife to be treated as separate persons for purpose of taking property</p> <p>96 Joint powers</p> <p>97 Acknowledgment by married woman not necessary</p> <p>98 Investments with money of husband</p> <p>99 Married woman may effect policy of assurance</p> <p>100 Assurance policy by married men or married women</p> <p>110 Invalidity of restraints upon anticipations</p> <p>111 Acquisitions and dispositions of trust estates by married women</p>		<p>defacto couples and there is no reference made to defacto relationships in the Act.</p> <p>The provisions discriminate against homosexuals on the basis that they exclude relationships which are not between a married woman and man.</p> <p>The language used discriminates against gender divers or intersex people because it implies a binary concept of woman/man, husband/wife.</p> <p>More research may be</p>			

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			necessary to determine the potential implications of this.			
Limitations of Actions Act 1936	<p><b><u>32 Further provisions as to application of Act to trusts</u></b></p> <p>(1) In any action or other proceeding against a trustee or any person claiming through him, except where the claim is founded on any fraud or fraudulent breach of trust to which the trustee was party or privy, or is to recover trust property, or the proceeds thereof still retained by the trustee, or previously received by the trustee and converted to his use, the following provisions shall apply:</p> <p>...(b) If the action or other proceeding is brought to recover money or other property, and is one to which no other provision of this Act applies, the trustee or person claiming through him shall be entitled to the benefit of and be at liberty to plead lapse of time as a bar to the action or other proceeding, in the like manner and to the like extent as if the action or other proceeding had been an action for money had and received; and that so <u>this Act shall run against a married woman entitled in possession for her separate use</u>, whether with or without a restraint upon anticipation, but shall not</p>	Marital status (sexual orientation)	<p>Use of the term "married woman".</p> <p>The provision discriminates against homosexuals on the basis that it excludes relationships which are not between a married woman and man.</p> <p>The language used discriminates against gender diverse or intersex people because it implies a binary</p>	Financial	1	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	begin to run against any beneficiary unless and until the interest of such beneficiary is an interest in possession.		concept of gender.			
Local Government Act 1999	<a href="#">3 Register of Interests - Form of returns</a> Various exclusions for persons 'related by blood or marriage'	Marital status (Sexual orientation)	Schedule sets out the financial information which must be disclosed in a register of interests 'ordinary return'. There are several exclusions for persons who are 'related by blood or marriage'. This excludes defacto relationships and therefore is discriminatory against homosexuals.	Financial	1	
Members of Parliament (Register of Interests) Act 1983	<a href="#">4 Contents of returns</a> Various exclusions for persons 'related by blood or marriage'	Marital status (sexual orientation)	Schedule sets out the financial information which must be disclosed in a register of interests	Financial	1	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			'ordinary return'. There are several exclusions for persons who are 'related by blood or marriage'. This excludes defacto relationships and therefore is discriminatory against homosexuals.			
Settles Estates Act 1880	<p><b><u>48 A married woman applying to the court or consenting to be examined apart from her husband</u></b></p> <p>Where a married woman shall apply to the court, or consent to an application to the court under this Act, she shall first be examined apart from her husband touching her knowledge of the nature and effect of the application, and it shall be ascertained that she freely desires to make or consent to such application; and such examination shall be made whether the hereditaments, which are the subject of the application, shall be settled in trust for the separate use of such married woman independently of her husband or not, and no clause or provision in any settlement restraining anticipation shall prevent the court from exercising, if it shall think fit, any of the powers given by this Act, and no such exercise shall occasion any forfeiture, anything in the settlement contained to the</p>	Marital status (Gender, sexual orientation, gender identity or intersex status)	<p>Clauses are sexist and out of date.</p> <p>The provisions discriminate against homosexuals on the basis that they exclude relationship which are not between a married woman and man.</p>	Financial	1	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>contrary notwithstanding</p> <p><b><u>49 Examination of married woman, how to be made when residing within the jurisdiction of the court, and how when residing without such jurisdiction</u></b></p> <p>The examination of such married woman, when resident within the jurisdiction of the court, shall be made either by the court or by some solicitor duly appointed by the court for that purpose, who shall certify under his hand that he has examined her apart from her husband, and is satisfied that she is aware of the nature and effect of the intended application, and that she freely desires to make or consent to the same; and when the married woman is resident out of the jurisdiction of the court, her examination may be made by any person appointed for that purpose by the court, and such person shall certify under his hand to the effect hereinbefore provided in respect of the examination of a married woman resident within the jurisdiction; and the appointment of any such person not being a solicitor shall afford conclusive evidence that the married woman was, at the time of such examination, resident out of the jurisdiction of the court.</p> <p><b><u>50 Consent of married woman</u></b></p> <p>Subject to such examination as aforesaid, married women may make or consent to any applications, whether they be of full age or infants.</p>		The language used discriminates against gender divers or intersex people because it implies a binary concept of woman/man, husband/wife.			
Stamp Duties Act 1923	<p><b><u>16 General exemptions</u></b></p> <p>The following instruments are exempt from all stamp duties:</p>	Marital/relationship status (Sexual orientation)	'Marriage settlements' exempt from stamp duty, however not the	Financial	1	



South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<b>9 Marriage settlements</b>		settlements of defacto-relationship break downs. This indirectly discriminates against non-heterosexual couples			
<a href="#">TAFE SA Regulations 2012</a>	<p><b>30 Removal expenses</b></p> <p>(4) If a prescribed employee retires or dies while employed at a location to which he or she moved wholly or largely at the expense of TAFE SA and the employee, or his or her surviving spouse or domestic partner, (as the case may be) moves residence on that retirement or death to another location in South Australia, the employee or surviving spouse or domestic partner is entitled to be paid the amounts specified in subregulation (1), subject to the following limitations.</p> <p><b>4 Interpretation</b></p> <p><b>domestic partner</b> means a person who is a domestic partner within the meaning of the <i>Family Relationships Act 1975</i>, whether declared as such under that Act or not;</p> <p><b>Family Relationships Act 1975</b></p> <p><b>11A Domestic partners</b></p> <p>A person is, on a certain date, the "domestic partner" of another person if he or she is, on that date, living with that person in a close personal relationship and -</p>	Marita status (sexual orientation)	Indirectly discriminates against any non-heterosexual couple because, as they are unable to marry. Accordingly, in order for a surviving partner of such couples to be entitled to the amounts, they must have lived together for the periods specified in section 11A of the <i>Family</i>	Financial	1	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>(a) he or she -</p> <p>(i) has so lived with that other person continuously for the period of 3 years immediately preceding that date; or</p> <p>(ii) has during the period of 4 years immediately preceding that date so lived with that other person for periods aggregating not less than 3 years; or</p> <p>(b) a child, of whom he or she and the other person are the parents, has been born (whether or not the child is still living at that date).</p>		<i>Relationships Act 1975.</i>			
<a href="#">Wills Act 1936</a>	<p><b>5 Will of minor</b></p> <p>(1) Subject to this Act, a <a href="#">minor</a> cannot make, alter or revoke a <a href="#">will</a>.</p> <p>(2) A <a href="#">minor</a> who is or has been married may make, alter or revoke a <a href="#">will</a> as if he or she were an <a href="#">adult</a>.</p> <p>(3) A <a href="#">minor</a> may make a <a href="#">will</a> in contemplation of marriage (and may alter or revoke such a <a href="#">will</a>) but the <a href="#">will</a> is of no effect unless the contemplated marriage is solemnised.</p> <p><b>20 Will to be revoked by marriage</b></p> <p>(1) Subject to subsection (2), every <a href="#">will</a> made by a man or woman is revoked by his or her marriage (except a <a href="#">will</a> made in exercise of a power of appointment when the real or <a href="#">personal estate</a> thereby appointed would not in default of such</p>	Marital/relationship status (Sexual orientation)	Prima facie, a minor cannot make, alter or revoke a will. This provision however, allows a minor who is or has been married make, alter or revoke a will as if they were an adult; hence special rights are conveyed upon individuals who are able to	Financial	1	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>appointment pass to his or her heir executor or administrator, or the person entitled as his or her next of kin under the Statute of Distributions).</p> <p>(2) A <a href="#">will</a> made after the commencement of the <i>Wills Act Amendment Act 1969</i> which is expressed to be made in contemplation of marriage, is not revoked by the solemnisation of the marriage contemplated.</p> <p><b>20A Effect of termination of marriage on <a href="#">will</a></b></p> <p>(1) If, after making a <a href="#">will</a>, the testator's marriage is terminated, the following provisions apply:</p> <p>(a) a <a href="#">disposition</a> of a beneficial interest in property by the <a href="#">will</a> in favour of the testator's former <a href="#">spouse</a> is revoked;</p> <p>(b) an appointment by the <a href="#">will</a> of the testator's former <a href="#">spouse</a> as executor, trustee or guardian is revoked;</p> <p>(c) a grant by the <a href="#">will</a> of a power of appointment exercisable by or in favour of the testator's former <a href="#">spouse</a> is revoked;</p> <p>(d) the <a href="#">will</a> is to have effect with respect to the revocation of such a <a href="#">disposition</a>, appointment or grant of a power as if the former <a href="#">spouse</a> had died on the date of termination of the marriage.</p> <p>(2) This section does not affect -</p> <p>(a) a <a href="#">disposition</a> or grant of a power in accordance with a contract between the testator and the former <a href="#">spouse</a> under</p>		<p>marry (non-heterosexual couples are not able to marry).</p> <p>Sections 20 and 20A similarly discriminate against non-married couples.</p>			

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>which the testator is or was bound to dispose of property by <a href="#">will</a> in a particular way; or</p> <p>(b) a <a href="#">disposition</a>, appointment or grant of a power if it appears from the terms of the <a href="#">will</a> that the testator intended that the <a href="#">disposition</a>, appointment or grant would have effect despite the termination of the marriage; or</p> <p>(c) a <a href="#">disposition</a>, appointment or grant of a power if the <a href="#">will</a> is re-executed, or a codicil is made to the <a href="#">will</a>, after termination of the marriage and the <a href="#">will</a> or codicil shows no intention of the testator to revoke the <a href="#">disposition</a>, appointment or grant; or</p> <p>(d) the right of a former <a href="#">spouse</a> to make a claim under the <i>Inheritance (Family Provision) Act 1972</i> .</p> <p>(3) For the purposes of this section -</p> <p>(a) a marriage is terminated -</p> <p>(i) when a decree of dissolution of a marriage becomes absolute under the Family Law Act;</p> <p>(ii) on the making of a decree of nullity under the Family Law Act in respect of a purported marriage;</p> <p>(iii) on the termination or annulment of a marriage or purported marriage in accordance with the law of a <a href="#">place</a> outside Australia if the</p>					

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>termination or annulment is recognised in Australia under the Family Law Act;</p> <p>(b) <b>disposition</b> of property by a <a href="#">will</a> includes an appointment of property by <a href="#">will</a> under a power of appointment conferred on the testator;</p> <p>(c) <b>Family Law Act</b> means the <a href="#">Family Law Act 1975</a> of the Commonwealth, as amended from time to time, or an Act of the Commonwealth enacted in substitution of that Act;</p> <p>(d) <b>spouse</b> includes a party to a purported marriage.</p>					
<a href="#">Workers Rehabilitation and Compensation Regulations 2010</a>	<p><b>50(3)(6) Noise induced hearing loss</b></p> <p>(2) The following procedures apply for the purpose of establishing whether a <a href="#">worker</a> is suffering from hearing loss that may be noise induced:</p> <p>(a) the <a href="#">worker</a> must first undergo an audiometric test of hearing conducted by—</p> <p>(i) a legally qualified medical practitioner; or</p> <p>(ii) an <a href="#">audiologist</a>; or</p> <p>(iii) an <a href="#">audiometrist</a>;</p> <p>(3) For the purposes of subregulation (2)(a) - ...</p> <p>(f) if the <a href="#">worker</a> is a <u>man of or over the age of 56 years or a woman of or over the age of 69 years</u>, the value in table P set out in</p>	<p>Intersex status</p> <p>Gender identity</p>	<p>This section adopts a binary definition of gender and may be applied discriminatorily to intersex individuals or transgender individuals depending on how 'gender' is determined. No age is prescribed for a person who is neither male nor female.</p>	<p>Financial</p>	<p>1</p>	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	Appendix 5 of NAL Report No 118 appropriate to the <u>worker's</u> age and sex must be subtracted from the binaural percentage of loss of hearing obtained in accordance with the procedure set out in paragraph (e).					
<a href="#">Aquaculture Act 2001</a>	<b>65(2)</b> At least 1 member of the AAC must <u>be a woman and at least 1 must be a man.</u>	Intersex status Gender identity	As a binary conception of gender is employed, individuals who do not identify as male or female may be discriminated against.	Membership/ appointments	1	
<a href="#">Art Gallery Act 1939</a>	<b>5(3)</b> At least <u>2 members must be women and at least 2 must be men.</u>	Intersex status Gender identity	As a binary conception of gender is employed, individuals who do not identify as male or female may be discriminated against.	Membership/ appointments	1	
<a href="#">Carrick Hill Trust Act 1985</a>	<b>5(2)</b> At least <u>2 members must be women and at least 2 must be men.</u>	Intersex status Gender identity	As a binary conception of gender is employed, individuals who	Membership/ appointments	1	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			do not identify as male or female may be discriminated against.			
<a href="#">Aboriginal Heritage Act 1988</a>	<b>7(3) Aboriginal Heritage Committee</b> The Minister must, as far as is practicable, <u>appoint equal numbers of men and women to the Committee</u>	Intersex status Gender identity	As a binary conception of gender is employed, individuals who do not identify as male or female <i>may</i> be discriminated against.	Memberships/ appointments	1	
<a href="#">Acts Interpretation Act 1915</a>	<b>26(a) &amp; (ab)</b> <b>Words importing masculine gender and singular number to include feminine and plural</b>  In every Act - (a) every word of <u>the masculine gender will be construed as including the feminine gender;</u> (ab) every word of <u>the feminine gender will be construed as including the masculine gender;</u>  ... <b>36A(2) &amp; (3)</b>	Intersex status Gender identity	As a binary conception of gender is employed, individuals who do not identify as male or female may be discriminated against.	Memberships/ appointments	1	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p><b>Gender balance in nomination of <a href="#">persons</a> for appointment to statutory bodies</b></p> <p>(2) If the Act provides for the <a href="#">non-government entity</a> to nominate a panel of <a href="#">persons</a> from which <a href="#">the Governor</a> or Minister is to select a <a href="#">person</a> for appointment, the Act will be taken to provide that the panel -</p> <p>(a) must include <u>at least 1 woman and 1 man</u>; and</p> <p>(b) <u>must, as far as practicable, be comprised of equal numbers of women and men.</u></p> <p>(3) If the Act does not provide for the <a href="#">non-government entity</a> to nominate a panel of <a href="#">persons</a> from which <a href="#">the Governor</a> or Minister is to select a <a href="#">person</a> for appointment, the Act will be taken to provide that -</p> <p>(a) the <a href="#">non-government entity</a> must nominate a panel of <a href="#">persons</a> comprised of not less than twice the number of members of the body to be appointed on the nomination of the entity plus one; and</p> <p>(b) the panel -</p> <p>(i) <u>must include at least 1 woman and 1 man; and</u></p> <p>(ii) <u>must, as far as practicable, be comprised of equal numbers of women and men; and</u></p> <p>...</p>					
<a href="#">Adelaide</a>	<b>12(4)</b>	Intersex status	As a binary	Memberships/	1	



South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
<a href="#">Cemeteries Authority Act 2001</a>	(4) <u>At least two directors must be women and at least two must be men.</u>	Gender identity	conception of gender is employed, individuals who do not identify as male or female may be discriminated against.	appointments		
<a href="#">Adelaide Dolphin Sanctuary Act 2005</a>	<b>12(6)</b> At least 2 members of the Board <u>must be women and at least 2 must be men.</u>	Intersex status Gender identity	As a binary conception of gender is employed, individuals who do not identify as male or female may be discriminated against.	Memberships/ appointments	1	
<a href="#">Adelaide Festival Centre Trust Act 1971</a>	<b>6(3)</b> <u>At least 2 members must be women and at least 2 must be men.</u>	Intersex status Gender identity	As a binary conception of gender is employed, individuals who do not identify as male or female may be discriminated against.	Memberships/ appointments	1	
<a href="#">Adelaide Festival</a>	<b>8(2)</b>	Intersex status	As a binary conception of	Memberships/	1	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
<a href="#">Corporation Act 1998</a>	At least 2 members must be women and at least 2 must be men.	Gender identity	gender is employed, individuals who do not identify as male or female may be discriminated against.	appointments		
<a href="#">Adelaide Park Lands Act 2005</a>	<b>6(5)</b> The <a href="#">Adelaide City Council</a> and the Minister must ensure that they each appoint <u>at least 1 woman and at least 1 man</u> to the membership of the <a href="#">board of management</a> .	Intersex status Gender identity	As a binary conception of gender is employed, individuals who do not identify as male or female may be discriminated against.	Memberships/ appointments	1	
<a href="#">Citrus Industry Act 2005</a>	<b>7(2)</b> <u>At least 1 member of the Board must be a woman and 1 a man.</u>	Intersex status Gender identity	As a binary conception of gender is employed, individuals who do not identify as male or female may be discriminated against.	Memberships/ appointments	1	
<a href="#">Climate Change and Greenhouse</a>	<b>9(6)</b> At least 1 member of the Council must be a woman and at	Intersex status Gender identity	As a binary conception of gender is	Memberships/ appointments	1	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
<a href="#">Emissions Reduction Act 2007</a>	<u>least 1 member must be a man.</u>		employed, individuals who do not identify as male or female may be discriminated against.			
<a href="#">Commission of Inquiry (Children in State Care and Children on Apy Lands) Act 2004</a>	<p><b>4A(3)(a)</b></p> <p>The Governor must appoint 2 Assistant Commissioners to assist in the conduct of the commission, of whom -</p> <p>(a) <u>1 must be male and the other female; and</u></p> <p>(b) at least 1 must be of Aboriginal descent.</p>	Intersex status Gender identity	As a binary conception of gender is employed, individuals who do not identify as male or female may be discriminated against.	Memberships/ appointments	1	
<a href="#">Co-operatives Act 1997</a>	<p><b>6(2)</b></p> <p><b>2 Democratic member control</b></p> <p><a href="#">Co-operatives</a> are democratic organisations controlled by their members, who actively participate in setting their policies and making decisions. Men and women serving as elected representatives are accountable to the membership. In primary <a href="#">co-operatives</a> members have equal voting rights (one member, one vote) and <a href="#">co-operatives</a> at other levels are organised in a democratic manner.</p>	Gender identity Intersex status	As a binary conception of gender is employed, individuals who do not identify as male or female, who may be discriminated against.	Memberships/ appointments	1	
<a href="#">Development</a>	<b>8(4)</b>	Intersex status	As a binary	Memberships/	1	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
<a href="#">Act 1993</a>	<p>(4) At least one member of <a href="#">the Advisory Committee</a> must be a woman and at least one member must be a man.</p> <p><b>10(5)</b></p> <p>(5) At least one member of the <a href="#">Development Assessment Commission</a> must be a woman and at least one member must be a man.</p> <p><b>56A(3)(d)</b></p> <p>(d) the <a href="#">council</a> -</p> <p>(i) must, unless granted an exemption by the Minister, ensure that at least 1 member of the panel is a woman and at least 1 member is a man; and</p> <p>(ii) should, insofar as is reasonably practicable, ensure that the panel consists of equal numbers of men and women;</p>	Gender identity	conception of gender is employed, individuals who do not identify as male or female may be discriminated against.	appointments		
<a href="#">Dog and Cat Management Act 1995</a>	<p><b>12(4)</b></p> <p>(4) At least <u>one member of the Board must be a woman and one a man.</u></p>	Intersex status Gender identity	As a binary conception of gender is employed, individuals who do not identify as male or female may be discriminated against.	Memberships/ appointments	1	
<a href="#">Economic Development</a>	<p><b>9(3)</b></p> <p>(3) The Board's membership must include persons</p>	Intersex status Gender identity	As a binary conception of gender is	Memberships/ appointments	1	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
<a href="#">Act 1993</a>	who have, in the Minister's opinion, appropriate expertise in economic development, international business, management and industrial relations and <u>at least one of those persons must be a woman and at least one a man.</u>		employed, individuals who do not identify as male or female may be discriminated against.			
<a href="#">Electricity Corporations Act 1994</a>	<b>42(4)</b> At least one member of the board <u>must be a woman and one a man.</u>	Intersex status Gender identity	As a binary conception of gender is employed, individuals who do not identify as male or female may be discriminated against.	Memberships/ appointments	1	
<a href="#">Emergency Management Act 2004</a>	<b>6(5)</b> A person or body referred to in subsection (2)(f) must, in constituting a panel for the purposes of that subsection, submit the name of at <u>least one man and one woman.</u>	Intersex status Gender identity	As a binary conception of gender is employed, individuals who do not identify as male or female may be discriminated against.	Memberships/ appointments	1	
<a href="#">Fire and Emergency Services Act</a>	<b>11(2)</b> At least 1 member of the <a href="#">Board</a> <u>must be a woman and at least 1 member must be a man.</u>	Intersex status Gender identity	As a binary conception of gender is employed,	Memberships/ appointments	1	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
<a href="#">2005</a>			individuals who do not identify as male or female may be discriminated against.			
<a href="#">Firearms Act 1977</a>	<b>7(2a)</b> The <a href="#">committee</a> must <u>include at least two men and two women.</u>	Intersex status Gender identity	As a binary conception of gender is employed, individuals who do not identify as male or female may be discriminated against.  However, it would be difficult for a discriminator to establish an exemption for discriminatory conduct "in direct compliance" with this law as the law does not require exclusion of intersex/gender diverse people.	Memberships/ appointments	1	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			E.g. committee may include at least two men and two women, but others who do not identify as men or women.			
<a href="#">Flinders University of South Australia Act 1966</a>	<p><b>5(3a)</b></p> <p>Where a person is appointed to the Council, the appointing authority must recognise that the Council is, as far as practicable, <u>to be constituted of equal numbers of men and women</u> who -</p> <p>(a) have a commitment to education and, in particular, to higher education; and</p> <p>(b) have an understanding of, and commitment to, the principles of equal opportunity and social justice and, in particular, to access and equity in education.</p>	<p>Intersex status</p> <p>Gender identity</p>	<p>As a binary conception of gender is employed, individuals who do not identify as male or female may be discriminated against.</p> <p>However, provision only requires equal numbers "insofar as practicable" so a discriminator would have difficulty establishing that discrimination against intersex/gender diverse people</p>	Memberships/ appointments	1	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			by excluding from membership was in direct compliance with this law.			
<a href="#">Gaming Machines Act 1992</a>	<p><b>73B(4)</b></p> <p>The board established under subsection (3) is to consist of 5 members—</p> <p>(a) being persons who have, between them, appropriate expertise in financial management and charitable or social welfare organisation administration; and</p> <p>(b) <u>at least 2 of whom are women and 2 are men.</u></p>	<p>Intersex status</p> <p>Gender identity</p>	<p>As a binary conception of gender is employed, individuals who do not identify as male or female may be discriminated against.</p> <p>However, it would be difficult to for a discriminator to establish an exemption for discriminatory conduct "in direct compliance" with this law - see above. Similar comments apply in relation to rows below.</p>	Memberships/ appointments	1	



South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
<a href="#">Genetically Modified Crops Management Act 2004</a>	<b>9(2)</b> At least 2 members of the <a href="#">Advisory Committee</a> <u>must be women and at least 2 members must be men.</u>	Intersex status Gender identity	As a binary conception of gender is employed, individuals who do not identify as male or female may be discriminated against.  However, likely not covered by the exemption as discrimination not "in direct compliance with" this provision.	Memberships/ appointments	1	
<a href="#">Government Financing Authority Act 1982</a>	<b>18B(2)</b> At least 1 member of <a href="#">the Board</a> <u>must be a man and 1 must be a woman.</u>	Intersex status Gender identity	As a binary conception of gender is employed, individuals who do not identify as male or female may be discriminated against.  However, likely not covered by	Memberships/ appointments	1	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			the exemption as discrimination not "in direct compliance with" this provision			
<a href="#">Health Practitioner Regulation National Law (South Australia) Act 2010</a>	<p><b>28</b></p> <p>At least 1 of the members of the <a href="#">Authority</a> must be a woman and 1 must be a man.</p> <p><b>1, 123A(f)</b></p> <p>(1) A person must not carry out a restricted birthing practice unless the person -</p> <p>(f) is rendering assistance to a woman who is in labour or giving birth to a child, or who has given birth to a child, where the assistance is <a href="#">provided</a> in an emergency.</p>	<p>Intersex status</p> <p>Gender identity</p>	<p>As a binary conception of gender is employed, individuals who do not identify as male or female may be discriminated against. However, likely not covered by the exemption as discrimination not "in direct compliance with" this provision</p> <p>Birthing is described as a process only a woman can undertake and thus an</p>	<p>Memberships/ appointments</p> <p>Health</p>	1	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			<p>individual who does not identify as a female but is able to give birth is excluded from this provision.</p> <p>However, likely to be no direct impact on the intersex/gender diverse person concerned. Rather, risk lies with the health practitioner.</p>			
<a href="#">Healthcare Act 2008</a>	<p><b>9(4)</b></p> <p>The Minister must ensure, as far as practicable, that the persons appointed under subsection (2) consist of equal numbers of women and men.</p>	<p>Intersex status</p> <p>Gender identity</p>	<p>As a binary conception of gender is employed, individuals who do not identify as male or female may be discriminated against.</p> <p>However, likely not covered by the exemption as discrimination</p>	<p>Memberships/ appointments</p>	<p>1</p>	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			not "in direct compliance with" this provision			
<a href="#">Heritage Places Act 1993</a>	<b>5(3)</b> At least 1 member of the <a href="#">Council</a> must be a <u>woman and at least 1 member must be a man.</u>	Intersex status Gender identity	As a binary conception of gender is employed, individuals who do not identify as male or female may be discriminated against.  However, likely not covered by the exemption as discrimination not "in direct compliance with" this provision	Memberships/ appointments	1	
<a href="#">History Trust of South Australia Act 1981</a>	<b>5(2)</b> At least 2 members <u>must be women and at least 2 must be men.</u>	Intersex status Gender identity	As a binary conception of gender is employed, individuals who do not identify as male or female may be	Memberships/ appointments	1	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			discriminated against. However, likely not covered by the exemption as discrimination not "in direct compliance with" this provision			
<a href="#">Independent Gambling Authority Act 1995</a>	<b>5(2)</b> At least 2 members <u>must be women and 2 must be men.</u>	Intersex status Gender identity	As a binary conception of gender is employed, individuals who do not identify as male or female may be discriminated against.	Memberships/ appointments	1	
Libraries Act 1982	<b>9 <u>Composition of Board</u></b> ... (2) At least <u>2 members must be women and at least 2 must be men.</u>	Gender identity or intersex status	Composition requirement implying binary construction of gender.  Clause does not actively discriminate against gender-diverse people	Memberships/ appointments	1	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			(additional position on the board which may be filled) however the language excludes them.			
Local Government Act 1999	<p><b><u>15 Composition of Panel</u></b></p> <p>...(2) <u>At least one member of the Panel must be a woman and at least one member a man.</u></p> <p><b><u>1A Implementation of Stormwater Management Agreement</u></b></p> <p><b>6 Board of Authority</b></p> <p>...(3) At least 1 member of the board must be a woman and at least 1 member must be a man.</p>	Gender identity or intersex status	Composition requirement implies binary construction of gender, excludes those who don't fall within such definitions.	Memberships/ appointments	1	
Local Government Finance Authority Act 1983	<p><b><u>DIVISION 2—THE BOARD OF TRUSTEES OF THE AUTHORITY</u></b></p> <p><b>Constitution of the Board</b></p> <p>...7</p> <p>(2) <u>At least one member of the Board must be a woman and at least one member must be a man.</u></p>	Gender identity or intersex status	Composition requirement implies binary construction of gender, excludes those who don't fall within such definitions.	Memberships/ appointments	1	
Motor Accident Commission Act 1992	<p><b><u>6 Composition of board</u></b></p> <p>...(3) At least one of the directors must be a man and at least one must be a woman.</p>	Gender identity or intersex status	Composition requirement implies binary construction of	Memberships/ appointments	1	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			gender, excludes those who don't fall within such definitions.			
Motor Vehicles Act 1959	<p><b>129 Inquiries into premiums</b></p> <p>(1) Upon the recommendation of the Minister, the Governor may appoint a committee to inquire into and determine from time to time what premiums in respect of insurance under this Part are fair and reasonable.</p> <p>...(2a) <u>At least one member of the committee must be a woman and at least one must be a man.</u></p>	Gender identity or intersex status	Composition requirement implies binary construction of gender, excludes those who don't fall within such definitions.	Memberships/ appointments	1	
National Parks and Wildlife Act 1972	<p><b><u>15 Establishment and membership of the Council</u></b></p> <p>(4) Of the appointed members -</p> <p>...(b) another must be a person selected by the Minister from <u>a panel of two men and two women</u> nominated by the Conservation Council of South Australia Incorporated;</p>	Gender identity or intersex status	Composition requirement implies binary construction of gender, excludes those who don't fall within such definitions.	Memberships/ appointments	1	
Native Vegetation Act 1991	<p><b><u>8 Membership of Council</u></b></p> <p>...(4) <u>At least one member of the Council must be a woman and one must be a man.</u></p>	Gender identity or intersex status	Composition requirement implies binary construction of gender, excludes those who don't fall within such	Memberships/ appointments	1	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			definitions.			
Natural Resources Management Act 2004	<p><b>13 Composition of NRM Council</b></p> <p>(7) At least 2 members of the NRM Council must be women and at least 2 members must be men.</p> <p><b>25 Composition of boards</b></p> <p>(6) At least 1 member of a regional NRM board must be a woman and at least 1 member must be a man.</p> <p><b>48 Composition of NRM groups</b></p> <p>(5) At least 1 member of an NRM group must be a woman and at least 1 member must be a man.</p>	Gender identity or intersex status	Composition requirement implies binary construction of gender, excludes those who don't fall within such definitions.	Memberships/ appointments	1	
Office for the Aging Act 1995	<p><b>PART 3 ADVISORY BOARD ON AGEING</b></p> <p><b>Advisory Board</b></p> <p><b>8...</b></p> <p>(3) At least <u>three members of the Board must be women and three men.</u></p>	Gender identity or intersex status	Composition requirement implies binary construction of gender, excludes those who don't fall within such definitions.	Memberships/ appointments	1	
Outback Communities (Administration and Management) Act 2009	<p><b>7 Membership</b></p> <p>(3) At least 1 member of the Authority must be a woman and 1 a man.</p>	Gender identity or intersex status	Composition requirement implies binary construction of gender, excludes those who don't fall within such	Memberships/ appointments	1	



South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			definitions.			
Pastoral Land Management and Conservation Act 1989	<b><u>12 Establishment of the Pastoral Board</u></b> ... (3) At least one member must be a woman and one a man.	Gender identity or intersex status	Composition requirement implies binary construction of gender, excludes those who don't fall within such definitions.	Memberships/ appointments	1	
Phylloxera and Grape Industry Act 1995	<b><u>10 Establishment and membership of Selection Committee</u></b> ... (6) At least one member of the Selection Committee must be a man and at least one must be a woman.	Gender identity or intersex status	Composition requirement implies binary construction of gender, excludes those who don't fall within such definitions.  However, likely not covered by the exemption as discrimination not "in direct compliance with" this provision	Memberships/ appointments	1	
South Australian Country Arts	<b><u>5 Composition of Trust</u></b>	Gender identity or intersex status	Composition requirement	Memberships/ appointments	1	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
Trust Act 1992	(2) At least 2 members must be women and at least 2 must be men.		implies binary construction of gender, excludes those who don't fall within such definitions.  However, exemption unlikely to apply because discrimination not in direct compliance with the provision.			
South Australian Film Corporation Act 1972	<b><u>6 Composition of Corporation</u></b> (2) At least 2 members must be women and at least 2 must be men.	Gender identity or intersex status	Composition requirement implies binary construction of gender, excludes those who don't fall within such definitions.  However, exemption unlikely to apply because discrimination not in direct compliance with	Memberships/ appointments	1	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			the provision			
South Australian Forestry Corporation Act 2000	<b>10 Establishment of board</b>  (4) At least one member of the board must be a woman and one a man.	Gender identity or intersex status	Composition requirement implies binary construction of gender, excludes those who don't fall within such definitions.  However, exemption unlikely to apply because discrimination not in direct compliance with the provision	Memberships/ appointments	1	
South Australian Housing Trust Act	<b>9 Constitution of board of management</b>  (3) At least one member of the board must be a woman and at least one member must be a man.	Gender identity or intersex status	Composition requirement implies binary construction of gender, excludes those who don't fall within such definitions.  However, exemption unlikely to apply because	Memberships/ appointments	1	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			discrimination not in direct compliance with the provision			
South Australian Motor Sport Act 1984	<p><b><u>5 Membership of Board</u></b></p> <p>(1a) At least one member of the Board must be a woman and at least one must be a man.</p>	Gender identity or intersex status	<p>Composition requirement implies binary construction of gender, excludes those who don't fall within such definitions.</p> <p>However, exemption unlikely to apply because discrimination not in direct compliance with the provision.</p>	Memberships/ appointments	1	
South Australian Multicultural and Ethnic Affairs Commission Act 1980	<p><b><u>6 Constitution of Commission</u></b></p> <p>(1) The Commission is to consist of not more than 15 members appointed by the Governor on the nomination of the Minister, of whom -</p> <p>(b) at least four must be men and four women.</p>	Gender identity or intersex status	<p>Composition requirement implies binary construction of gender, excludes those who don't fall within such definitions.</p> <p>However,</p>	Memberships/ appointments	1	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			exemption unlikely to apply because discrimination not in direct compliance with the provision			
South Australian Museum Act 1976	<b><u>4</u></b> <b>Composition of Board</b>  (3) At least 2 members must be women and at least 2 must be men.	Gender identity or intersex status	Composition requirement implies binary construction of gender, excludes those who don't fall within such definitions.  However, exemption unlikely to apply because discrimination not in direct compliance with the provision	Memberships/ appointments	1	
South Australian Tourism Commission Act 1993	<b><u>9</u></b> <b>Composition of board</b>  (4) At least two directors must be women and at least two must be men.	Gender identity or intersex status	Composition requirement implies binary construction of gender, excludes those who don't fall	Memberships/ appointments	1	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			within such definitions. However, exemption unlikely to apply because discrimination not in direct compliance with the provision			
South Australian Water Corporation Act 1994	<b>12 Establishment of board</b> (4) At least two members of the board must be women and two men.	Gender identity or intersex status	Composition requirement implies binary construction of gender, excludes those who don't fall within such definitions. However, exemption unlikely to apply because discrimination not in direct compliance with the provision	Memberships/ appointments	1	
State Opera South Australia Act 1976	<b>8 Composition of Board</b> (2) At least 2 members must be women and at least 2 must be men.	Gender identity or intersex status	Composition requirement implies binary construction of	Memberships/ appointments	1	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			gender, excludes those who don't fall within such definitions.  However, exemption unlikely to apply because discrimination not in direct compliance with the provision			
State Procurement Act 2004	<b><u>7 Composition of Board</u></b>  (3) At least 1 appointed member of the Board must be a woman and at least 1 must be a man.	Gender identity or intersex status	Composition requirement implies binary construction of gender, excludes those who don't fall within such definitions.  However, exemption unlikely to apply because discrimination not in direct compliance with the provision	Memberships/ appointments	1	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
State Records Act 1997	<p><b><u>9 Establishment of Council</u></b></p> <p>(4) At least two members of the Council must be women and at least two must be men.</p>	Gender identity or intersex status	<p>Composition requirement implies binary construction of gender, excludes those who don't fall within such definitions.</p> <p>However, exemption unlikely to apply because discrimination not in direct compliance with the provision</p>	Memberships/ appointments	1	
State Theatre Company of South Australia Act 1972	<p><b><u>7 Composition of Board</u></b></p> <p>(2) At least 2 members must be women and at least 2 must be men.</p>	Gender identity or intersex status	<p>Composition requirement implies binary construction of gender, excludes those who don't fall within such definitions.</p> <p>However, exemption unlikely to apply because discrimination</p>	Memberships/ appointments	1	



South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			not in direct compliance with the provision			
Superannuation Funds Management Corporation of South Australia Act 1995	<a href="#">9 Establishment of the board</a> (5) The panel must have included at least one man and one woman.	Gender identity or intersex status	Composition requirement implies binary construction of gender, excludes those who don't fall within such definitions.  However, exemption unlikely to apply because discrimination not in direct compliance with the provision	Memberships/ appointments	1	
Supported residential Facilities Act 1992	<a href="#">11 Establishment of the Committee</a> (3) At least one member of the Advisory Committee must be a woman and at least one member must be a man.	Gender identity or intersex status	Composition requirement implies binary construction of gender, excludes those who don't fall within such definitions.  However, exemption	Memberships/ appointments	1	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			unlikely to apply because discrimination not in direct compliance with the provision			
Survey Act 1992	<b><u>8</u> Committee</b>  (3) At least one member of the Committee must be a woman and one a man.	Gender identity or intersex status	Composition requirement implies binary construction of gender, excludes those who don't fall within such definitions.  However, exemption unlikely to apply because discrimination not in direct compliance with the provision	Memberships/ appointments	1	
<a href="#">TAFE SA Act 2012</a>	<b>7 Establishment of board</b>  (1) A board of directors is established as the governing body of TAFE SA.  (2) The board is to consist of not less than 6 and not more than 11 members appointed by the Governor.  (3) At least 2 members must be women and at least 2	Gender identity Intersex status	Binary concept of gender for appointment to board of directors of TAFE SA.  However, exemption	Memberships/ appointments	1	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	must be men.		unlikely to apply because discrimination not in direct compliance with the provision			
<a href="#">Teachers Registration and Standards Act 2004</a>	<p><b>9 Membership of Teachers Registration Board</b></p> <p>(1) The Teachers Registration Board consists of 16 members appointed by the Governor of whom - ...</p> <p>(2) The Minister must ensure, as far as practicable, that the persons appointed under subsection (1) consist of equal numbers of women and men.</p>	Gender identity Intersex status	Binary concept of gender for appointment to the Teachers Registration Board.  However, exemption unlikely to apply because discrimination not in direct compliance with the provision.	Memberships/ appointments	1	
<a href="#">Training and Skills Development Act 2008</a>	<p><b>9 Establishment of Training and Skills Commission</b></p> <p>(1) The Training and Skills Commission is established.</p> <p>(8) At least 1 member of the Commission must be a woman and 1 a man.</p>	Gender identity Intersex status	Binary concept of gender for appointment to the Training and Skills Commission.  However, exemption unlikely to apply because discrimination	Memberships/ appointments	1	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			not in direct compliance with the provision			
<a href="#">Transplantation and Anatomy Act 1983</a>	<p>13 <b>Removal for transplantation of regenerative tissue from a child</b></p> <p>(1) A parent of a child may, in the prescribed circumstances, consent in writing to the removal from the body of the child of specified regenerative tissue for the purpose of the transplantation of the tissue to the body of another living person referred to in the consent.</p> <p>(3) A consent under subsection (1) has no effect for the purposes of this Act unless approved by the Committee under this section.</p> <p>(4) The Minister shall appoint a Committee for the purposes of this section which shall consist of three members, of whom -</p> <p>(a) one shall be a legal practitioner of at least seven years' standing; and</p> <p>(b) one shall be a medical practitioner; and</p> <p>(c) one shall be a social worker or psychologist, and of whom at least one shall be a woman and at least one shall be a man.</p>	Gender identity Intersex status	Binary concept of gender for appointment to the Committee.  However, exemption unlikely to apply because discrimination not in direct compliance with the provision	Memberships/ appointments	1	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
<a href="#">University of Adelaide Act 1971</a>	<p><b>12 Constitution of Council</b></p> <p>(2) Where a person is appointed to the Council, the appointing authority must recognise that the Council is, as far as practicable, to be constituted of equal numbers of men and women who -</p> <p>(a) have a commitment to education and, in particular, to higher education; and</p> <p>(b) have an understanding of, and commitment to, the principles of equal opportunity and social justice and, in particular, to access and equity in education.</p>	<p>Gender identity</p> <p>Intersex status</p>	<p>Binary concept of gender for appointment to the Council of the University.</p> <p>However, exemption unlikely to apply because discrimination not in direct compliance with the provision</p>	Memberships/ appointments	1	
<a href="#">Veterinary Practice Act 2003</a>	<p><b>6 Composition of Board</b></p> <p>(2) At least 1 of the members of the Board nominated by the Minister must be a woman and at least 1 must be a man.</p>	<p>Gender identity</p> <p>Intersex status</p>	<p>Binary concept of gender for appointment to the Veterinary Surgeons Board of South Australia.</p> <p>However, exemption unlikely to apply because discrimination not in direct compliance with the provision</p>	Memberships/ appointments	1	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
<a href="#">West Beach Recreation Reserve Act 1987</a>	<p><b>7 Membership of Trust</b></p> <p>(1) The Trust consists of seven members appointed by the Minister, of whom -</p> <p>...</p> <p>(b) a council, in constituting a panel -</p> <p>(i) must nominate <u>at least one woman and one man</u>; and</p> <p>(ii) must give reasonable consideration to nominating persons who provide a range of the qualifications and experience referred to above; and</p> <p>(iii) need not nominate persons who are members or employees of the council.</p> <p>(3) <u>At least two members of the Trust must be women and at least two must be men.</u></p> <p>(4) The Minister will appoint a member of the Trust to be its presiding officer and another to be its deputy presiding officer.</p> <p>(5) The Minister should, before making an appointment under subsection (1), consult with persons who, in the opinion of the Minister, have</p>	<p>Intersex status</p> <p>Gender identity</p>	<p>Binary conception of sex that may be used to discriminate against an individual who is intersex, or who identifies as one gender but physically resembles another (or is officially recorded as being of another gender).</p> <p>However, exemption unlikely to apply because discrimination not in direct compliance with the provision</p>	Memberships/ appointments	1	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	an interest in the matter.					
<a href="#">WorkCover Corporation Act 1994</a>	<p><b>5(3) - Constitution of board of management</b></p> <p>At least 3 members of the board must be women and at least 3 members must be men.</p>	<p>Intersex status</p> <p>Gender identity</p>	<p>Binary conception of sex that may be used to discriminate against an individual who is intersex, or who identifies as one gender but physically resembles another (or is officially recorded as being of another gender).</p> <p>However, exemption unlikely to apply because discrimination not in direct compliance with the provision</p>	Memberships/ appointments	1	
<a href="#">Young Offenders Act 1993</a>	<p><b>38(3) Establishment of Training Centre Review Board</b></p> <p>At least 1 of the persons appointed under subsection (2)(b), (c) and (e) must be a woman <u>and at least 1 such person must be a man.</u></p>	<p>Intersex status</p> <p>Gender identity</p>	<p>Binary conception of sex that may be used to discriminate against an</p>	Memberships/ appointments	1	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			<p>individual who is intersex, or who identifies as one gender but is recorded as another gender on their birth certificate</p> <p>However, exemption unlikely to apply because discrimination not in direct compliance with the provision</p>			
<a href="#">Zero Waste SA Act 2004</a>	<p><b>9(7) Board of Zero Waste SA</b> At least one member of the <a href="#">Board</a> must be a woman and one a man.</p>	<p>Intersex status Gender identity</p>	<p>Binary conception of sex that may be used to discriminate against an individual who is intersex, or who identifies as one gender but physically resembles another (or is officially recorded as being of another</p>	<p>Memberships/ appointments</p>	<p>1</p>	



South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			gender). However, exemption unlikely to apply because discrimination not in direct compliance with the provision			
<a href="#">Zero Waste SA Regulations 2006</a>	<p><b>4(b)</b></p> <p>For the purposes of section 9(4) of the Act, the Minister is to consult the LGA in relation to the selection of persons for appointment to the Board as follows:</p> <p>(b) the invitation is to specify the number of persons to be appointed and invite the LGA to recommend a number of suitable candidates equal to twice the number of persons to be appointed plus 1 and to recommend, as far as practicable, <u>equal numbers of men and women</u>;</p>	<p>Intersex status</p> <p>Gender identity</p>	<p>Binary conception of sex that may be used to discriminate against an individual who is intersex, or who identifies as one gender but physically resembles another (or is officially recorded as being of another gender).</p> <p>However, exemption unlikely to apply because discrimination not in direct</p>	<p>Memberships/ appointments</p>	<p>1</p>	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			compliance with the provision			
Parliamentary Superannuation Act 1974	<p><b>36A Division of benefit where deceased member is survived by lawful and putative spouses</b></p> <p>(1) If a deceased member, or deceased member pensioner, is survived by a lawful spouse and a putative spouse, any benefit to which a surviving spouse is entitled under this Act will be divided between them in a ratio determined by reference to the relative length of the periods for which each of them cohabited with the deceased as his or her spouse.</p> <p>...(4) A putative spouse is not entitled to any benefit under this section, unless the deceased member, or member pensioner, and that spouse were putative spouses as at the date of the member's, or the member pensioner's, death.</p>	Marital status (sexual orientation)	<p>Under this provision, someone who is married to (but separated from) a deceased who had a putative spouse, is entitled to a proportion of the benefits.</p> <p>Putative spouse are not entitled to any benefit under the section, unless the relationship as at the date of the deceased's death.</p> <p>People who cannot get married are treated discriminatorily under this section.</p>	Financial	2	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
Police Superannuation Act 1990	<p><b>41 Division of benefit where deceased contributor is survived by lawful and putative spouses</b></p> <p>(1) If a deceased contributor is survived by a lawful spouse and a putative spouse, any benefit to which a surviving spouse is entitled under this Act will be divided between them in a ratio determined by reference to the relative length of the periods for which each of them cohabited with the deceased as his or her spouse.</p> <p>(4) A putative spouse is not entitled to any benefit under this section, unless the deceased contributor and that spouse were putative spouses as at the date of the contributor's death.</p>	Marital status (sexual orientation)	<p>Under this provision, someone who is married to (but separated from) a deceased who had a putative spouse, is entitled to a proportion of the benefits.</p> <p>Putative spouse are not entitled to any benefit under the section, unless the relationship as at the date of the deceased's death.</p> <p>People who cannot get married are treated discriminatorily under this section.</p>	Financial	2	Sections 41A or 41B exemptions would probably apply
Superannuation Act 1988	<p><b>46 Division of benefit where deceased contributor is survived by lawful and putative spouses</b></p> <p>(1) If a deceased contributor is survived by a lawful</p>	Marital status (sexual orientation)	Under this provision, someone who is	Financial	2	SDA Superannuation Exemption may

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>spouse and a putative spouse, any benefit to which a surviving spouse is entitled under this Act will be divided between them in a ratio determined by reference to the relative length of the periods for which each of them cohabited with the deceased as his or her spouse.</p> <p>...(4) A putative spouse is not entitled to any benefit under this section, unless the deceased contributor and that spouse were putative spouses as at the date of the contributor's death.</p>		<p>married to (but separated from) a deceased who had a putative spouse, is entitled to a proportion of the benefits.</p> <p>A putative spouse is not entitled to any benefit under the section, unless the relationship as at the date of the deceased's death.</p> <p>People who cannot get married are treated discriminatorily under this section.</p>			apply
<a href="#">Trustee Act 1936</a>	<p><b>22 Married woman as bare trustee may convey</b></p> <p>When any freehold hereditament is vested in a married woman as a bare trustee she may convey or surrender it as if she were a feme sole.</p>	Marital status/sex (Sexual orientation, Gender identity, Intersex status)	Archaic concept which does not include unmarried or non-heterosexual	Financial	2	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			couples.			
<a href="#">Assisted Reproductive Treatment Act 1988</a>	<p><b>9</b></p> <p>(1) The Minister must, by notice in writing given to a person registered under this Part, impose conditions of the following kinds on the person's registration:</p> <p>(c) a condition preventing the provision of assisted reproductive treatment except in the following circumstances:</p> <p>(i) if a woman who would be the mother of any child born as a consequence of the assisted reproductive treatment is, or appears to be, infertile;</p> <p>(ii) if a man who is living with a woman (on a genuine domestic basis as her husband) who would be the mother of any child born as a consequence of the assisted reproductive treatment is, or appears to be, infertile; ...</p>	Sexual orientation	Assisted reproductive treatment is not available for non-heterosexual couples or for people who do not identify as either male or female.	Family & relationship law	3	
<a href="#">Adoption Act 1988</a>	<p><b>4</b></p> <p><b>marriage relationship</b> means the <u>relationship between two persons cohabiting as husband and wife or <i>de facto</i> husband and wife.</u></p> <p><b>12</b></p>	Marital status (sexual orientation)	Only individuals in a heterosexual defacto or marriage relationship are	Family and relationship law	3	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>(1) Subject to this section, an adoption order will not be made except in favour of two persons who have been cohabiting together in a <a href="#">marriage relationship</a> for a continuous period of at least five years.</p> <p>(2) An adoption order may be made in favour of two persons who have been cohabiting together in a <a href="#">marriage relationship</a> for a continuous period of less than five years if <a href="#">the Court</a> is satisfied that there are special circumstances justifying the making of the order.</p> <p>(3) An adoption order may be made in favour of one person where -</p> <p>(a) that person has cohabited with a birth or <a href="#">adoptive parent</a> of the <a href="#">child</a> in a <a href="#">marriage relationship</a> for a continuous period of at least five years; or</p> <p>(b) <a href="#">the Court</a> is satisfied that there are special circumstances justifying the making of the order.</p> <p>(4) Where two persons are cohabiting in a <a href="#">marriage relationship</a>, an adoption order will not be made except in favour of both or in the circumstances described in subsection (3)(a).</p> <p>(5) An adoption order will not be made in favour of a person who is lawfully married but not cohabiting with his or her spouse unless <a href="#">the Court</a> is satisfied, after interviewing the spouse of the person in private, that the spouse consents to the adoption.</p>		<p>permitted to adopt.</p> <p>This indirectly discriminates against non-heterosexual couples as they must be living together for the prescribed time before they are able to adopt (as they cannot marry).</p>			

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<b>11A</b>					
<a href="#">Adoption Regulations 2004</a>	<p><b>19(3)</b></p> <p>(3) A person who -</p> <p>(a) is not resident and domiciled in this State; or</p> <p>(c) <u>is not cohabiting with another in a marriage relationship</u>; or</p> <p>(d) is cohabiting with another in a marriage relationship but has been so cohabiting for a continuous period of less than 3 years; or</p> <p>(e) has a child residing with him or her and the child has so resided for a period less than the immediately preceding 12 months; or</p> <p>(f) will or is likely to have any other child residing with him or her in the period of 2 years following selection as an applicant for an adoption order under this regulation,</p> <p>is excluded from selection as an applicant for an order for adoption of a particular child in accordance with the order prescribed by subregulation (1) unless the Chief Executive is</p>	Marital status (sexual orientation)	"Marriage relationship" is defined as a heterosexual marriage or defacto relationship in the Adoption Act. This indirectly discriminates against homosexual couples as they must be living together for the prescribed time before they are able to adopt (as they cannot marry).	Family and relationship law	3	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	satisfied that there are special circumstances that would justify the making of an adoption order in favour of the person.					
<a href="#">Children's Protection Act 1993</a>	<p><b>6(1)</b> "family", in relation to a <a href="#">child</a>, means the <a href="#">child's</a> immediate <a href="#">family</a> (including all <a href="#">guardians</a>) and the <a href="#">child's</a> extended <a href="#">family</a> (that is to say, all other persons to whom the <a href="#">child</a> is related by blood or marriage) and, in relation to an Aboriginal or <a href="#">Torres Strait Islander child</a>, includes any person held to be related to the <a href="#">child</a> according to Aboriginal kinship rules, or Torres Strait Islander kinship rules, as the case may require;</p> <p><b>52F(3)</b> The Council's membership must include - (a) at least 1 Aboriginal member; and (b) at least 2 young people with experience of <a href="#">alternative care</a>, and at least one-third of the total number of members of the Council must be men and at least one-third must be women.</p> <p><b>52N(4)</b> (4) At least one-third of the total number of members of the Committee must be men and at least one-third must be women.</p>	Marital status (sexual orientation)	The definition of extended families applies to marriage relationships only and does not apply to step-relationship. Further, it indirectly discriminates against homosexual couples because they cannot marry and both partners cannot be related to their child (e.g. a lesbian couple who use the egg of one individual in the couple but who use a donated sperm).	Family and relationship law Membership/appointments	3	



South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			As a binary conception of gender is employed, individuals who do not identify as male or female may be discriminated against.			
<a href="#">Family Relationships Act 1975</a>	<p><b>10HA Recognised surrogacy agreements</b></p> <p>(1) In this section, unless the contrary intention appears -</p> <p>(2) A "recognised surrogacy agreement" is an agreement -</p> <p>(a) under which a woman (the "surrogate mother") agrees -</p> <p>(i) to become pregnant or to seek to become pregnant; and</p> <p>(ii) to surrender custody of, and rights in relation to, a child born as a result of the pregnancy to 2 other persons (the "commissioning parents"); and</p> <p>(b) in relation to which the following conditions are satisfied:</p> <p>(i) the parties to the agreement are -</p>	Sexual orientation	Surrogacy is only available to married or defacto heterosexual couples.	Family and relationship law	3	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>(A) the <a href="#">surrogate mother</a> and, if she is a <a href="#">married woman</a>, her <a href="#">husband</a>; and</p> <p>(B) the commissioning parents, and no other person;</p> <p>(ii) all parties to the agreement are at least 18 years old;</p> <p>(iii) the commissioning parents -</p> <p>(A) are legally married; or</p> <p>(B) have cohabited continuously together as <a href="#">de facto husband and wife</a></p> <ul style="list-style-type: none"> <li>• for the period of 3 years immediately preceding the date of the agreement; or</li> <li>• for periods aggregating not less than 3 years during the period of 4 years immediately preceding the date of the agreement ...</li> </ul>					
<a href="#">Guardianship of Infants Act 1940</a>	<p><b>20 Power of married woman to sue as next friend</b></p> <p>A married woman shall be capable of suing as next friend and of being appointed guardian <i>ad litem</i> on behalf of her own children or any other <a href="#">infants</a> whatsoever.</p>	Marital status (sexual orientation)	A woman who is unmarried because she is in a non-heterosexual relationship and unable to be	Family and relationship law	3	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			married, is denied the ability to sue as next friend and be appointed guardian ad litem on behalf of her own children.			
<a href="#">Family and Community Services Act 1972</a>	<p><b>6(1)</b> <i>step-parent</i> in relation to a <a href="#">child</a> means a person (not being a <a href="#">parent</a> of the <a href="#">child</a>) -</p> <p>(a) who</p> <p>(i) is married to a <a href="#">parent</a> of the <a href="#">child</a>; or</p> <p>(ii) was married to a deceased <a href="#">parent</a> of the <a href="#">child</a> at the date of death of the <a href="#">parent</a>; and</p> <p>(b) who at any time during that marriage accepted the <a href="#">child</a> as a member of a household formed with the <a href="#">parent</a>;</p> <p><b>104 Order for payment of <a href="#">preliminary expenses</a></b></p> <p>(1) Where the <a href="#">Magistrates Court</a>, upon complaint made by or on behalf of a <a href="#">woman</a>, is satisfied -</p> <p>(a) that she is pregnant by the <a href="#">defendant</a> (not being her husband) or has been delivered of a <a href="#">child</a> or a stillborn <a href="#">child</a> of whom the <a href="#">defendant</a> (not being her husband) is the</p>	Marital status (sexual orientation)	<p>Step-parents can only be individuals in a marriage relationship. Non-heterosexual couples are not able to be married and not able to be considered step children.</p> <p>Preliminary expenses are only available to women from men, thus non-heterosexual couples are excluded from claiming maintenance</p>	Family and relationship law	4	S 40(1)(d) exemption would apply, for example, if a court declined to entertain an application for maintenance payments.

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>father; and</p> <p>(b) that he has not made adequate provision for the payment of the <a href="#">preliminary expenses</a> in respect of the confinement, the court may order the <a href="#">defendant</a> to pay to the <a href="#">Chief Executive Officer</a> such amount as it thinks reasonable for or towards those <a href="#">preliminary expenses</a>.</p> <p>(2) A complaint under this section may be made at any time during the pregnancy of the <a href="#">woman</a>, or within two years after the birth of the <a href="#">child</a>, but the court must not make an order under this section before the birth of the <a href="#">child</a> unless it is satisfied by the evidence, or by the certificate, of a legally qualified medical practitioner that the <a href="#">woman</a> is pregnant.</p> <p>(3) The court must not receive in evidence the certificate of a legally qualified medical practitioner unless the <a href="#">defendant</a> consents to the admission of that certificate.</p> <p>(4) The adoption of a <a href="#">child</a> does not prevent the court from making an order for <a href="#">preliminary expenses</a> under this section nor does it affect the validity or operation of any order for <a href="#">preliminary expenses</a> in respect of the <a href="#">child</a>.</p> <p><b>106 Order may be made, without complaint, in proceedings against father</b></p> <p>Notwithstanding any other provision of this Act, an order for <a href="#">preliminary expenses</a> may be made by the <a href="#">Magistrates Court</a>, without a separate complaint having been made, in</p>		payments.			

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>any proceedings against the father for the <a href="#">maintenance</a> of the <a href="#">child</a> and the order may be made separately, or may be included in any other order against the father.</p> <p><b>107 Power of court to make order for future <a href="#">maintenance of child</a> upon complaint for <a href="#">preliminary expenses</a></b></p> <p>(1) Where an order for payment of, or contribution towards, <a href="#">preliminary expenses</a> is made before the birth of the <a href="#">child</a> to which it relates and it appears desirable to the court to provide the <a href="#">child</a> with adequate means of support, the court may order the father to pay such amount as it thinks reasonable for or towards the <a href="#">maintenance</a> of the <a href="#">child</a> from the expiration of three months after its birth.</p> <p>(2) An order made under subsection (1) is not enforceable under this Act and has no force or effect unless a certified copy of the registration of the birth of the <a href="#">child</a> is produced to the court.</p> <p>(3) An order made under subsection (1) does not take effect if the <a href="#">child</a> to whom it relates is stillborn, or dies, or is adopted before the order would otherwise take effect.</p> <p>(4) An order under subsection (1) must not be made requiring a person to make payments for or towards the <a href="#">maintenance</a> of a <a href="#">child</a> unless-</p> <p>(a) the person has consented to the making of the order; or</p> <p>(b) the person has been given notice of the <a href="#">complainant's</a> intention to apply for the</p>					

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>order.</p> <p>(5) Where a certified copy of the registration of the birth of the <a href="#">child</a> in relation to whom an order has been made under subsection (1) is produced to the court, a Registrar must send by post to the <a href="#">defendant</a> at his usual or last-known place of residence or business notice in writing of the name of the <a href="#">child</a> (if shown in the certified copy of the registration of the birth of the <a href="#">child</a>) and of the date and place of birth of the <a href="#">child</a> and the date on which and the place at which the first payment under the order is required to be made.</p>					
<a href="#">Fair Work Act 1994</a>	<p><b>3(1)(n)</b>  <del>to ensure equal remuneration for men and women doing work of equal or comparable value; and</del></p> <p><b>90A—Equity in remuneration</b>  In making an <a href="#">award</a> regulating <a href="#">remuneration</a>, the <a href="#">Commission</a> must take all reasonable steps to ensure that the principle of equal <a href="#">remuneration</a> for men and women doing work of equal or comparable value is applied (insofar as may be relevant).</p>	<p>Intersex status</p> <p>Gender identity</p>	A binary conception of gender is applied and this may be used to discriminate against those who do not identify as either male or female.	Employment	5	
<a href="#">Anzac Day Commemoration Act 2005</a>	<p><b>4— Object of Act</b></p> <p>The object of this Act is to ensure that the contribution of <del>all men and women who have served Australia in time of war or armed conflict, or in international peace-keeping operations, in which Australia has been involved, is recognised and commemorated in this State.</del></p>	<p>Intersex status</p> <p>Gender identity</p>	As a binary conception of gender is employed, individuals who do not identify as male or	Not Applicable	5	

**Comment [L&R46]:** Although the provisions refer to "men" and "women", they do not appear to actually authorise discrimination against people who are intersex / gender diverse

**Comment [L&R47]:** Deleted because as this is an objective and not an operative provision that is likely to support a defence of things done "in direct compliance" with the law.

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			<del>female may be discriminated against.</del>			
<a href="#">Constitution Act 1934</a>	<p><b>48 Franchise for women</b></p> <p><u>Women shall possess and may exercise the right to vote at parliamentary elections subject to the same qualifications and in the same manner as men.</u></p>	Intersex status	<p>As a binary conception of gender is employed, individuals who do not identify as male or female may be discriminated against.</p> <p>However, it is unlikely that such discrimination - for example denying the vote to gender diverse/intersex people- would be authorised by the exemption for things done "in direct compliance with" another law. The law is not specific and mandatory to</p>	Not Applicable	5	

South Australian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			the effect that gender diverse/intersex people do not have the right to vote.			



## 7. TASMANIA

Tasmanian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
<a href="#">Misuse of Drugs Act 2001</a>	<p><b>30 Power to conduct personal searches</b></p> <p>(1) In this section –</p> <p><b>body cavity</b> means rectum or vagina;</p> <p><b>strip search</b> means a search, other than a body cavity search ordered by a magistrate under this section, in which the person searched is required to remove most or all of his or her clothes.</p> <p>(2) Where a police officer detains a person for the purpose of search under <a href="#">section 29</a> or <a href="#">33</a>, the following provisions apply:</p> <p>(a) <u>if the person is female and it is proposed to conduct a strip search, a female police officer is to conduct it;</u></p> <p>(b) <u>if the person is male and it is proposed to conduct a strip search, a male police officer is to conduct it;</u></p> <p>(c) if the search involves the application of force to the person, the police officer must give the Commissioner of Police a written report about the search within 7 days, including particulars of the circumstances that gave rise to the application of force;</p> <p>(d) if the police officer reasonably suspects that a controlled substance may be present in one or more of the person's body cavities and wishes to</p>	<p>Gender identity</p> <p>Intersex status</p>	<p>It is unclear how this provision will apply to individuals who may identify as neither or both male or female, or whose identity documents do not reflect their gender identity.</p> <p>An intersex person may be legally recognised as one sex but feel more comfortable being searched by an officer of a different sex.</p> <p>Best practice would be for such individuals to choose the sex of their searcher.</p>	<p>Bodily searches</p>	<p>1</p>	

Tasmanian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>determine whether or not that is the case, the police officer must cause the person to be brought before a magistrate;</p> <p>(e) the magistrate before whom the person is brought may make an order that the person's body cavity or cavities specified in the order may be searched by a medical practitioner.</p> <p>(3) The magistrate's order, if made, is sufficient authority for a medical practitioner to search the person's body cavity or cavities specified in the order.</p> <p>(4) Notwithstanding <a href="#">subsection (3)</a> –</p> <p>(a) <u>the person is first to be told that he or she may ask for the search to be conducted by a medical practitioner of the same sex as that person; and</u></p> <p>(b) <u>if the person does so ask, the search is not to be conducted except by a medical practitioner of that sex unless it is not reasonably practicable in the circumstances for such a medical practitioner to be present.</u></p> <p>(5) The magistrate's order also authorises –</p> <p>(a) a medical practitioner who is to conduct the search to ask another person to help with the search; and</p> <p>(b) the other person to give that help.</p>					

Tasmanian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>(6) <u>Unless it is not reasonably practicable in the circumstances, the person asked to help is to be of the same sex as the person to be searched.</u></p> <p>(7) If the person subject to the magistrate's order refuses or fails to submit to the search, the medical practitioner and the helper, if any, may use reasonable force to enable the search to be conducted.</p>					
<a href="#">Poisons Act 1971 No. 81</a>	<p><b>90C Personal searches</b></p> <p>(1) Where, pursuant to <a href="#">section 90A</a> or <a href="#">90B</a>, an inspector or a police officer detains a person for the purpose of search, the following provisions apply:</p> <p>(a) <u>if a strip search is to be carried out on a female, that search shall be carried out by a female police officer;</u></p> <p>(b) <u>if a strip search is to be carried out on a male, that search shall be carried out by a male police officer;</u></p> <p>(c) if the inspector or police officer suspects on reasonable grounds that a raw narcotic, narcotic substance, prohibited substance, section 36 substance, or prohibited plant may be present in the cavities of that person's body and wishes to determine the presence or absence of the narcotic, substance, or plant in those cavities, he shall cause that person to be brought before a</p>	<p>Gender identity</p> <p>Intersex status</p>	<p>It is unclear how this provision will apply to individuals who may identify as neither or both male or female, or whose identity documents do not reflect their gender identity.</p> <p>An intersex person may be legally recognised as one sex but feel more comfortable being searched by an officer of a different sex.</p> <p>Best practice would be for such individuals to choose the sex of their searcher.</p>	<p>Bodily searches</p>	<p>1</p>	

Tasmanian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>magistrate;</p> <p>(d) on a person being brought before a magistrate in accordance with <a href="#">paragraph (c)</a>, the magistrate shall either –</p> <p>(i) make an order in writing that the cavities of that person's body which are specified in that order shall be searched by a specified medical practitioner; or</p> <p>(ii) refuse to make such an order;</p> <p>(e) if the search involves the application of force to the person – the inspector or police officer shall, within 7 days after effecting the search, deliver to the Secretary or, as the case may be, to the Commissioner of Police a report in writing giving full particulars of the search, including particulars of the circumstances which gave rise to the application of force.</p> <p>(2) For the purposes of <a href="#">subsection (1)</a> –</p> <p>(a) <b>cavities of a person's body</b> means the vagina and rectum of that person;</p> <p>(b) <b>strip search</b> means a search, other than a cavity search ordered by a magistrate under <a href="#">subsection (1)(d)(i)</a>, in which the person to be searched is</p>					

Tasmanian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>required to remove most or all of his clothing.</p> <p>(3) An order under <a href="#">subsection (1)(d)(i)</a> is sufficient authority for the medical practitioner specified in the order, and any person working in the medical or nursing profession acting in good faith in aid of, and under the direction of, that medical practitioner, to carry out a search of the cavities of the body of the person concerned which are specified in that order.</p> <p>(4) If a person in respect of whom an order has been made under <a href="#">subsection (1)(d)(i)</a> requests that the search authorized by that order be not carried out unless another medical practitioner, of the same sex as that person, is present, <u>the search shall not be carried out unless another medical practitioner of the same sex as that person is present unless the circumstances are such that it is not reasonably practicable to arrange for the presence of another medical practitioner of the same sex as that person at the search.</u></p> <p>(5) Notwithstanding <a href="#">subsection (3)</a>, a search authorized by an order under <a href="#">subsection (1)(d)(i)</a> shall not be carried out until the person in respect of whom the search is to be carried out has been informed of the request that he may make pursuant to <a href="#">subsection (4)</a>.</p> <p>(6) If a person in respect of whom an order has been made under <a href="#">subsection (1)(d)(i)</a></p>					

Tasmanian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>refuses or fails to submit himself to the search authorized by that order, or wilfully obstructs the carrying out of the search, the medical practitioner authorized to carry out the search, and any person working in the medical or nursing profession acting in good faith in aid of, and under the direction of, that medical practitioner, may use such force as is reasonably necessary for the purpose of enabling the search to be carried out.</p> <p>(7) In this section, <i>section 36 substance</i> means a substance to which <a href="#">section 36</a> applies.</p>					
<a href="#">Admission to Courts (Lower Courts) Regulations 2006 No. 145 (TAS)</a>	<p><b>7 Powers of search and seizure</b></p> <p>(6) A search under subregulation (1)(a)(i) of a person apparently 10 or more years of age that involves the removal of clothing -</p> <p>(a) is not to be conducted unless the person to be searched -</p> <p>(i) has been asked whether the person has with him or her any property that is likely to adversely affect order or safety in, or the security or management of, the court; and</p> <p>(ii) has been given the opportunity to produce any such property; and</p> <p>(iii) has been given the opportunity to have the search conducted in private</p>	<p>Gender identity</p> <p>Intersex status</p>	<p>It is unclear how this provision will apply to individuals who may identify as neither or both male or female, or whose identity documents do not reflect their gender identity.</p> <p>An intersex person may be legally recognised as one sex but feel more comfortable being searched by an officer of a different sex.</p> <p>Best practice would be for such individuals to choose the sex of their searcher.</p>	<p>Bodily searches</p>	<p>1</p>	

Tasmanian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>and, if the person so chooses, the search is conducted in private; and</p> <p>(b) is to be conducted -</p> <p>(i) <u>if practicable, by an authorized officer of the same sex as the person searched; and</u></p> <p>(ii) <u>if practicable, in the presence of only persons of the same sex as the person searched; and</u></p> <p>(iii) in the presence of no more than 2 authorized officers.</p>					
<a href="#">Corrections Act 1997 No. 51</a>	<p><b>22 Search</b></p> <p>(4) A search or examination of a female visitor under this section is to be made by a female officer and in the presence of females only.</p>	<p>Gender identity</p> <p>Intersex status</p>	<p>It is unclear how this provision will apply to individuals who may identify as neither or both male or female, or whose identity documents do not reflect their gender identity.</p> <p>An intersex person may be legally recognised as one sex but feel more comfortable being searched by an officer of a different sex.</p> <p>Best practice would be for such individuals to be offered the option of a</p>	<p>Bodily searches</p>	<p>1</p>	

Tasmanian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			female searcher.			
<a href="#">Criminal Code Act 1924 No. 69</a>	<p><b>39B Search of aircraft, &amp;c.</b></p> <p>(1) If the person in command of an aircraft or a person authorized in writing in a particular case by a justice believes on reasonable grounds that an offence involving the safety of an aircraft has been, is being, or may be committed on board or in relation to an aircraft he may search or cause to be searched –</p> <p>(a) the aircraft and any person, luggage, or freight on board the aircraft; and</p> <p>(b) any person who is about to board the aircraft and any luggage or freight that is about to be placed on board the aircraft.</p> <p>(2) It is lawful for any person to assist the person in command of an aircraft or authorized in accordance with <a href="#">subsection (1)</a> in the exercise of the powers conferred by that subsection.</p> <p>(3) <u>Nothing in this section authorizes the search of a female otherwise than by a female.</u></p>	Gender identity Intersex status	<p>It is unclear how this provision will apply to individuals who may identify as neither or both male or female, or whose identity documents do not reflect their gender identity.</p> <p>An intersex person may be legally recognised as one sex but feel more comfortable being searched by an officer of a different sex.</p> <p>Best practice would be for such individuals to have the option of a female searcher, if they wished.</p>	Bodily searches	1	
<a href="#">Forensic Procedures Act 2000 No. 101</a>	<p><b>41 be Certain forensic procedures generally to be carried out by person of same sex</b></p> <p>(1) If practicable, an intimate forensic procedure (other than the taking of a dental impression X-ray) <u>is to be carried out by a person of the</u></p>	Gender identity Intersex status	It is unclear how this provision will apply to individuals who may identify as neither or both male or female, or whose identity documents do	Bodily searches	1	



Tasmanian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>same sex as the person undergoing the procedure.</p> <p>(2) If practicable, a non-intimate forensic procedure for which the person undergoing the procedure is required to remove clothing other than his or her overcoat, coat, jacket, gloves, socks, shoes and hat is to be carried out by a person of the same sex as the person undergoing the procedure.</p> <p>(3) If practicable, a person asked under <a href="#">section 42</a> to help carry out a forensic procedure covered by <a href="#">subsection (1)</a> or <a href="#">(2)</a> is to be a person of the same sex as the person undergoing the procedure.</p> <p><b>45 Presence of police officers during forensic procedure</b></p> <p>(1) Police officers may be present during the carrying out of a forensic procedure for the purposes of safety, security, continuity of evidence, investigation and the effective carrying out of the procedure in accordance with this Act.</p> <p>(2) The number of police officers that may be present during the carrying out of a forensic procedure must not exceed that which is reasonably necessary for the purposes specified in <a href="#">subsection (1)</a>.</p> <p>(3) A police officer who is of the opposite sex to that of the person undergoing the forensic procedure may only be present during the carrying out of the procedure if –</p> <p>(a) it would not be reasonably</p>		<p>not reflect their gender identity.</p> <p>An intersex person may be legally recognised as one sex but feel more comfortable being searched by an officer of a different sex.</p> <p>Best practice would be for such individuals to choose the sex of the officer.</p>			

Tasmanian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>practicable to carry out the procedure without the presence of the police officer; and</p> <p>(b) at the time the forensic procedure must be carried out, there is no police officer of the same sex as the person available to be present instead of the police officer of the opposite sex.</p> <p>(4) <a href="#">Subsections (2)</a> and <a href="#">(3)</a> do not apply to any non-intimate forensic procedure that may be carried out without requiring the person undergoing the procedure to remove any clothing except his or her overcoat, coat, jacket, gloves, socks, shoes and hat.</p>					
<a href="#">Mental Health Act 2013 No. 2</a>	<p><b>111 Searches</b></p> <p>(11) Unless the CFP directs otherwise in a particular case, a search that involves any touching or undressing of a person, or any touching of a person's clothing or personal belongings, must be carried out –</p> <p>(a) <u>by an authorised person of the same gender as that person and only in the presence of persons of that gender; and</u></p> <p>(b) in privacy.</p> <p><b>2 Search power of custodians and escorts</b></p> <p>(3) <u>A frisk search is, if practicable, to be conducted by a person of the same sex as the person being searched.</u></p>	<p>Gender identity</p> <p>Intersex status</p>	<p>It is unclear how this provision will apply to individuals who may identify as neither or both male or female, or whose identity documents do not reflect their gender identity.</p> <p>An intersex person may be legally recognised as one sex but feel more comfortable being searched by an officer of a different sex.</p> <p>Best practice would be for such individuals to choose the sex of their</p>	<p>Bodily searches</p>	<p>1</p>	

Tasmanian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			searcher.			
<a href="#">Police Offences Act 1935</a>	<p><b>4A Custody of intoxicated persons</b></p> <p>(7) A police officer may –</p> <p>(a) search or cause to be searched a person who has been taken into custody under <a href="#">subsection (2)</a>; and</p> <p>(b) remove or cause to be removed from that person for safe keeping, until the person is released from custody, any money or valuables that are found on or about that person and any item on or about that person that is likely to cause harm to that person or any other person or that could be used by that person or any other person to cause harm to that person or any other person.</p> <p>(8) <u>A search of a person under <a href="#">subsection (7)</a> is, if practical, to be conducted by a police officer of the same sex as the person being searched.</u></p>	Gender identity Intersex status	<p>It is unclear how this provision will apply to individuals who may identify as neither or both male or female, or whose identity documents do not reflect their gender identity.</p> <p>An intersex person may be legally recognised as one sex but feel more comfortable being searched by an officer of a different sex.</p> <p>Best practice would be for such individuals to choose the sex of their searcher.</p>	Bodily searches	1	
<a href="#">Police Powers (Public Safety) Act 2005</a>	<p><b>22 Power to conduct additional search</b></p> <p>(1) In this section –</p> <p><b>body cavity</b> means rectum or vagina;</p> <p><b>strip search</b> means a search, other than a body cavity search, in which the person searched is required to remove most or all of</p>	Gender identity Intersex status	<p>It is unclear how this provision will apply to individuals who may identify as neither or both male or female, or whose identity documents do not reflect their gender identity.</p>	Bodily searches	1	

Tasmanian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>his or her clothes.</p> <p>(2) A police officer may without warrant conduct a strip search of the person if –</p> <p>(a) the person is suspected of being a designated person; and</p> <p>(b) the police officer believes on reasonable grounds that it is necessary to conduct a strip search of that person for the purposes of the search and that the seriousness and urgency of the circumstances require a strip search to be conducted.</p> <p>(3) A police officer may detain a person for so long as is reasonably necessary to conduct a search under this section.</p> <p>(4) Where a police officer detains a person for the purpose of a search under this section, the following provisions apply:</p> <p>(a) <u>if it is proposed to conduct a strip search, the search is to be conducted by an officer of the same sex as the person searched or by a person of the same sex under the direction of a police officer;</u></p> <p>(b) if the search involves the application of force to the person, the police officer must give the Commissioner of Police a written report about the search within 7 days, including particulars of the circumstances that gave rise to the application of force.</p>		<p>An intersex person may be legally recognised as one sex but feel more comfortable being searched by an officer of a different sex.</p> <p>Best practice would be for such individuals to choose the sex of their searcher.</p>			

Tasmanian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
<a href="#">Search Warrants Act 1997</a>	<p><b>18 Conduct of frisk searches</b></p> <p>A frisk search of a person under this Act is, if practicable, to be conducted by a person of the same sex as the person being searched.</p>	<p>Gender identity</p> <p>Intersex status</p>	<p>It is unclear how this provision will apply to individuals who may identify as neither or both male or female, or whose identity documents do not reflect their gender identity.</p> <p>An intersex person may be legally recognised as one sex but feel more comfortable being searched by an officer of a different sex.</p> <p>Best practice would be for such individuals to choose the sex of their searcher.</p>	Bodily searches	1	
<a href="#">Terrorism (Preventative Detention) Act 2005</a>	<p><b>22 Power to conduct personal search</b></p> <p>(5) Where a police officer detains a person for the purpose of a search under this section, the following provisions apply:</p> <p>(a) if it is proposed to conduct a strip search, the search is to be <u>conducted by an officer of the same sex as the person searched or by a person of the same sex under the direction of a police officer.</u></p> <p>(b) if the search involves the application</p>	<p>Gender identity</p> <p>Intersex status</p>	<p>It is unclear how this provision will apply to individuals who may identify as neither or both male or female, or whose identity documents do not reflect their gender identity.</p> <p>An intersex person may be legally recognised as one sex but feel more comfortable being</p>	Bodily searches	1	

Tasmanian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	of force to the person, the police officer must give the Commissioner of Police a written report about the search within 7 days, including particulars of the circumstances that gave rise to the application of force.		searched by an officer of a different sex.  Best practice would be for such individuals to choose the sex of their searcher.			
<a href="#">Local Government (Amendment of By-laws) Order 2008 No. 50 (TAS)</a>	Note offences in schedules for entering a changeroom reserved for use by people of the opposite sex and use of changeroom reserved for use by people of the opposite sex.	Gender identity Intersex status	Binary concept of gender adopted. Discriminatory against those who may be gender diverse or of intersex status.  Likely to be an issue of significant practical concern. However, query whether an investigation or prosecution of such offences would be captured by the SDA.	Criminal	1	
<a href="#">Long Service Leave Act 1976 No. 95</a>	<b>2 Interpretation</b> (1) In this Act, unless the contrary intention appears— <b>age for retirement</b> means – (a) in a case where an age for retirement is prescribed in an industrial award that is applicable to an employee, or is fixed by the terms of an employee's contract of employment – the age so prescribed or fixed; or	Gender identity Intersex status	Binary concept of gender adopted to age for retirement. No provision is made for a person who does not identify as either male or female.	Employment	1	

Tasmanian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	(b) in any other case – <u>the age of 65 years, in the case of a male, or 60 years in the case of a female;</u>					
<a href="#">Work Health and Safety Regulations 2012 No. 122</a>	<p><b>5 Interpretation</b></p> <p><b>female of reproductive capacity</b>, in Part 7.2, means a female other than a female who provides information stating that she is not of reproductive capacity;</p> <p><b>394 Meaning of lead risk work</b></p> <p>In this Part, lead risk work means work carried out in a lead process that is likely to cause the blood lead level of a worker carrying out the work to exceed -</p> <p>(a) for a female of reproductive capacity, 10?g/dL (0.48?mol/L); or</p> <p>(b) in any other case, 30?g/dL (1.45?mol/L)</p>	Gender identity	<p>Binary concept of gender adopted. Query whether person can be of reproductive capacity and not identify as female.</p> <p>As a distinction is being made between males and females, <i>Norrie's Case</i> and the <i>Acts Interpretation Act 1931</i> do not appear to operate to include every other gender. Accordingly, it becomes unclear what the situation is for a person who has female reproductive organs but who does not identify as female.</p>	Employment	1	
<a href="#">Relationships Act 2003 No. 44</a>	<p><b>3 Interpretation</b></p> <p><b>child</b> includes –</p> <p>(a) a child of which the partners are the natural parents; and</p> <p>(b) a child of a female whose male partner is treated as the father of the child under</p>	Gender identity Intersex status	<p>Query whether definition of child excludes child of a person who does not identify as female and who did not conceive the child naturally.</p> <p>May have discriminatory</p>	Family and relationship law	1	

Tasmanian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p><a href="#">section 10C of the Status of Children Act 1974</a>; and</p> <p>(c) a child adopted by the partners; and</p> <p>(d) a surrogate child of the partners;</p>		ramifications for gender diverse/intersex people.			
<a href="#">Status of Children Act 1974</a>	<p><b>8 Presumption of paternity arising from cohabitation</b></p> <p>If –</p> <p>(a) a child was born to a woman; and</p> <p>(b) at any time during the period beginning not earlier than 44 weeks and ending not less than 20 weeks before the birth, the woman cohabited with a man to whom she was not married –</p> <p>the child is presumed to be the child of that man.</p>	Gender identity Intersex status	Provision excludes persons who have given birth but do not identify as women.	Family and relationship law	1	
<a href="#">Surrogacy Act 2012 No. 34</a>	<p><b>5 Meaning of <i>surrogacy arrangement, birth mother and intended parent</i></b></p> <p>(1) In this Act, a <i>surrogacy arrangement</i> is an arrangement for –</p> <p>(a) a female person (the <i>birth mother</i>) to seek to become pregnant and give birth to a child; and</p> <p>(b) the child to be treated as the child of a person or persons other than the birth mother (the <i>intended parent or intended parents</i>).</p> <p><b>7 Meaning of <i>medical or social need</i></b></p>	Gender identity Intersex status	Binary concept of gender adopted. Definition appears to exclude those who do not identify as a gender from surrogacy arrangements?  May also discriminate against homosexual women who are unable to conceive a child due to sexual orientation but are not physically unable to conceive a child as individuals.	Family and relationship law	3	



Tasmanian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>(1) For the purposes of this Act, there is a <i>medical or social need</i> for a surrogacy arrangement if –</p> <p>(a) there is only one intended parent under the surrogacy arrangement and the intended parent is a man or an eligible woman; or</p> <p>(b) there are 2 intended parents under the surrogacy arrangement and the intended parents are –</p> <p>(i) a man and an eligible woman; or</p> <p>(ii) two men; or</p> <p>(iii) two women, each of whom is an eligible woman.</p> <p>(2) For the purposes of <a href="#">subsection (1)</a>, an eligible woman is a woman who –</p> <p>(a) is unable, on medical grounds, to conceive a child; or</p> <p>(b) is likely to be unable, on medical grounds, to carry a pregnancy or give birth; or</p> <p>(c) is unlikely to survive a pregnancy or birth or is likely to have her health significantly affected by a pregnancy or birth; or</p> <p>(d) if she were to conceive a child, is likely to conceive–</p> <p>(i) a child who is likely to be affected by</p>					

Tasmanian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>a genetic condition or genetic disorder, the cause of which is attributable to the woman; or</p> <p>(ii) a child who is unlikely to survive the pregnancy or birth or whose health is likely to be significantly affected by the pregnancy or birth.</p>					
<a href="#">Births, Deaths and Marriages Registration Act 1999 No. 58</a>	<p><b>28A Application to register change of sex</b></p> <p>(1) An adult person -</p> <p>(a) whose birth is entered in the Register; and</p> <p>(b) who has undergone sexual reassignment surgery; and</p> <p>(c) who is not married -</p> <p>may apply to the Registrar, in a form approved by the Registrar, to register a change of the person's sex.</p> <p>(2) The parents of a child whose birth is registered in the State may apply to the Registrar, in a form approved by the Registrar, for registration of a change of the child's sex.</p> <p>(3) An application for registration of a change of a child's sex may be made by one parent if -</p> <p>(a) the applicant is the sole parent named in the registration of the child's birth under this Act or any other law; or</p> <p>(b) there is no other surviving parent of</p>	<p>Gender identity</p> <p>Intersex status</p>	<p>The provisions prevent a person from apply to register if they do not fulfil the requirements of 'sexual reassignment surgery'. This is discriminatory on the basis of gender identity and intersex status.</p> <p>The provisions prevent a person from applying to register their change of sex if they are married, which is discriminatory on both a gender identity level but also sexual orientation - it prevents a married person who changes sex from remaining married if they wish to do so (but exemption applies)</p> <p>If the statute is to be interpreted so as to not allow the registration of</p>	<p>Family and relationship law</p> <p>Identity documents</p>	<p>2 &amp; 4</p>	<p>Section 40(5) -not unlawful to refuse to change official record of a person's sex if the person is married.</p> <p>Section 43A – not discriminatory to make or keep records to be kept in a way that doesn't allow for the designation of sex other than male or female.</p>

Tasmanian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>the child.</p> <p>(4) If the parents of a child are dead, cannot be found or for some other reason cannot exercise their parental responsibilities in respect of the child, the child's guardian may apply for registration of a change of the child's sex.</p>		sex non-specific individuals (i.e. if it can be distinguished from Norrie's case) then it also discriminates against individuals who would prefer that designation (but exemption applies).			
<a href="#">Human Cloning for Reproduction and Other Prohibited Practices Act 2003 No. 51</a>	<p><b>4. Interpretation</b></p> <p><b>woman</b> means a female human.</p> <p><b>10. Offence — creating a human embryo for a purpose other than achieving pregnancy in a woman</b></p> <p>(1) A person commits an offence if the person intentionally creates a human embryo by a process of the fertilisation of a human egg by a human sperm <u>outside the body of a woman, unless the person's intention in creating the embryo is to attempt to achieve pregnancy in a particular woman.</u></p> <p>Penalty: Imprisonment for a term not exceeding 15 years.</p> <p><b>15. Offence — collecting a viable human embryo from the body of a woman</b></p> <p>A person commits an offence if the person removes a human embryo from the body of a woman, intending to collect a viable human embryo.</p> <p>Penalty: Imprisonment for a term not exceeding 15 years.</p>	<p>Gender identity</p> <p>Intersex status</p>	<p>Binary concept of gender adopted. May exclude persons capable of pregnancy who do not identify as a woman/female.</p>		5	

**Comment [L&R48]:** *Norrie's Case* and *Acts Interpretation Act 1931* suggest that the offences extend to creating, collecting, placing and importing a human embryo in any person who is able to carry a human embryo.

Tasmanian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p><b>17. Offence – placing of an embryo</b></p> <p>(1) A person commits an offence if the person intentionally places a human embryo in an animal.</p> <p>(2) A person commits an offence if the person intentionally places a human embryo in the body of a human, <del>other than in a woman's reproductive tract.</del></p> <p><b>18. Offence – importing, exporting or placing a prohibited embryo</b></p> <p>(3) A person commits an offence if the person intentionally places an embryo in the body of a woman knowing that, or reckless as to whether, the embryo is a prohibited embryo.</p> <p>Penalty: Imprisonment for a term not exceeding 15 years.</p>					
<a href="#">Criminal Code Act 1924 No. 69</a>	<p><b>297 Conspiracy</b></p> <p>(1) Any person who conspires with another –</p> <p>(a) to kill any person, whether a subject of His Majesty or not, and whether he is in this State or elsewhere, under circumstances which, if he were killed in this State, would constitute murder;</p> <p>(b) to obstruct, prevent, pervert, or defeat the due course of justice, or the administration of the law, whether such purpose is to be effected in this State or elsewhere;</p>	Marital status (Sexual orientation)	<p>Quite anachronistic provisions here.</p> <p>Note that husband and wife are excluded from operation of this provision. Subsection (2) is discriminatory against those who are not married in that they are excluded from the protection.</p> <p>Also note at (1)(g) that it is illegal to conspire to</p>	Criminal	5	

Tasmanian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>(c) to commit any crime;</p> <p>(d) . . . . .</p> <p>(e) to extort, by any means, any property whatever from any person;</p> <p>(f) to inflict by any unlawful means any injury or harm upon the public, or any particular person or class of persons;</p> <p>(g) <u>to facilitate the seduction of a woman;</u></p> <p>(h) to do any act involving, and known to be likely to involve, public mischief; or</p> <p>(i) to do any act without lawful justification or excuse with intent thereby to injure any person – is guilty of a crime.</p> <p>Charge: Conspiracy.</p> <p>(2) A husband and wife are not criminally responsible for any conspiracy between themselves only.</p> <p>(3) Nothing in this section shall affect the provisions of the <a href="#">Trades Unions Act 1889</a>.</p>		<p>facilitate the seduction of a woman- this excludes persons of all other sexes including gender diverse people.</p> <p>There are some other potentially discriminatory provisions regarding husbands and wives in this Act too.</p> <p>However, query whether an investigation or prosecution of such offences would be captured by the SDA.</p>			

Tasmanian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
<a href="#">Status of Children Act 1974</a>	<p><b>10B Interpretation</b></p> <p>A reference in this Part to a fertilization procedure is a reference to –</p> <p>(a) the artificial insemination of a woman; or</p> <p>(b) the procedure of implanting in the uterus of a woman an embryo derived from an ovum fertilized outside the body.</p>	Sexual orientation	The presumption discriminates against persons who are in same sex relationships, however most children born to same-sex couples will have presumption of parentage interpreted using 10C (1A) where a child is born to a woman who is in a relationship with another woman	Family and relationship law	5	
<a href="#">Perpetuities and Accumulations Act 1992</a>	<p><b>10. Presumptions and evidence as to future parenthood</b></p> <p>(1) Where there arises, in the application of the rule against perpetuities to a disposition or in determining the right of a person to put an end to a trust or an accumulation, a question that depends on the capacity of a person to procreate a child at a future time—</p> <p>(a) it is presumed, subject to <a href="#">paragraph (b)</a>, that—</p> <p><del>(i) a male person can procreate a child at the age of 12 years or over but not under that age; and</del></p> <p><del>(ii) a female person can procreate a child at the age of 12 years or over but not under that age or over the age of 55 years; but</del></p> <p>(b) in the case of a living person, evidence may be given in any proceedings to show that he or she will, or will not, be capable of procreating a child at the</p>	Gender identity Intersex status	Binary concept of gender adopted in this provision. Excludes gender diverse persons from the definition.	Not Applicable	5	

Tasmanian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<del>time in question;</del>					
<a href="#">Children, Young Persons and their Families Act 1997 No. 28</a>	<p><b>13. Responsibility to prevent abuse or neglect or certain behaviour</b></p> <p><del>(1) An adult who knows, or believes or suspects on reasonable grounds, that a child is suffering, has suffered or is likely to suffer abuse or neglect has a responsibility to take steps to prevent the occurrence or further occurrence of the abuse or neglect.</del></p> <p><del>(1A) If, while a woman is pregnant, an adult knows, or believes or suspects on reasonable grounds, that the child of that pregnancy once born—</del></p> <p><del>(a) is reasonably likely to suffer abuse or neglect; or</del></p> <p><del>(b) is reasonably likely to require medical treatment or other intervention as a result of the behaviour of the woman, or another person with whom the woman resides or is likely to reside, before the birth of the child—</del></p> <p>that adult has a responsibility to take steps to prevent the occurrence of that abuse or neglect or that behaviour.</p>	Gender identity Intersex status	Discriminatory against a person who may be pregnant but does not identify as a woman.	Not Applicable	5	
<a href="#">Community Protection (Offender Reporting) Act 2005</a>	<p><b>21. Power to take photographs, fingerprints, &amp;c.</b></p> <p><del>(4) The Registrar or an authorised person cannot, under this section, require a reportable offender to expose his or her genitals, the anal area of his or her buttocks or, in the case of a female, her breasts.</del></p>	Gender identity Intersex status	Discriminatory towards person with breasts who does not identify as a female.	Not Applicable	5	
<a href="#">Criminal Code Act 1924 No. 69</a>	<p><b>165A. Infanticide</b></p> <p>A woman who by any wilful act or omission, causes</p>	Gender identity	Provisions exclude persons who are	Not Applicable	5	

**Comment [L&R49]:** The exemption operates to enable evidence to be given regarding the capability of person who is neither male nor female to procreate.

**Comment [L&R50]:** *Norrie's Case* and *Acts Interpretation Act 1931* suggest that this section would extend to any person who is pregnant.

**Comment [L&R51]:** *Norrie's Case* and *Acts Interpretation Act 1931* suggest that this section would extend to any person with breasts.

**Comment [L&R52]:** *Norrie's Case* and *Acts Interpretation Act 1931* suggest that this section would extend to any person who is pregnant.

Tasmanian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>the death of her child (being a child under the age of 12 months), and who was at the time not fully recovered from the effect of giving birth to the child, and the balance of her mind being, by reason thereof, disturbed, is guilty of a crime, which is called infanticide, although, the offence would, but for this section, have amounted to murder.</p> <p><b>166. Concealment of birth</b></p> <p>(1) Any person who, when a woman is delivered of a child, by any secret disposition of the dead body of the child, whether the child died before, at, or after, its birth, endeavours to conceal the birth thereof, is guilty of a crime.</p> <p><b>178D. Termination by person other than medical practitioner or pregnant woman</b></p> <p>(1) A person who performs a termination on a woman and who is not—</p> <p>(a) a medical practitioner; or</p> <p>(b) the pregnant woman—</p> <p>is guilty of a crime.</p> <p>Charge:</p> <p>Termination by person other than medical practitioner or pregnant woman.</p> <p>(2) For the purposes of <a href="#">subsection (1)</a>, <b>woman</b> means a female person of any age.</p> <p><b>178E. Termination without woman's consent</b></p> <p>(1) A person who intentionally or recklessly performs a termination on a woman without the woman's consent, whether or not the woman suffers any other</p>	Intersex status	pregnant or gave birth to a child but do not identify as women/females.			



Tasmanian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>harm, is guilty of a crime.</p> <p>Charge: Termination without woman's consent.</p> <p><b>(2)</b> No prosecution is to be instituted against a medical practitioner who performs a termination on a woman if the woman is incapable of giving consent and the termination is—</p> <p><b>(a)</b> performed in good faith and with reasonable care and skill; and</p> <p><b>(b)</b> is for the woman's benefit; and</p> <p><b>(c)</b> is reasonable having regard to all the circumstances.</p> <p><b>(3)</b> For the purposes of this section, <b>woman</b> means a female person of any age.</p> <p><b>184A. Assault on pregnant woman</b></p> <p>Any person who unlawfully assaults a woman, knowing that woman to be pregnant is guilty of a crime.</p> <p>Charge: Assault on pregnant woman.</p>					
<a href="#">Disability Services Act 2011 No. 27</a>	<p><b>5. Principles</b></p> <p><b>(2)</b> The following principles are to be applied in respect of relevant activities:</p> <p><b>(i)</b> equality between men and women is to be promoted;</p>	<p>Gender identity</p> <p>Intersex status</p>	Binary concept of gender adopted.	Not Applicable	5	
<a href="#">Forensic Procedures Act 2000 No. 101</a>	A number of references in Act to "in the case of a female, the breasts;"	<p>Gender identity</p> <p>Intersex</p>	Discriminatory against those with breasts who do not identify as female.	Not Applicable	5	

**Comment [L&R53]:** *Norrie's Case* and *Acts Interpretation Act 1931* suggest that the principle would be interpreted as equality between all people.

**Comment [L&R54]:** *Norrie's Case* and *Acts Interpretation Act 1931* suggest that this section would extend to any person with breasts.

Tasmanian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
		status				
<a href="#">Industrial Relations Act 1984 No. 21</a>	<p><b>3. Maternity leave to start 6 weeks before birth</b></p> <p>A female employee who has given notice of her intention to take parental leave for the birth of a child must start the leave 6 weeks before the expected date of birth unless a medical practitioner has certified that the employee is fit to work closer to the expected date of birth.</p>	Gender identity Intersex status	Provision excludes from application persons who are pregnant but do not identify as female.	Not Applicable	5	
<a href="#">Obstetric and Paediatric Mortality and Morbidity Act 1994 No. 31</a>	<p><b>3. Interpretation</b></p> <p><b>late maternal death</b> means the death of a woman more than 42 days but less than one year after the cessation of pregnancy—</p> <p>(a) resulting from an obstetric cause or another cause aggravated by an obstetric cause; and</p> <p>(b) irrespective of the duration of the pregnancy and the location of the foetus within the woman's body;</p> <p><b>maternal death</b> means the death of a woman while pregnant, or within 42 days after the cessation of pregnancy—</p> <p>(a) from any cause related to, or aggravated by, the pregnancy or its management; and</p> <p>(b) irrespective of the duration of the pregnancy and the location of the foetus within the woman's body;</p> <p><b>6. Functions of Council</b></p> <p>The Council has the following functions:</p> <p>(a) to investigate the circumstances surrounding, and</p>	Gender identity Intersex status	Provisions exclude persons who are pregnant or gave birth to a child but do not identify as women.	Not Applicable	5	

**Comment [L&R55]:** *Norrie's Case* and *Acts Interpretation Act 1931* suggest that this would extend to any person who is pregnant.

**Comment [L&R56]:** *Norrie's Case* and *Acts Interpretation Act 1931* suggest that this would extend to any person who was pregnant.

Tasmanian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>the conditions that have or may have caused –</p> <p><del>(iv) injuries, illness or defects suffered by pregnant women or viable foetuses in Tasmania at any time before or during childbirth;</del></p> <p><del>(db) to communicate to the Minister, or a relevant Minister, the Secretary or a prescribed body, information relating to –</del></p> <p><del>(i) a child death, maternal death or late maternal death; or</del></p> <p><del>(ii) the morbidity of a child or a woman who is or has been pregnant;</del></p>					
<a href="#">Payroll Tax Act 2008</a>	<p><b>53. Maternity and adoption leave</b></p> <p>(1) Wages are exempt wages if they are paid or payable to an employee in respect of –</p> <p><del>(a) maternity leave, being leave given to a female employee in connection with her pregnancy or the birth of her child (other than sick leave, recreation leave, annual leave or any similar leave); or</del></p> <p><del>(b) adoption leave, being leave given to an employee in connection with the adoption of a child by him or her (other than sick leave, recreation leave, annual leave or any similar leave).</del></p> <p><del>(2) It is immaterial whether the leave is taken during or after the pregnancy or before or after the adoption.</del></p> <p><del>(3) The exemption is limited to wages paid or payable in respect of a maximum of 14 weeks maternity leave in respect of any one pregnancy and 14 weeks adoption leave in respect of any one</del></p>	Gender identity Intersex status	Provision excludes persons who are pregnant or gave birth to a child but do not identify as <del>women.</del>	Not Applicable	5	

**Comment [L&R57]:** *Norrie's Case* and *Acts Interpretation Act 1931* suggest this section would extend to any person who is pregnant or gave birth to a child.

Tasmanian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>adoption.</p> <p>(4) In <del>subsection (3)</del> –</p> <p>(a) a reference to 14 weeks maternity leave or 14 weeks adoption leave includes a reference to an equivalent period of leave at a reduced rate of pay; and</p> <p>(b) a reference to wages paid or payable in respect of a period of leave is a reference to the total wages that would normally have been paid or payable for that period of leave.</p> <p><i>Note</i> For a part-time employee, the exemption may apply to wages paid or payable for maternity leave or adoption leave that extends to 28 weeks at half of the part-time rate of pay that would normally apply to the employee.</p> <p>(5) The exemption does not apply to any part of wages paid or payable in respect of maternity or adoption leave that comprises fringe benefits.</p>					
<a href="#">Reproductive Health (Access to Terminations) Act 2013</a>	<p><b>4. Terminations by medical practitioner at not more than 16 weeks</b></p> <p>The pregnancy of a woman who is not more than 16 weeks pregnant may be terminated by a medical practitioner with the woman's consent.</p> <p><b>5. Terminations by medical practitioner after 16 weeks</b></p> <p>(1) The pregnancy of a woman who is more than 16 weeks pregnant may be terminated by a medical practitioner with the woman's consent if the medical</p>	<p>Gender identity</p> <p>Intersex status</p>	<p>Provision excludes persons who are pregnant but do not identify as women.</p>	Not Applicable	5	

**Comment [L&R58]:** *Norrie's Case* and *Acts Interpretation Act 1931* suggest these sections would extend to any person who is pregnant.

Tasmanian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>practitioner—</p> <p>(a) reasonably believes that the continuation of the pregnancy would involve greater risk of injury to the physical or mental health of the pregnant woman than if the pregnancy were terminated; and</p> <p>(b) has consulted with another medical practitioner who reasonably believes that the continuation of the pregnancy would involve greater risk of injury to the physical or mental health of the pregnant woman than if the pregnancy were terminated.</p> <p>(2) In assessing the risk referred to in <a href="#">subsection (1)</a>, the medical practitioners must have regard to the woman's physical, psychological, economic and social circumstances.</p> <p><b>6. Conscientious objection and duty to treat</b></p> <p>(1) Subject to <a href="#">subsection (2)</a>, no individual has a duty, whether by contract or by any statutory or other legal requirement, to participate in treatment authorised by <a href="#">section 4</a> or <a href="#">5</a> of this Act if the individual has a conscientious objection to terminations.</p> <p>(2) <a href="#">Subsection (1)</a> does not apply to an individual who has a duty set out in <a href="#">subsection (3)</a> or <a href="#">(4)</a>.</p> <p>(3) A medical practitioner has a duty to perform a termination in an emergency if a termination is necessary to save the life of a pregnant woman or to prevent her serious physical injury.</p> <p>(4) A nurse or midwife has a duty to assist a medical practitioner in performing a termination in an emergency if a termination is necessary to save the life of a pregnant woman or to prevent her serious</p>					

Tasmanian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>physical injury.</p> <p><b>7. Obligations on medical practitioners and counsellors</b></p> <p>(1) In this section –</p> <p><b>counsellor</b> means a person who holds himself or herself out as a provider of a counselling service, or conducts himself or herself in a manner consistent with a provider of a counselling service, whether or not that service or conduct is engaged in, or provided, for fee or reward;</p> <p><b>health service</b> means a health service which provides advice, information or counselling on the full range of pregnancy options.</p> <p>(2) Subject to <a href="#">subsection (3)</a>, if a woman seeks a termination or advice regarding the full range of pregnancy options from a medical practitioner and the practitioner has a conscientious objection to terminations, the practitioner must, on becoming aware that the woman is seeking a termination or advice regarding the full range of pregnancy options, provide the woman with a list of prescribed health services from which the woman may seek advice, information or counselling on the full range of pregnancy options.</p> <p>(3) <a href="#">Subsection (2)</a> does not apply to a medical practitioner who has a duty set out in <a href="#">section 6(3)</a>.</p> <p>(4) Nothing in this section prevents a medical practitioner from continuing to provide treatment, advice or counselling, in respect of matters other than a termination or advice regarding the full range of pregnancy options, to a woman who the medical</p>					

Tasmanian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>practitioner has provided a list of prescribed health services from which the woman may seek advice, information or counselling on the full range of pregnancy options.</p> <p><b>8. Woman not guilty of crime or offence</b></p> <p>Notwithstanding any other Act or law, a woman who consents to, assists in or performs a termination on herself is not guilty of a crime or any other offence.</p>					

## 8. VICTORIA

Victorian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
<a href="#">Crimes (Mental Impairment and Unfitness to be Tried) Act 1997</a>	<p><b>1, 2(b)</b></p> <p>In nominating people for appointment to the Panel, the Minister must have regard to -</p> <p>(a) the matters that the Panel has jurisdiction to hear and determine; and</p> <p>(b) <u>the need for the Panel to be comprised of both males and females</u> so qualified by knowledge and experience that the Panel is capable of exercising the jurisdiction and performing the functions conferred on it.</p>	Intersex status. Gender identity	<p>Schedule 1, 2(b) refers to a binary composition of a Panel and by not acknowledging that there can be genders other than female or male, may be applied discriminatorily against intersex individuals whose gender may be used as a basis to not appoint them to the Panel.</p> <p>However, not likely to be captured by the exemption as discrimination against intersex/gender diverse people not "in direct compliance with" this provision.</p>	Appointments	1	
<a href="#">Corrections Act 1986</a>	<p><b>100(1C)</b></p> <p>(1C) The <a href="#">Regional Manager</a> must ensure, to the extent practicable, that a <a href="#">search</a> under this</p>	Intersex status Gender identity	It is unclear how this provision will apply to individuals who may identify as neither or both male or female, or whose identity	Bodily searches	1	



Victorian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>section is conducted -</p> <p>(a) in a private place or area that provides reasonable privacy for the person being <a href="#">searched</a>; and</p> <p>(b) in the presence of a witness; and</p> <p>(c) as expeditiously as possible to minimise the impact on the person's dignity and self-respect; and</p> <p>(d) by a person of the same sex as the person being <a href="#">searched</a>.</p>		<p>documents do not reflect their gender identity.</p> <p>An intersex person may be legally recognised as one sex but feel more comfortable being searched by an officer of a different sex.</p> <p>Best practice would be for such individuals to choose the sex of their searcher.</p> <p>.</p>			
<a href="#">Corrections Regulations 2009</a>	<p><b>69(6)</b></p> <p>Under this regulation, all <a href="#">escort officers</a> or prison <a href="#">officers</a> involved in a <a href="#">strip search</a> must ensure that - ...</p> <p>(f) the prisoner is not searched by a person of the opposite sex, except where the search is urgently required and a person of the same sex as the person to be searched is unavailable to conduct the search.</p>	As above	<p>It is unclear how this provision will apply to individuals who may identify as neither or both male or female, or whose identity documents do not reflect their gender identity.</p> <p>An intersex person may be legally recognised as one sex but feel more</p>	Bodily searches	1	

Victorian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p><b>92(3)</b></p> <p>A person who is about to be searched may request that a person who accompanied the person to the community corrections centre or another person of the same sex who is then at the community corrections centre, other than an offender, be present during the search.</p>		<p>comfortable being searched by an officer of a different sex.</p> <p>Best practice would be for such individuals to choose the sex of their searcher.</p>			
<a href="#">Crimes Act 1958</a>	<p><b>464(2)</b></p> <p><b><i>intimate part of the body</i></b> means the genital or anal region of a male or female or the breast of a female;</p> <p><b><i>intimate sample</i></b> means -</p> <p>(a) a blood sample;</p> <p>(b) a sample of pubic hair, including the root if required;</p> <p>(c) a swab, washing or sample taken from the external genital or anal region of a male or female or from the breast of a female;</p> <p>(d) a sample of saliva;</p>	<p>Gender Identity</p> <p>Intersex Status</p>	<p>It is unclear how this provision will apply to individuals who may identify as neither or both male or female, or whose identity documents do not reflect their gender identity.</p> <p>An intersex person may be legally recognised as one sex but feel more comfortable being searched by an officer of a different sex.</p> <p>Best practice would be for such individuals to choose the sex of the</p>	Bodily searches	1	

Victorian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>(e) a scraping taken from the mouth;</p> <p>(f) a dental impression;</p> <p><b>non-intimate sample</b> means -</p> <p>(a) a sample of hair, other than pubic hair, including the root if required;</p> <p>(b) a sample of matter taken from under a fingernail or toenail;</p> <p>(c) a swab, washing or sample taken from any external part of the body other than the genital or anal region of a male or female or the breast of a female.</p> <p><b>464N(2) Taking of fingerprints</b></p> <p>(2) If -</p> <p>(a) fingerprints are to be taken in accordance with a court order;</p> <p>(b) reasonable force is to be used to take fingerprints -</p> <p>a person of the same sex as the person to be fingerprinted must, if practicable, take the fingerprints and a member of the <a href="#">police force</a> involved in investigating the <a href="#">offence</a></p>		relevant officer.			

Victorian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>for which the fingerprints are required must not, if practicable, take the fingerprints.</p> <p><b>464NA(5)</b></p> <p>A person of the same sex as the person to be finger scanned must, if practicable, take the finger scan.</p> <p><b>464Z</b></p> <p>(3) For the purposes of a forensic procedure under this Subdivision</p> <p>(a) an intimate sample (other than a dental impression) or a physical examination of an intimate part of the body may only be taken or <a href="#">conducted</a> by a medical practitioner or nurse or midwife of the same sex, if practicable, as the person from whom the sample is to be taken or who is to be examined;</p> <p>(6)</p> <p>(ab) in the presence of a member of the <a href="#">police force</a> who is present to witness the taking of the sample or the <a href="#">conduct</a> of the physical</p>					

Victorian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>examination, subject to subsection (9), and is of the same sex, if practicable, as the person from whom the sample is to be taken or who is to be examined ...</p> <p><b>464ZA</b></p> <p>(2) If practicable, a member of the <a href="#">police force</a> acting in accordance with subsection (1) and any person assisting the member -</p> <p>(a) must be of the same sex as the person on whom the procedure is to be <a href="#">conducted</a>; and</p> <p>(b) must not be involved in investigating the <a href="#">offence</a> for which the procedure is required.</p> <p>(3) If the <a href="#">Children's Court</a> makes an order under <a href="#">section 464U(7)</a> or <a href="#">464V(5)</a>, a parent or guardian of the <a href="#">child</a> or, if a parent or guardian cannot be located, an independent person of the same sex, if practicable, as the <a href="#">child</a> must be present during the <a href="#">conduct</a> of a compulsory procedure on the <a href="#">child</a>.</p> <p><b>469A(2)</b></p> <p>A female shall not be searched under the last</p>					

Victorian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	preceding subsection except by a female.					
Firearms Regulations 2008	<p><b>16(4)</b></p> <p>A search under subregulation (1)(b) or (1)(c)(ii) must, if reasonably practicable, be conducted by a member of the police force or by an authorised officer who is of the same sex as the person being searched.</p>	<p>Intersex status</p> <p>Gender identity</p>	<p>It is unclear how this provision will apply to individuals who may identify as neither or both male or female, or whose identity documents do not reflect their gender identity.</p> <p>An intersex person may be legally recognised as one sex but feel more comfortable being searched by an officer of a different sex.</p> <p>Best practice would be for such individuals to choose the sex of the relevant officer.</p>	Bodily searches	1	
Terrorism (Community Protection) Act 2003	<p><b>1</b></p> <p><b>transgender person</b> means a person, whether or not the person is a recognised transgender person -</p>	<p>Gender identity</p> <p>Intersex status</p>	<p>These provisions do not account for persons who identifies as neither or both male or female.</p>	Bodily searches	1	

Victorian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>(a) who identifies as a member of the opposite sex, by living, or seeking to live, as a member of the opposite sex; or</p> <p>(b) who has identified as a member of the opposite sex by living as a member of the opposite sex; or</p> <p>(c) who, being of indeterminate sex, identifies as a member of a particular sex by living as a member of that sex -</p> <p>and includes a reference to the person being thought of as a transgender person, whether or not the person is, or was, in fact a transgender person.</p> <p>(6) The member must not search the genital area of the person searched, or in the case of a female or a transgender person who identifies as a female, the person's breasts unless the member suspects on reasonable grounds that it is necessary to do so for the purposes of the search.</p> <p>(7) A search must be conducted by a member of the <a href="#">force</a> of the same sex as the person searched or by a person of the same sex <a href="#">under</a> the direction of the member.</p>		<p>The requirement of search by a person of the 'same-sex' has uncertain application for persons whose gender identity differs from their legal sex.</p> <p>There is also potential detriment for intersex people, who may, regardless of the sex they identify with, feel more comfortable with the search being undertaken by a person of a particular sex.</p> <p>These provisions also do not intersex men, trans men, or gender diverse people who have breasts.</p>			

Victorian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
<a href="#">Children, Youth and Families Act 2005</a>	<p><b>347 Child in custody to be placed in remand centre</b></p> <p>(1) If a <a href="#">child</a> is remanded in <a href="#">custody</a> by a <a href="#">court</a> or a bail justice, the <a href="#">child</a> must be placed in a <a href="#">remand centre</a> except as otherwise provided by the regulations with respect to prescribed regions of the State.</p> <p>(2) If any <a href="#">children</a> are remanded in <a href="#">custody</a> in a <a href="#">police gaol</a> under this section, they -</p> <p>(a) are entitled to be kept separate from adults who are detained there;</p> <p>(b) are entitled to be kept separate according to their sex;</p> <p>....</p> <p><b>434(4)</b></p> <p>(4) A female member of the <a href="#">Youth Residential Board</a> must be present at any meeting of the Board at which consideration is being given to the release on parole of a female person.</p> <p><b>445(4)</b></p> <p>A female member of the <a href="#">Youth Parole Board</a> must be present at any meeting of the Board at which consideration is being given to the release on parole of a female person.</p>	<p>Gender identity</p> <p>Intersex status</p>	<p>Section 347 allows children to be kept separately in a remand centre according to their sex. There is the potential for discrimination for an individual that has physical characteristics of one gender but does not identify with that gender, or an individual of intersex status.</p> <p>Section 488AD mandates that an officer must ensure that a frisk search or strip search is conducted by an officer of the same sex as the person being searched (unless in the case of urgency). An individual that resembled one gender but identified with another gender might be</p>	Criminal	1	



Victorian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p><b>488AD Manner of conducting search</b></p> <p>(1) In the case of a <a href="#">frisk search</a> or a <a href="#">strip search</a>, the <a href="#">officer in charge</a> must ensure that the search is conducted only by an <a href="#">officer</a> of the same sex as the person being searched.</p>		<p>discriminated against. Similarly, an individual that was of intersex status might be discriminated against under these laws.</p> <p>Sections 434(4) and 445 provide an additional requirement that a female member of the Youth Residential Board and Youth Parole Board must be present at any meeting where release on parole is being considered for a female person. As it does not state how whether a prisoner is a female is to be determined, it may allow discrimination against an individual who does identify as a female but is listed as a male on their birth certificate.</p>			
<a href="#">Major Crime (Investigative Powers)</a>	<b>Sections 14 and 15 WITNESS SUMMONS</b>	Intersex status	Discriminates against individuals who identify as intersex	Criminal	1	Section 43A - not discriminatory to make or keep

Victorian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
<a href="#">Regulations 2005</a>	To: (insert <i>name of person to whom summons is directed</i> )  *Male/*Female		as provides only two gender options.			records in a way that does not allow for the designation of sex other than male or female
<a href="#">Births, Deaths and Marriages Registration Act 1996</a>	<b>17A Addition of details after birth registration - registration of partner</b> (1) This section applies if- (a) a woman has undergone a procedure within the meaning of Part III of the <a href="#">Status of Children Act 1974</a> as a result of which she became pregnant and gave <a href="#">birth</a> to a <a href="#">child</a> ; and (b) <a href="#">by application of a presumption in that Part the woman's female partner is presumed to be a parent of the child</a> ; and (c) the <a href="#">child's birth</a> was <a href="#">registered</a> before the commencement of the <a href="#">Assisted Reproductive Treatment Act 2008</a> . (2) If the <a href="#">Register</a> only names the mother of the <a href="#">child</a> , the mother and her <a href="#">partner</a> may apply to amend the <a href="#">Register</a> to name the <a href="#">partner</a> as a <a href="#">parent</a> of the <a href="#">child</a> . (3) If the <a href="#">Register</a> names the mother and father of the <a href="#">child</a> , the <a href="#">Register</a> must not be amended to name the <a href="#">partner</a> as a <a href="#">parent</a>	Intersex status Gender identity	This section is intended to remove discrimination towards non-heterosexual couples by allowing a woman's female partner to be listed as a partner on the Register, however it has the potential to discriminate against an intersex partner.  In order to change one's gender on the register, section 30A requires an individual to be unmarried and to have undergone sex affirmation surgery.  This prevents individuals who are married and have undergone sex affirmation surgery from changing their	Family and relationship law Identity documents	2 & 4	s 40(5) - not unlawful to refuse to change official record of a person's sex if the person is married.  s 43A – not discriminatory to make or keep records to be kept in a way that doesn't allow for the designation of sex other than male or female.

Victorian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>of the <a href="#">child</a> without a <a href="#">court</a> order.</p> <p>(4) An application under subsection (2) must be accompanied by a statutory declaration made by the woman's <a href="#">partner</a> stating that she consented to the procedure that resulted in the pregnancy.</p> <p><b>30A Application to alter Register</b></p> <p>(1) An <a href="#">unmarried person</a> -</p> <p>(a) who is 18 years or over; and</p> <p>(b) whose <a href="#">birth</a> is <a href="#">registered</a> in Victoria; and</p> <p>(c) who has undergone <a href="#">sex affirmation surgery</a> -</p> <p>may apply to the <a href="#">Registrar</a> for the record of the person's sex in the person's <a href="#">birth</a> registration to be altered.</p>		<p>gender and remaining married (but exemption applies).</p> <p>It also prevents individuals who have not undergone sex affirmation surgery but who identify as another gender to change their gender on the Register.</p> <p>If the statute is to be interpreted so as to not allow the registration of sex non-specific individuals (i.e. if it can be distinguished from Norrie's case) then it also discriminates against individuals who would prefer that designation (but exemption applies).</p>			
Property Law Act 1958	<p><b>241 The male line to be preferred</b></p> <p>None of the maternal ancestors of the person from whom the <a href="#">descent</a> is to be traced nor any of their <a href="#">descendants</a> shall be capable of inheriting until all his paternal ancestors and their <a href="#">descendants</a> have failed; and no female paternal ancestor of such</p>	<p>Gender identity</p> <p>Sexual orientation</p> <p>Intersex status</p>	<p>The inheritance provisions adopt a binary conception of gender as "female" and "male" and may be discriminatorily applied in the case of</p>	Financial	1	

Victorian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>person nor any of her <a href="#">descendants</a> shall be capable of inheriting until all his male paternal ancestors and their <a href="#">descendants</a> have failed; and no female maternal ancestor of such person nor of any of her <a href="#">descendants</a> shall be capable of inheriting until all his male maternal ancestors and their <a href="#">descendants</a> have failed.</p> <p><b>242 The mother of more remote male ancestor to be preferred to the mother of the less remote male ancestor</b></p> <p>Where there is a failure of male paternal ancestors of the person from whom the <a href="#">descent</a> is to be traced and their <a href="#">descendants</a>, the mother of his more remote male paternal ancestor or her <a href="#">descendants</a> shall be the heir or heirs of such person in preference to the mother of a less remote male paternal ancestor or her <a href="#">descendants</a>.</p> <p><b>243 Failure of male maternal ancestor</b></p> <p>Where there is a failure of male maternal ancestors of such person and their <a href="#">descendants</a>, the mother of his more remote male maternal ancestor and her <a href="#">descendants</a> shall be the heir or heirs of such person in preference to the mother of a less remote male maternal ancestor and her <a href="#">descendants</a>.</p> <p><b>244 Half blood if on the part of a male ancestor to inherit after the whole blood of the same degree if on the part of a female ancestor after her</b></p> <p>Any person related to the person from whom the <a href="#">descent</a> is to be traced by the half blood shall be capable of being his heir; and the place in which</p>		<p>an intersex individual, or an individual who does not identify as a particular gender but is registered on their birth certificate as that gender.</p>			

Victorian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	any such relation by the half blood shall stand in the order of inheritance so as to be entitled to inherit shall be next after any relation in the same degree of the whole blood and his issue where the common ancestor is a male, and next after the common ancestor where such common ancestor is a female; so that the brother of the half blood on the part of the father shall inherit next after the sisters of the whole blood on the part of the father and their issue, and the brother of the half blood on the part of the mother shall inherit next after the mother.					
<a href="#">Ambulance Services Act 1986</a>	<b>17(3)</b> In making a recommendation under subsection (1A), the Minister must ensure that women and men are adequately represented.	Intersex status Gender identity	This may be used to discriminate against intersex individuals in board appointments. <i>Norrie's Case</i> and the <i>Interpretation of Legislation Act 1931</i> suggest that there should be equal representation of all genders. It is difficult to see how, in practice, this would occur based on a non-binary definition of gender.	Memberships/ appointments	1	

Victorian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
<a href="#">Disability Act 2006</a>	<p><b>28(4) Community visitors</b></p> <p>(4) In nominating <a href="#">persons</a> for appointment as <a href="#">community visitors</a>, the <a href="#">Public Advocate</a> must as far as practicable nominate an equal number of males and females.</p>	<p>Gender identity</p> <p>Intersex status</p>	<p>Section 28(4) requires a Public Advocate to as far as practicable nominate an equal number of males and females as community visitors. By applying a binary definition of gender, the provision may be used to discriminate against intersex individuals and not appoint them as community visitors.</p> <p>However, not likely to be captured by the exemption as discrimination against intersex/gender diverse people not "in direct compliance with" this provision. For example, would not necessarily be taken to permit the Public Advocate to exclude an intersex/gender diverse person.</p>	Memberships/ appointments	1	

Victorian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
<a href="#">Health Services Act 1988</a>	<p><b>33(10) Board of management</b></p> <p>(10) In nominating a person or persons for appointment to a <a href="#">board</a>, the Minister must ensure that both men and women are adequately represented on the <a href="#">board</a>.</p> <p><b>65T(3)(b) Directors</b></p> <p>(3) In making a recommendation under this section, the Minister must ensure that -</p> <p>(a) the <a href="#">board</a> includes at least one person who is able to reflect the perspectives of users of health services; and</p> <p>(b) women and men are adequately represented.</p>	Intersex status	<p>Sections 33(10) and 65T(3)(b) both require a Minister to ensure that the Board of Management represents women and men equally. This may be used to discriminate against intersex individuals in director appointments.</p> <p>However, not likely to be captured by the exemption as discrimination against intersex/gender diverse people not "in direct compliance with" this provision.</p>	Memberships/ appointments	1	
<a href="#">Mental Health Act 1986</a>	<p><b>1</b></p> <p>(2) In nominating persons for appointment to the Board, the Minister must have regard to -</p> <p>(a) the matters which the Board has jurisdiction to hear and determine; and</p> <p>(b) the need for the Board to be comprised of both males and</p>	<p>Gender identity</p> <p>Intersex status</p>	<p>These sections require that individuals have regard to the number of males and females in appointing individuals to various Boards and positions.</p> <p>Any person who</p>	Memberships/ appointments	1	

Victorian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>females so qualified by knowledge and experience that the Board is capable of exercising the jurisdiction and performing the functions conferred on it;</p> <p><b>2</b></p> <p>(3) In selecting the members of a division of 3 members the President must have regard to -</p> <p>(a) the desirability of constituting divisions of both males and females and of different age groups; and</p> <p><b>3</b></p> <p>(1) The membership of the Psychosurgery Review Board is to be made up of both males and females and consist of -</p> <p><b>5</b></p> <p>(3) In nominating persons for appointment as community visitors for a region the Minister must as far as practicable nominate an equal number of males and females.</p>		<p>does not identify as either male or female could be discriminated against in an appointment.</p> <p>However, not likely to be captured by the exemption as discrimination against intersex/gender diverse people not "in direct compliance with" this provision.</p>			
<a href="#">Administration and Probate Act 1958</a>	<p><b>5</b></p> <p><b>purchaser</b> means a lessee mortgagee or other person who in good faith acquires an interest in <a href="#">property</a> for valuable consideration also an intending <a href="#">purchaser</a> and <b>valuable consideration</b> includes marriage but does not include a nominal</p>	<p>Marital/relationship status</p> <p>(Sexual orientation)</p>	<p>Section 5 defines valuable consideration as including marriage which discriminates against those who are not heterosexual and permitted to be</p>	Financial	2	



Victorian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>consideration in money</p> <p><b>29</b></p> <p>effect of death on certain causes of action</p> <p>(1) Subject to the provisions of this section, on the death of any person, all causes of action subsisting against or vested in him shall survive against or (as the case may be) for the benefit of his <a href="#">estate</a>:</p> <p>Provided that this subsection shall not apply to causes of action for defamation or seduction or for inducing one <a href="#">spouse</a> to leave or remain apart from the other.</p> <p>(2) Where a cause of action survives as aforesaid for the benefit of the <a href="#">estate</a> of a deceased person the damages recoverable for the benefit of the <a href="#">estate</a> of that person -</p> <p>...</p> <p>(b) in the case of a breach of promise of marriage shall be limited to such damage (if any) to the <a href="#">estate</a> of that person as flows from the breach of the promise to marry;</p>		<p>married.</p> <p>Section 29 allows one to claim damages for breach of marriage which denies those who are not heterosexual and permitted to be married the right to claim damages.</p> <p>Section 52 adopts a binary version of gender in referring to 'mother' and 'father', and 'brother' and 'sister'. This can discriminate against both individuals of intersex status, and individuals in non-heterosexual relationships that have children. Further, subsection (viii) refers to marriage, which excludes non-heterosexual defacto couples.</p>			

Victorian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p><b>52 Distribution on intestacy</b></p> <p>(1) Where a person in respect of his or her residuary <a href="#">estate</a> dies <a href="#">intestate</a> then subject to the provisions of <a href="#">section 51</a> and <a href="#">51A</a> the following provisions shall have effect with respect to such <a href="#">estate</a>:</p> <p>...</p> <p>(b) If the <a href="#">intestate</a> leaves a father and a mother but no <a href="#">partner</a> or issue such <a href="#">estate</a> shall be distributed equally between the father and the mother;</p> <p>(e) If the <a href="#">intestate</a> leaves a father but no <a href="#">partner</a> or issue or mother the father shall be entitled to such <a href="#">estate</a>;</p> <p>(ea) If the <a href="#">intestate</a> leaves a mother but no <a href="#">partner</a> or issue or father the mother shall be entitled to such <a href="#">estate</a>;</p> <p>...</p> <p>(ii) Except as hereinafter provided the children of any person who died before the <a href="#">intestate</a> shall take only the share which</p>					

Victorian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>that person would have taken if living at the death of the <a href="#">intestate</a> and if more than one shall take the same in equal shares;</p> <p>(iii) No <a href="#">representation</a> shall be admitted among collaterals after brothers' and sisters' children;</p> <p>(v) Brothers or sisters or when they take as representatives brothers' or sisters' children shall take in priority to grandparents;</p> <p>(vi) Where brothers' or sisters' children are entitled and all the brothers or sisters of the <a href="#">intestate</a> have died before him or her such children shall not take as representatives and all such children shall take in equal shares;</p> <p>(vii) There shall be no difference between males and females or between relationship of the whole</p>					

Victorian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>blood and of the half blood;</p> <p>(viii) A <b>husband</b> and wife shall for all purposes of distribution and division be treated as two persons.</p>					
<a href="#">Coal Mines (Pensions) Act 1958</a>	<p><b>106 Pensions - additional payments in respect of dependents</b></p> <p>Where a mine worker becomes eligible for a disablement pension or a retiring pension he shall also be eligible for additional payments of the following amounts -</p> <p>(a) an amount of \$67 per week in respect of his wife which amount shall be payable until her death or until she ceases to be his wife;</p> <p>(b) an amount of \$14 per week in respect of each child and step-child under the age of sixteen years who is totally or mainly dependent on his earnings which amount shall be payable until such child attains the age of sixteen years;</p> <p>(c) where no amount is payable under paragraph (a) of this subsection an amount of not more than \$67 per week in respect of one female who is totally or mainly dependent on his earnings, and who is a member of the mine worker's family over the age of sixteen years caring for any</p>	<p>Marital status (sexual orientation)</p>	<p>Sections 106 and 107 provide for pensions only to heterosexual married couples and thus discriminate against non-heterosexual couples and individuals of intersex status in a relationship who are not able to receive a pension.</p>	<p>Financial</p>	<p>2</p>	<p>May be covered by section 41A, 41B exemptions depending on whether the scheme meets the definition of a superannuation fund</p>

Victorian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>child or step-child of the mine worker under the age of sixteen years which amount shall be payable until her death or marriage or until she ceases to be such a dependent.</p> <p>Notwithstanding anything in paragraph (a) of this section the Tribunal shall refuse to award an addition to the pension of a mine worker in respect of his wife or shall cancel or suspend so much of any pension as consists of such addition where it is satisfied that the wife is living apart from her husband and that the husband is not maintaining or contributing a reasonable sum to the support of his wife.</p> <p><b>107 Pension payable to dependents</b></p> <p>(1) Upon the death of -</p> <p>(a) a person who has been awarded or who was eligible to receive a disablement pension or a retiring pension; or</p> <p>(b) a mine worker whose death has been found to have been due to injury (not being an intentional self-inflicted injury) -</p> <p>the widow of such person or mine worker or the female in respect of whom such person or mine worker if he had remained alive and been granted a pension would</p>					

Victorian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>have been entitled to an additional payment shall be eligible for a pension of \$102.30 per week until the death re-marriage or marriage of such widow or female, as the case may be, and the persons referred to in paragraph (b) of section one hundred and six of this Act shall also be eligible for pensions of an amount equal to the amount referred to in that paragraph and for the period specified in that paragraph.</p> <p>(1A) Where the death of a mine worker has occurred on or after the eighth day of December One thousand nine hundred and sixty-two or occurs after the commencement of the <a href="#">Coal Mines (Amendment) Act 1963</a> the widow of that mine worker or the female in respect of whom such mine worker if he had remained alive and been granted a pension would have been entitled to an additional payment shall be eligible for a pension of \$102.30 per week from the date of the death of the mine worker (whether the death occurred before or after the commencement of the <a href="#">Coal Mines (Amendment) Act 1963</a>) until the death remarriage or marriage of such widow or female, as the case may be:</p> <p>Provided that the pension payable to any such widow or female in respect of any period prior to the fourth day of October One thousand nine</p>					

Victorian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	hundred and sixty-three shall be at the rate of \$11.75 per week ...					
<a href="#">Constitution Amendment Act 1958</a>	<p><b>Pensions of former members</b></p> <p>(1) Notwithstanding anything in the foregoing provisions of this Division, where a person who has ceased to be a member was immediately before the <a href="#">appointed day</a> in receipt of or entitled to receive a pension under this Division, that person shall on and from the <a href="#">appointed day</a> be entitled to receive out of the Fund in lieu of any other pension under this Division an annual pension at the rate of 50 per cent per annum of the basic salary from time to time.</p> <p>(2) Notwithstanding anything in the foregoing provisions of this Division, where a widow of a member or former member was immediately before the <a href="#">appointed day</a> in receipt of or entitled to receive a pension under this Division, the widow shall on and from the <a href="#">appointed day</a> until her death or re-marriage be entitled to receive out of the Fund in lieu of any other pension under this Division an annual pension at the rate of 40 per cent per annum of the basic salary from time to time.</p> <p>(3) Notwithstanding anything in the foregoing provisions of this Division, if a former member dies on or after the <a href="#">appointed day</a> and his widow is entitled upon his death to</p>	Marital status (sexual orientation)	Pensions are limited to widows and thus this section adopts a heterosexual definition of marriage and discriminates against non-heterosexual couples that legally do not have the right to marry.	Financial	2	May be covered by section 41A, 41B exemptions depending on whether the scheme meets the definition of a superannuation fund

Victorian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>the payment of a pension under the foregoing provisions of this Division, the widow shall upon his death until her death or re-marriage be entitled to receive out of the Fund in lieu of any other under this Division an annual pension at the rate of 40 per cent per annum of the basic salary from time to time.</p> <p>(4) Notwithstanding subsection (1), (2) or (3), the rate of pension to which a person is entitled under this section shall not be less than the rate of pension which that person was receiving or was entitled to receive under this Division immediately before the <a href="#">appointed day</a>.</p> <p>(5) The provisions of subsections (6), (7) and (8) of section 42 and section 44 shall apply to and in relation to pensions under this section as if in those provisions a reference to a pension were a reference to a pension under this section.</p> <p>(6) In this section -  <b><i>appointed day</i></b> means the day on which the <a href="#">Parliamentary Superannuation Act 1982</a> receives the Royal Assent;</p>					
<a href="#">Parliamentary Contributory Superannuation Act 1962</a>	<p><b>7(5)(c) Upon the death</b></p> <p>(c) of a person -</p> <p>(i) who dies whilst he is a</p>	Marital status (sexual orientation)	Section 7(5)(c) allows, in certain circumstances, the widow of a member	Financial	2	Likely to be covered by section 41A, 41B exemptions



Victorian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>member;</p> <p>(ii) who has received a salary as a member for an aggregate period of six years or more (whether before or after or partly before and partly after the commencement of this Act); and</p> <p>(iii) who has served as a member in at least three successive Parliaments (whether after or partly before and partly after the commencement of this Act); or</p> <p>(d) of a person who is entitled to receive an ordinary superannuation benefit under this Act but whose right to receive that benefit is at the date of his death suspended pursuant to section eight of this Act -</p> <p>the widow of such person shall until her death or re-marriage be entitled to receive out of the Fund an ordinary superannuation benefit.</p> <p>In this section <b>widow</b> shall not include a woman who married a former member after he had finally ceased to be a member.</p>		<p>to receive a widow to receive an ordinary superannuation benefit upon the member's death. This excludes non-heterosexual relationships, and relationships where one or two of the individuals identify as intersex.</p>			

Victorian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
<a href="#">Adoption Act 1984</a>	<p><b>4</b></p> <p><b>de facto spouse</b> means -</p> <p>(a) In relation to a man who is living with a woman in a <a href="#">de facto relationship</a>, the woman with whom he is living in that <a href="#">de facto relationship</a>;</p> <p>(b) in relation to a woman who is living with a man in a <a href="#">de facto relationship</a>, the man with whom she is living in that <a href="#">de facto relationship</a>;</p> <p><b>10A Application for adoption order</b></p> <p>An application for an <a href="#">adoption order</a> under sections 11 and 12 may be made—</p> <p>(a) in the case of a man and a woman who are married or living in a relationship referred to in section 11(1), if the man and woman have been married to each other or living in that relationship with each other for not less than 2 years;</p> <p>(b) in the case of a person who is married or living in a relationship referred to in section 11(1) and who proposes adopting a <a href="#">child</a> of his or her spouse or <a href="#">de facto spouse</a>, or a <a href="#">child</a> who is related to his or her spouse or <a href="#">de facto spouse</a>, if that person and his or her spouse or <a href="#">de facto spouse</a> (as the case requires) have been married to each</p>	<p>Sexual orientation</p> <p>Intersex status</p> <p>Gender identity</p>	<p>The definition of de facto spouse in section 4 refers to a heterosexual relationship only and excludes non-heterosexual relationships, or relationships where one individual (or both) identify as intersex.</p> <p>Section 10A and 11-permit adoption only to heterosexual couples (or individuals in some circumstances), which discriminates against non-heterosexual couples, and those who identify as intersex.</p>	Family and relationship law	3	

Victorian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>other or living in that relationship with each other for not less than 2 years.</p> <p><b>11 Persons in whose favour adoption orders may be made</b></p> <p>(1) An <a href="#">adoption order</a> may be made in favour of <a href="#">a man and a woman</a> -</p> <p>(a) who are married to each other and have been so married for not less than two years; or</p> <p>(b) whose relationship is recognized as a traditional marriage by an Aboriginal community or an Aboriginal group to which they belong and has been so recognized for not less than two years; or</p> <p>(c) who are living in a <a href="#">de facto relationship</a> and have been so living for not less than 2 years; or</p> <p>(d) who have been living with each other in any combination of the relationships referred to in paragraphs (a) to (c) and have been so living for not less than 2 years -</p> <p>before the date on which the order is</p>					

Victorian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>made.</p> <p>(1A) The Court must not make an <a href="#">adoption order</a> under subsection (1) in relation to a man and woman living in a <a href="#">de facto relationship</a> unless the Court is satisfied that neither the man nor the woman is married to another person at the time that the order is made.</p> <p>(2) The Court shall not make an <a href="#">adoption order</a> in favour of a person who is, or persons either of whom is, the mother of the <a href="#">child</a> or a man who, under section 33(3), is an appropriate person to give consent to the adoption of the <a href="#">child</a>.</p> <p>(3) Subject to this section, where the Court is satisfied that special circumstances exist in relation to the <a href="#">child</a> which make it desirable so to do, the Court may make an <a href="#">adoption order</a> in favour of one person.</p> <p>(4) The Court shall not make an <a href="#">adoption order</a> in favour of one person—</p> <p>(a) if that person is married unless that person is living separately and apart from his or her spouse; or</p> <p>(b) if that person is married and is living with his or her spouse, except with the consent of that</p>					

Victorian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>spouse; or</p> <p>(c) if that person is living in a <a href="#">de facto relationship</a> and has been so living for not less than 2 years, except with the consent of that person's <a href="#">de facto spouse</a>.</p> <p>(5) The spouse or <a href="#">de facto spouse</a> of a parent or of an adoptive parent of a <a href="#">child</a> may make an application to the Court under this Act for an order for the adoption of the <a href="#">child</a> by that spouse or <a href="#">de facto spouse</a>.</p> <p>(6) Where an application is made under subsection (5) by the spouse or <a href="#">de facto spouse</a> of a parent or of an adoptive parent of a <a href="#">child</a>, the Court must not make an order for the adoption of the <a href="#">child</a> solely by that spouse or <a href="#">de facto spouse</a> unless it is satisfied that—</p> <p>(a) the making of an order in relation to the <a href="#">guardianship</a> or custody of the <a href="#">child</a> under the Family Law Act 1975 of the Commonwealth as amended and in force for the time being in relation to the <a href="#">child</a> would not make adequate provision for the welfare and interests of the <a href="#">child</a>; and</p> <p>(b) exceptional circumstances exist</p>					

Victorian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>which warrant the making of an <a href="#">adoption order</a>; and</p> <p>(c) an order for the adoption of the <a href="#">child</a> would make better provision for the welfare and interests of the <a href="#">child</a> than an order referred to in paragraph (a); and</p> <p>(d) in the case of an order in favour of a <a href="#">de facto spouse</a>, neither that spouse nor his or her <a href="#">de facto spouse</a> is married to another person at the time that the order is made.</p> <p>(7) If an order for the adoption of a <a href="#">child</a> is made under subsection (6), the spouse or <a href="#">de facto spouse</a> shall be deemed to be a parent of the <a href="#">child</a> jointly with that parent or adoptive parent as if the spouse or <a href="#">de facto spouse</a> and that parent or adoptive parent had been married to each other at the time the <a href="#">child</a> was born but notwithstanding anything in section 53 -</p> <p>(a) the <a href="#">child</a> is not to be treated in law as if the <a href="#">child</a> were not the <a href="#">child</a> of that parent or adoptive parent; and</p> <p>(b) that parent or adoptive parent is not to be treated in law as if the parent or adoptive parent were not</p>					

Victorian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>a parent of that <a href="#">child</a>; and</p> <p>(c) the relationship between the <a href="#">child</a> and that parent or adoptive parent is not terminated; and</p> <p>(d) if that parent or adoptive parent had been the <a href="#">guardian</a> of the <a href="#">child</a>, the order does not terminate the <a href="#">guardianship</a>; and</p> <p>(e) if the <a href="#">child</a> were the <a href="#">adopted child</a> of that adoptive parent, the order does not terminate that adoption.</p>					
<a href="#">Maintenance Act 1965</a>	<b>3 Definitions and entire Act</b>	Marital status (sexual orientation)	<p>The definition of “adopted” is that of the law of Victoria, which does not allow non-heterosexual couples to adopt a child.</p> <p>The Act in its entirety relates to maintenance between a wife and husband and excludes non heterosexual couples who are unable to be</p>	Family and relationship law	3	

Victorian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			married.			
<a href="#">Crimes Act 1958</a>	<p><b>336 Marital coercion</b></p> <p>(1) Any presumption that an <a href="#">offence</a> committed by a wife in the presence of her husband is committed under his <a href="#">coercion</a> is hereby abolished.</p> <p>(2) Where a woman is charged with an <a href="#">offence</a> other than treason or murder, that woman shall have a complete defence to such charge if her action or inaction (as the case may be) was due to <a href="#">coercion</a> by a man to whom she was then married.</p> <p>(3) For the purposes of this section "coercion" means pressure, whether in the form of threats or in any other form, sufficient to cause a woman of ordinary good character and normal firmness of mind, placed in <a href="#">the circumstances in which the woman was placed</a>, to <a href="#">conduct</a> herself in the manner charged.</p> <p>(4) Without limiting the generality of the expression "the circumstances in which the woman was placed" in subsection (3), such circumstances shall include the degree of dependence, whether economic or otherwise, of the woman on her husband.</p> <p>(5) The accused shall bear the burden of adducing evidence that she <a href="#">conducted</a> herself in the manner charged because</p>	Marital status (sexual orientation)	The defence of marital coercion is only available to heterosexual married couples. It is not available to include non-heterosexual individuals who are unable to marry and who are in a defacto relationship. However, query how the operation of a defence may be captured by the SDA.	Criminal	4	Any determination by a court in respect of the coercion defence would be covered by s 40(1)(a) exemption



Victorian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>she was coerced by her husband, but if such evidence has been adduced, the prosecution shall bear the burden of proving that the action or inaction charged was not due to <a href="#">coercion</a> by the husband.</p> <p>(6) This section shall <a href="#">operate</a> in substitution for the common law as to any presumption or defence of marital <a href="#">coercion</a>.</p> <p>(7) This section shall not affect the law relating to the defence of duress.</p>					
<a href="#">Abortion Law Reform Act 2008</a>	<p>Section 3 - "abortion" means intentionally causing the termination of a <u>woman's pregnancy</u> ...";</p> <p><b>Section 4 - Termination of pregnancy by registered medical practitioner at not more than 24 weeks</b></p> <p>A registered medical practitioner may perform an abortion on a <u>woman</u> who is not more than 24 weeks pregnant.</p> <p><b>Section 5 - Termination of pregnancy by registered medical practitioner after 24 weeks</b></p> <p>—(1) A registered medical practitioner may perform an abortion on a <u>woman</u> who is more than 24 weeks pregnant only if the medical practitioner—</p> <p>—(a) reasonably believes that the abortion is</p>	<p>Gender identity</p> <p>Intersex status</p>	<p>The Act could be used to deny an abortion to an individual who did not identify as a female but was pregnant, or an individual who was of intersex status and pregnant</p>	Not Applicable	5	

**Comment [L&R59]:** *Norrie's Case* and the *Interpretation of Legislation Act 1931* suggest that these sections would extend to a person who is pregnant.

Victorian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>appropriate in all the circumstances; and</p> <p><del>—(b) has consulted at least one other registered medical practitioner who also reasonably believes that the abortion is appropriate in all the circumstances.</del></p> <p><del>—(2) In considering whether the abortion is appropriate in all the circumstances, a registered medical practitioner must have regard to—</del></p> <p><del>—(a) all relevant medical circumstances; and</del></p> <p><del>—(b) the woman's current and future physical, psychological and social circumstances.</del></p> <p><b>Section 6 – Supply or administration of drugs by registered pharmacist or registered nurse – at not more than 24 weeks</b></p> <p>A registered pharmacist or registered nurse who is authorised under the <a href="#">Drugs, Poisons and Controlled Substances Act 1981</a> to supply a drug or drugs may administer or supply the drug or drugs to cause an abortion in a woman who is not more than 24 weeks pregnant.</p> <p><b>Section 7 – Supply or administration of drugs by registered pharmacist or registered nurse – more than 24 weeks</b></p> <p><del>—(1) A registered medical practitioner may, in writing, direct a registered pharmacist or registered nurse, who is employed or engaged by a <a href="#">hospital</a>, to administer or supply a drug or drugs to cause an</del></p>					

Victorian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>abortion in a woman who is more than 24 weeks pregnant only if the medical practitioner—</p> <p>—(a)— reasonably believes that the abortion is appropriate in all the circumstances; and</p> <p>—(b)— has consulted at least one other registered medical practitioner who also reasonably believes that the abortion is appropriate in all the circumstances.</p> <p>—(2)— In considering whether the abortion is appropriate in all the circumstances, a registered medical practitioner must have regard to—</p> <p>—(a)— all relevant medical circumstances; and</p> <p>—(b)— the woman's current and future physical, psychological and social circumstances.</p> <p>—(3)— A registered pharmacist may administer or supply a drug or drugs to cause an abortion in a woman who is more than 24 weeks pregnant only if the pharmacist is employed or engaged by a <a href="#">hospital</a> and only at the written direction of a registered medical practitioner.</p> <p>—(4)— A registered nurse may administer or supply a drug or drugs to cause an abortion in a woman who is more than 24 weeks pregnant only if the nurse is employed or engaged by a <a href="#">hospital</a> and only at the written direction of a registered medical practitioner.</p> <p><b>Section 8— Obligations of registered health practitioner who has conscientious objection</b></p> <p>—(1)— If a woman requests a registered health</p>					

Victorian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>practitioner to advise on a proposed abortion, or to perform, direct, authorise or supervise an abortion for that woman, and the practitioner has a conscientious objection to abortion, the practitioner must—</p> <p>—(a)— inform the woman that the practitioner has a conscientious objection to abortion; and</p> <p>—(b)— refer the woman to another registered health practitioner in the same regulated health profession who the practitioner knows does not have a conscientious objection to abortion.</p> <p>—(2)— Subsection (1) does not apply to a practitioner who is under a duty set out in subsection (3) or (4).</p> <p>—(3)— Despite any conscientious objection to abortion, a registered medical practitioner is under a duty to perform an abortion in an emergency where the abortion is necessary to preserve the life of the pregnant woman.</p> <p>—(4)— Despite any conscientious objection to abortion, a registered nurse is under a duty to assist a registered medical practitioner in performing an abortion in an emergency where the abortion is necessary to preserve the life of the pregnant woman.</p>					
<a href="#">Assisted Reproductive Treatment Act</a>	Throughout the legislation including sections 3, 4, 5, 8, 9, 10, 11, 13, 14, 15, 17, 25, 28, 29, 30, 32, 35, 39, 40, 46, 48, 49, 50, 51, 52, 55, 68, 71, 150,	Intersex status	Throughout the Act only women are recognised as being	Not Applicable Family and	5	

Victorian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
<a href="#">2008</a>	153	Gender identity	able to benefit from assisted reproductive treatment which may discriminate against individuals who do not identify as female but have female genital organs and are able to conceive, or intersex individuals who are able to conceive	relationship law		
Assisted Reproductive Treatment Regulations 2009	<p>Regulation 15(2) A registered ART provider or doctor who has carried out artificial insemination other than on behalf of a registered ART provider using donor gametes must provide to the Registrar -</p> <p>(a) — the information set out in Schedule 5; and</p> <p>(b) — for the purposes of performing administrative functions relating to the Central Register, the address and telephone number of -</p> <p>(i) — the donor; and</p> <p>(ii) — the woman on whom the treatment procedure was carried out and her partner, if any.</p>	As above	As above	Not Applicable Family and relationship la w	5	

**Comment [L&R60]:** *Norrie's case and the Interpretation of Legislation Act 1984* suggests that references to "women" should be interpreted to include every other gender where applicable (i.e. where a person may be assisted by reproductive services generally available to women regardless of the gender that the person identifies with).

**Comment [L&R61]:** As above

Victorian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	Also Schedule 1 (all) and Schedule 2 (all)					
<a href="#">Marriage Act 1958</a>	<p>Entire Act</p> <p><b>133 Principle on which questions relating to minors are to be decided</b></p> <p>Where in any proceeding before any Court (whether or not a Court within the meaning of this Part) the administration of any property belonging to or held on trust for a minor, or the application of the income thereof is in question, the Court in deciding that question shall regard the welfare of the minor as the first and paramount consideration, and shall not take into consideration whether from any other point of view the claim of the father or any right at common law possessed by the father in respect of such administration or application is superior to that of the mother, or the claim of the mother is superior to that of the father.</p> <p><b>S 134 Equal right of mother to apply to court</b></p> <p>The mother of a minor shall have the like powers to apply to the Court in respect of any matter affecting the minor as are possessed by the father.</p>	<p>Sexual orientation</p> <p>Intersex status</p>	<p>Sections 133 and 134 apply a heterosexual conception of relationship in relation to Courts deciding questions relating to the welfare of minors ('mother' and 'father'). An individual who is considered a non-biological 'parent' to a child (in a non-heterosexual relationship) or an intersex parent may be discriminated against under this provision.</p>	Not Applicable	5	
<a href="#">Police Regulation Act 1958</a>	<p>Section 3</p> <p><b>member of the force</b> shall apply to every person (whether male or female) employed in the force;</p> <p>Section 10</p>	<p>Intersex</p>	<p>Sections 3 and 10 adopt a binary conception of gender and exclude intersex as a gender.</p>	Not Applicable	5	

**Comment [L&R62]:** *Norrie's Case* and the *Interpretation of Legislation Act 1984* suggest that sections 133 and 134 apply to any parent of a child.

**Comment [L&R63]:** *Norrie's Case* and the *Interpretation of Legislation Act* suggest that all members of the force are to receive equal salaries.

Victorian Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p><b>10 Women to receive salaries etc. at same rate as men</b></p> <p>Women who are members of the force shall be entitled to receive salaries wages and allowances at the same rates as men of corresponding rank who are members of the force are entitled to receive.</p>					
<a href="#">Prohibition of Human Cloning for Reproduction Act 2008</a>	<p>Section 3</p> <p><b>sperm</b> means sperm from a man;</p> <p><b>woman</b> means a female human.</p>	<p>Intersex status</p> <p>Gender identity</p>	<p>The definition of sperm, as being sperm from a man, excludes intersex individuals who produce sperm, and individuals who produce sperm and do not identify as male.</p> <p>The definition of woman as a female human could be used to discriminate against an individual with female genitalia who does not identify as female but has not under gone a sex change procedure.</p>	Not Applicable	5	

**Comment [L&R64]:** *Norrie's Case* and the *Interpretation of Legislation Act* suggest that the definition of sperm will extend to anyone who is able to produce sperm.

**Comment [L&R65]:** *Norrie's Case* and the *Interpretation of Legislation Act* suggest that the definition of woman would extend to any person who identifies as a female.





## 9. WESTERN AUSTRALIA

WA Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
<a href="#">Constitution Acts Amendment Act 1899</a>	<b>3 Terms used</b> Person means an individual of either sex.	Gender identity, intersex status	Term implies binary construction of gender, excludes people of both or neither sex.		1	
Betting Control Act 1954 - No 63 of 1954	<b>28A Search warrant</b> (4) No female person shall be searched under authority of a warrant given pursuant to this section, except by a female member of the Police Force and in the presence of female persons only.	Gender identity Intersex status	It is unclear how this provision will apply to individuals who may identify as neither or both male or female, or whose identity documents do not reflect their gender identity.  An intersex person may be legally recognised as one sex but feel more comfortable being searched by an officer of a different sex.  Best practice would be for such individuals to choose the sex of the relevant officer	Bodily searches	1	
<a href="#">Children and Community Services Act 2004</a>	<b>115 Child may be searched</b> (1) An authorised person may search a child, and any thing found on or with the child, for any thing or substance that can be seized under section 116.  (2) The search of a child must be done -	Gender identity, intersex status	It is unclear how this provision will apply to individuals who may identify as neither or both male or female, or whose identity documents do not reflect their gender identity.	Bodily searches	1	

WA Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>(a) <u>by an authorised person, or a person designated under subsection (3), who is of the same sex as the child</u>; and</p> <p>(b) in the presence of at least one other adult.</p> <p>(3) If it is reasonably necessary in order to do the search, an authorised person may designate another person to do the search or to assist in doing the search.</p> <p>(4) A person designated under subsection (3) -</p> <p>(a) may do the search or assist in doing the search; and</p> <p>(b) must obey any lawful and reasonable direction of the authorised person.</p> <p>(5) Nothing in this section authorises a search that involves -</p> <p>(a) the removal of some or all of a child's clothing; or</p> <p>(b) an examination of the body cavities of a child</p>		<p>An intersex person may be legally recognised as one sex but feel more comfortable being searched by an officer of a different sex.</p> <p>Best practice would be for such individuals to choose the sex of the relevant officer</p>			
<a href="#">Children and Community Services Act 2004</a>	<p><b><u>192 Children not to be employed to perform in indecent manner etc.</u></b></p> <p>...</p> <p>(3) For the purposes of this section but without limiting its application -</p>	Gender identity, intersex status	No allowance made for children who may have breasts but not identify as female or be legally recognised as female.	Bodily searches	1	

WA Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>(a) a child is employed to perform in an indecent, obscene or pornographic manner if, in the course of the child's employment, the child -</p> <p>(i) is engaged in an activity of a sexual nature; or</p> <p>(ii) is in the presence of another person who is engaged in an activity of a sexual nature; or</p> <p>(iii) is required to pose or move in a manner calculated to give prominence to sexual organs, the anus or, <u>in the case of a female, her breasts;</u></p>					
<a href="#">Criminal Property Confiscation Act 2000 - No 68 of 2000</a>	<p><b><u>75 Search of person under s. 73 or 74, who may perform</u></b></p> <p>(1) When a police officer exercises his or her power to search a person under section 73 or under a warrant under section 74, the officer must ensure that the person is searched by a <u>person of the same sex or a medical practitioner.</u></p>	<p>Gender identity, intersex status</p>	<p>It is unclear how this provision will apply to individuals who may identify as neither or both male or female, or whose identity documents do not reflect their gender identity.</p> <p>An intersex person may be legally recognised as one sex but feel more comfortable being searched by an officer of a different sex.</p>	<p>Bodily searches</p>	<p>1</p>	

WA Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			Best practice would be for such individuals to choose the sex of the relevant officer.			
<a href="#">Diamond (Argyle Diamond Mines Joint Venture) Agreement Act 1981</a>	<p><b>21 <u>Detaining and searching people in designated areas</u></b></p> <p>(5) Subject to subsection (6) a search under subsection (4) shall be <u>carried out by a police officer of the same sex as the person to be searched.</u></p> <p>(6) Where it is not immediately practicable for subsection (5) to be complied with in relation to a search under subsection (4) a police officer may, subject to subsection (7), cause the search to be carried out, under the direction of a police officer, by a security officer of the same sex as the person who is to be searched or may -</p> <p>(a) detain the person until; or</p> <p>(b) convey or conduct the person to a place where,</p> <p>it is practicable for subsection (5) to be complied with.</p> <p>(8) Subject to subsection (9) an examination arranged under subsection (7) shall be <u>carried out in the presence of a police officer of the same sex as the person to be examined.</u></p> <p>(9) Where it is not immediately practicable</p>	Gender identity, intersex status	<p>It is unclear how this provision will apply to individuals who may identify as neither or both male or female, or whose identity documents do not reflect their gender identity.</p> <p>An intersex person may be legally recognised as one sex but feel more comfortable being searched by an officer of a different sex.</p> <p>Best practice would be for such individuals to choose the sex of the relevant officer.</p>	Bodily searches	1	

WA Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>for subsection (8) to be complied with in relation to an examination arranged under subsection (7) a police officer may cause the examination to be carried out in the presence of a security officer of the same sex as the person to be examined or may —</p> <p>(a) detain the person until; or</p> <p>(b) convey or conduct the person to a place where,</p> <p>it is practicable for subsection (8) to be complied with.</p>					
Health Act 1911	<p><b><u>307 Compulsory examination and treatment</u></b></p> <p>Provided that where the person to be examined is a female, and the examination is to be by 2 medical practitioners, one of such practitioners shall, <u>if so desired by the person to be examined, be a female medical practitioner, if able and willing to act, and within 32 km of the place where the examination is to be made.</u></p>	Gender identity, intersex status	It may be more appropriate for an intersex, transgender or gender diverse people who is not legally recognised as female to nevertheless be examined by a female. For example, a transgender woman whose legal documentation does not match her gender identity.	Bodily searches	1	
<p><i>Gender Reassignment Act 201 (WA)</i></p> <p><i>Gender Reassignment Regulations 2001 (WA)</i></p>	<p><b>s 15(3):</b> A recognition certificate <u>cannot be issued to a person who is married.</u></p> <p><b>s 14(1)</b> Where a person has <u>undergone a reassignment procedure</u> (before or after the commencement of this Act and within the State or elsewhere), application may be made to the Board in accordance with this</p>	Gender identity Intersex status Sexual orientation	<p>This prevents individuals who are married and have undergone sex affirmation surgery from changing their gender and remaining married.</p> <p>It also prevents individuals who have not undergone</p>	Family & relationships law Identity documents	2 & 4	<p>Section 40(5) - not unlawful to refuse to change official record of a person's sex if the person is married.</p> <p>Section 43A – not</p>

WA Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>section for the issue of a recognition certificate.</p> <p><b>s 4:</b> <i>Reassignment procedure</i> means a medical or surgical procedure (or a combination of such procedures) to alter the genitals and other gender characteristics of a person, identified by a birth certificate as male or female, so that the person will be identified as a person of the opposite sex and includes, in relation to a child, any such procedure (or combination of procedures) to correct or eliminate ambiguities in the child's gender characteristics.</p> <p><b>s 15(1):</b> Board must be satisfied that the person:</p> <ul style="list-style-type: none"> <li>a) believes that his or her true gender is the gender to which the person has been reassigned; and</li> <li>b) has adopted the lifestyle and has the gender characteristics of a person of the gender to which the person has been reassigned; and</li> </ul> <p>has received proper counselling in relation to his or her gender identity.</p>		<p>sex affirmation surgery but who identify as another gender to change their gender on the Register, which is discriminatory on the basis of gender identity and intersex status.</p> <p>Note the High Court decision of <i>AB v AH</i> concerned the interpretation of these provisions and has meant that chest surgery is sufficient for transgender men.</p> <p>If the statute is to be interpreted so as to not allow the registration of sex non-specific individuals (i.e. if it can be distinguished from Norrie's case) then it also discriminates against individuals who would prefer that designation.</p>			discriminatory to make or keep records to be kept in a way that doesn't allow for the designation of sex other than male or female.
Misuse of Drugs Act 1981	<p><a href="#">23 Powers of police officers when things suspected of being used in commission of offences</a></p> <p>(2) A person shall not be searched under subsection (1) except by -</p> <ul style="list-style-type: none"> <li>(a) a <u>person of the same sex</u> as the firstmentioned person; or</li> </ul>	Gender identity, intersex status	<p>It is unclear how this provision will apply to individuals who may identify as neither or both male or female, or whose identity documents do not reflect their gender identity.</p> <p>An intersex person may be</p>	Bodily searches	1	

WA Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>(b) a medical practitioner.</p> <p><b><u>24 Granting of search warrants in connection with prevention or detection of offences</u></b></p> <p>(2) A person shall not be searched under a search warrant except by -</p> <p>(a) a <u>person of the same sex</u> as the firstmentioned person; or</p> <p>(b) a medical practitioner.</p>		<p>legally recognised as one sex but feel more comfortable being searched by an officer of a different sex.</p> <p>Best practice would be for such individuals to choose the sex of the relevant officer.</p>			
Poisons Act 1964	<p><b><u>55 Powers in respect of premises, vehicles or vessels if offence suspected of being committed</u></b></p> <p>(4) A person must not be searched under this section except by a person of the same sex as the first-mentioned person.</p>	Gender identity, intersex status	<p>It is unclear how this provision will apply to individuals who may identify as neither or both male or female, or whose identity documents do not reflect their gender identity.</p> <p>An intersex person may be legally recognised as one sex but feel more comfortable being searched by an officer of a different sex.</p> <p>Best practice would be for such individuals to choose the sex of the relevant officer.</p>	Bodily searches	1	
Prisons Act 1981	<p><b><u>49 Power to search and question persons entering prison</u></b></p> <p>(4) A search under this section of a female</p>	Gender identity, intersex	It is unclear how this provision will apply to individuals who may identify	Bodily searches	1	

WA Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>person or a child apparently under the age of 10 years shall be conducted expeditiously and -</p> <p>(a) by a female prison officer or some other female person authorised for the purpose by the superintendent; and</p> <p>(b) in the presence only of female persons and, in the case of the search of such a child, in the presence of the person accompanying the child unless that person refuses to be present.</p>	status	<p>as neither or both male or female, or whose identity documents do not reflect their gender identity.</p> <p>An intersex person may be legally recognised as one sex but feel more comfortable being searched by an officer of a different sex.</p> <p>Best practice would be for such individuals to choose the sex of the relevant officer.</p>			
Prostitution Act 2000	<p><b><u>29 Provisions about searching person</u></b></p> <p>(1) A police officer cannot carry out a search of a person under this Part unless of the same sex as the person searched.</p>	Gender identity, intersex status	<p>It is unclear how this provision will apply to individuals who may identify as neither or both male or female, or whose identity documents do not reflect their gender identity.</p> <p>An intersex person may be legally recognised as one sex but feel more comfortable being searched by an officer of a different sex.</p> <p>Best practice would be for such individuals to choose the sex of the relevant officer.</p>	Bodily searches	1	



WA Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
Protective Custody Act 2000	<p><b><u>8. Apprehended person may be searched</u></b></p> <p>(2) The search of an apprehended person must be done by a person of the same sex as the apprehended person.</p>	Gender identity, intersex status	<p>It is unclear how this provision will apply to individuals who may identify as neither or both male or female, or whose identity documents do not reflect their gender identity.</p> <p>An intersex person may be legally recognised as one sex but feel more comfortable being searched by an officer of a different sex.</p> <p>Best practice would be for such individuals to choose the sex of the relevant officer.</p>	Bodily searches	1	
Public Transport Authority Act 2003	<p><b><u>62. Provisions about searching a person</u></b></p> <p>(1) A security officer or member of the Police Force cannot carry out a search of a person under this Act unless of the same sex as the person searched.</p>	Gender identity, intersex status	<p>It is unclear how this provision will apply to individuals who may identify as neither or both male or female, or whose identity documents do not reflect their gender identity.</p> <p>An intersex person may be legally recognised as one sex but feel more comfortable being searched by an officer of a different sex.</p> <p>Best practice would be for</p>	Bodily searches	1	

WA Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
			such individuals to choose the sex of the relevant officer.			
<a href="#">Court Security and Custodial Services Act 1999</a>	<b>30 Separation of certain kinds of persons in custody and intoxicated detainees</b>  (1) Where practicable, a person in custody is not to be confined with a person of the <u>opposite sex</u> in a lock-up, a court custody centre or a vehicle used for moving persons for whom the CEO is responsible under section 16.	Gender identity, intersex status	Term implies binary construction of gender, excludes people of both or neither sex.	Criminal	1	
<a href="#">Criminal Code Act Compilation Act 1913</a>	Use of 'male' and 'female', 'man' and 'woman', 'boy' and 'girl' throughout	Gender identity, intersex status	Generally - references to 'male' and 'female', 'man' and 'woman', 'boy' and 'girl' which imply a binary construction of gender.	Criminal	1	
<a href="#">Criminal Code Act Compilation Act 1913</a>	<b>6 Terms used: carnal knowledge, carnal connection</b>  When the term carnal knowledge or the term carnal connection is used in defining an offence, it is implied that the offence, so far as regards that element of it, is complete upon penetration.  Penetration includes penetration of the anus of a <u>female or male person</u> .	Gender identity, intersex status	Term implies binary construction of gender, excludes people of both or neither sex.	Criminal	1	
<a href="#">Criminal Code Act Compilation Act 1913</a>	<b>192 Procuring person to have unlawful carnal knowledge by threat, fraud or administering drug</b>  (1) Any person who -	Gender	Term implies binary construction of gender, excludes people of both or neither sex.	Criminal	1	

WA Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>(a) By threats or intimidation of any kind procures a woman or girl to have unlawful carnal connection with a man, either in Western Australia or elsewhere; or</p> <p>(b) By any false pretence procures a woman or girl, who is not a common prostitute or of known immoral character, to have unlawful carnal connection with a man, either in Western Australia or elsewhere; or</p> <p>(c) Administers to a woman or girl, or causes a woman or girl to take, any drug or other thing with intent to stupefy or overpower her in order to enable any man, whether a particular man or not, to have unlawful carnal knowledge of her; or</p> <p>(d) Does any of the foregoing acts with respect to a man or boy;</p> <p>is guilty of a crime, and is liable to imprisonment for 2 years.</p> <p>(2) It is no defence to a charge of an offence against this section that the act of the accused person by which the offence was committed was done with the consent of the person with respect to whom the act was done.</p>					
Health Act 1911	<a href="#">310 Penalty for conveying infection of</a>	Sex (gender)	Discriminates against	Criminal	1	

WA Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p><b><u>venereal disease</u></b></p> <p>(1) A person who knowingly infects any other person with a venereal disease or knowingly does or suffers any act likely to lead to the infection of any other person with a venereal disease commits an offence.</p> <p>(2) Where a woman who is a prostitute, and while residing in a brothel or in premises reputed to be a brothel has received notice under section 307(1), and after the receipt of such notice continues to reside in a brothel or in premises reputed to be a brothel, such woman shall by reason of such continued residence be deemed knowingly to be doing an act likely to lead to the infection of any other person with venereal disease within the meaning and for the purposes of this section.</p>	identity, intersex status)	<p>women because creates a presumption in the case of women sex workers and does not provide for the same presumption for male sex workers.</p> <p>(gender-diverse sex workers excluded from terminology)</p>			
<a href="#">Adoption Act 1994</a>	<p><b><u>4 Terms used</u></b></p> <p><i>mother</i> means, in relation to a child or adoptee, the woman who gave birth to the child or adoptee;</p>	Gender identity, intersex status	A person may have given birth to a child but not identify or be classified as a woman (e.g. having undergone gender re-assignment procedures) - they may be excluded from this definition.	Family and relationship law	1	
<a href="#">Adoption Act 1994</a>	<p><b><u>21 Man who may be prospective adoptee's father to be notified of consent etc.</u></b></p> <p>(1) The CEO, or in the case of a proposed</p>	Gender identity, intersex status	Section not discriminatory against same-sex (lesbian) couples because of cl. (2c).	Family and relationship law	1	

**Comment [L&R66]:** However, *Norrie's* case and the *Interpretation Act 1984* (WA) suggests that this should be interpreted to include any sex or gender diverse person who have birth to a child. May depend on the meaning of "each other gender" and whether this is a binary expression. Has not been interpreted previously. These comments apply to a number of the rows below.

WA Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>adoption by a step-parent of the child, the prospective adoptive parent, is to notify, in accordance with subsections (2), (2a) and (2b) -</p> <p>(a) any man who might be presumed to be the child's father because of a presumption set out in section 188 or 189 of the <i>Family Court Act 1997</i>; and</p> <p>(b) if applicable, any man (not being a man who could be presumed to be the child's father because of a presumption set out in Part 5 Division 11 Subdivision 3 of the <i>Family Court Act 1997</i>) who, to the knowledge of the CEO or that prospective adoptive parent, is a person who has been named as or has claimed to be the child's father.</p> <p>(2c) A person who has been named as or has claimed to be a child's parent under section 6A of the <i>Artificial Conception Act 1985</i> is to be notified by the relevant person in accordance with subsection (1) and for that purpose, subsections (2), (2a) and (2b) apply to and in respect of that notification as if a reference in those subsections to "<i>man</i>" was a reference to "<i>person</i>".</p>		<p>However potentially discriminatory against a person who fathered a child but does not identify as a man or is not classified as a man (e.g. having undergone gender re-assignment procedures).</p>			
<a href="#">Adoption Act 1994</a>	<a href="#">26C Determination of parentage, application for</a>	Gender identity,	Section not discriminatory against same-sex (lesbian)	Family and relationship law	1	

**Comment [L&R67]:** However, *Norrie's case* and the *Interpretation Act 1984 (WA)* suggests that this should be interpreted to include any sex or gender diverse person who have birth to a child. May depend on the meaning of "each other gender" and whether this is a binary expression. Has not been interpreted previously.

WA Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	(1) Before an application for an adoption order in relation to a child is filed, an application may be made to the Court -  (a) <u>by any man who might be presumed to be the child's father because of a presumption set out in Part 5 Division 11 Subdivision 3 of the Family Court Act 1997; or</u>  (aa) by any person who might be a parent of the child under the Artificial Conception Act 1985; or	intersex status	couples because of cl. (aa).  Potentially discriminatory against a person who fathered a child but does not identify as a man or is not classified as a man (e.g. having undergone gender re-assignment procedures)			
<a href="#">Artificial Conception Act 1985</a>	Use of 'male' and 'female', 'man' and 'woman' throughout	Gender identity, intersex status	Generally - references to 'male' and 'female' which imply a binary construction of gender: 'a woman undergoes artificial fertilisation' or 'the ovum used for the purposes of the procedure was taken from some other woman' and 'a man (not being the woman's husband) produced sperm used for the purposes of the procedure'.	Family and relationship law	1	
Human Reproductive Technology Act 1991	Use of 'female', 'woman' throughout	Gender identity, intersex status	Generally - references to 'female' and 'woman' which imply a binary construction of gender.	Family and relationship law	1	
<a href="#">Administration</a>	<a href="#">15 De facto partners and distribution on</a>	Marital	Under this provision,	Financial	1	

**Comment [L&R68]:** However, *Norrie's case* and the *Interpretation Act 1984 (WA)* suggests that this should be interpreted to include any sex or gender diverse person who have birth to a child. May depend on the meaning of "each other gender" and whether this is a binary expression. Has not been interpreted previously.

**Comment [L&R69]:** However, *Norrie's case* and the *Interpretation Act 1984 (WA)* suggests that this should be interpreted to include any sex or gender diverse person who have birth to a child. May depend on the meaning of "each other gender" and whether this is a binary expression. Has not been interpreted previously.

WA Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
<a href="#">Act 1903</a>	<p><u>intestacy</u></p> <p>(1) If the intestate dies leaving a de facto partner but no husband or wife, then where the de facto partner and the intestate lived as de facto partners for a period of at least 2 years immediately before the death of the intestate, the de facto partner shall be entitled, in accordance with section 14, to the intestate property to which a husband or wife of the intestate would have been entitled, had the intestate died leaving a husband or wife.</p> <p>(2) <u>If the intestate dies leaving a husband or wife and a de facto partner, then where</u>  =</p> <p>(a) <u>the de facto partner and the intestate lived as de facto partners for a period of at least 2 years immediately before the death of the intestate; and</u></p> <p>(b) <u>the intestate did not, during the whole or any part of that period, live as the husband or wife of the person to whom he or she was married,</u></p> <p><u>the de facto partner shall be entitled, to one-half of the intestate property to which the husband or wife would have been entitled in accordance with section 14 but for this subsection and the husband or wife shall be entitled to the</u></p>	status (sexual orientation)	<p>someone who is married to (but separated from) a deceased who had a de-facto partner of two years is still entitled to 50% of deceased estate.</p> <p>This indirectly discriminates against homosexual couples as they are unable to get married and thus must live as a de facto for two years before being entitled to 50% of a deceased estate.</p>			

WA Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p><u>other half of that property.</u></p> <p>(3) If the intestate dies leaving a husband or wife and a de facto partner, then where -</p> <p>(a) the de facto partner and the intestate lived as de facto partners for a period of at least 5 years immediately before the death of the intestate; and</p> <p>(b) the intestate did not, during the whole or any part of that period, live as the husband or wife of the person to whom he or she was married,</p> <p>the de facto partner shall be entitled, in accordance with section 14, to the intestate property to which the husband or wife would have been entitled but for this subsection.</p> <p>(4) Where under this section a de facto partner is entitled to intestate property and the intestate dies leaving more than one de facto partner so entitled, those de facto partners are entitled to that property in equal shares.</p> <p>(5) Where under this section a de facto partner is entitled to intestate property, then for the purposes of section 14 and the Fourth Schedule, the de facto partner is to be taken to be a husband or wife, as is applicable, and all references to a husband or wife in those provisions are</p>					



WA Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>to be construed accordingly.</p> <p>(6) In this section - the intestate and the intestate property have the same respective meanings as they have in section 14.</p> <p>(7) The amendments made to this Act by the Family Court Amendment Act 2002 do not apply to or in respect of the estate of a person who died intestate as to all or any of the person's property before the commencement of that Act, and the estate of such a person is to be distributed as if that Act had not been passed.</p>					
Prisons Act 1981	<p><b><u>44 Separation of male and female prisoners</u></b></p> <p>In a prison containing prisoners of each sex, separate cells and sleeping quarters in different parts of the prison shall be allocated to male and female prisoners.</p>	Gender identity, intersex status	There is no provision for the sleeping and accommodation arrangements for individuals who do not identify as either male or female.	Criminal	2	
<u>Duties Act 2008 - No 11 of 2008</u>	<p><b><u>97 Some transactions between spouses or de facto partners</u></b></p> <p>Duty is not chargeable on a transfer of, or an agreement for the transfer of, dutiable property where -</p> <p>(a) the person from whom, and the person to whom, the dutiable property is transferred, or agreed to be transferred, are married to each other or are <u>de facto</u></p>	Marital status (sexual orientation)	Threshold of 2 years applies to de-facto couples but not married couples. Indirectly discriminates against homosexual couples because they cannot marry.	Financial	2	

WA Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p><u>partners of 2 years</u>; and</p> <p>(b) the dutiable property is a lot on which a residence is erected which, when liability for duty on the transaction arises, was used solely or dominantly as the ordinary place of residence of the persons referred to in paragraph (a); and</p> <p>(c) the lot on which the residence is erected is used solely or dominantly for residential purposes associated with that residence; and</p> <p>(d) the person from whom the dutiable property is transferred, or agreed to be transferred, is the sole owner of the property; and</p> <p>(e) the result of the transaction is or will be that the dutiable property is owned solely by the persons referred to in paragraph (a) as joint tenants or tenants in common in equal shares.</p>					
Judges' Salaries and Pensions Act 1950	<p><b><u>7 Derivative pensions</u></b></p> <p>(3) A pension is not payable under this Act to a de facto partner of a judge or former judge who died before the commencement of this subsection.</p>	Marital status (sexual orientation)	Translational provision - discriminates against homosexual couples because they are not able to be married.	Financial	2	
Family Court Act 1997	<p><b><u>37 Principles to be applied, and matters to be considered, by the Court in its non-federal jurisdiction - FLA s.</u></b></p> <p>(1) The Court must, in the exercise of its</p>	Marital status (sexual orientation)	Clear discrimination against same-sex relationships.	Family and relationship law	4	Direct compliance with Marriage Act

WA Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>non-federal jurisdiction under this Act, have regard, as is applicable to each case, to -</p> <p>(a) <u>the need to preserve and protect the institution of marriage as the union of a man and a woman to the exclusion of all others voluntarily entered into for life;</u> and</p>					
Surrogacy Act 2008	<p><a href="#">19 Circumstances for seeking parentage order</a></p> <p><b>eligible couple</b> means 2 people of opposite sexes who are married to, or in a de facto relationship with, each other and who, as a couple -</p> <p>(a) are unable to conceive a child due to medical reasons not excluded by subsection (3); or</p> <p>(b) although able to conceive a child, would be likely to conceive a child affected by a genetic abnormality or a disease;</p> <p><b>eligible person</b> means a woman who -</p> <p>(a) is unable to conceive a child due to medical reasons not excluded by subsection (3); or</p> <p>(b) although able to conceive a child, would be likely to conceive a child affected by a genetic abnormality or a disease; or</p>	Marital status (sexual orientation)	<p>Section has the effect of discriminating against homosexual women (who are unable to conceive a child as a couple due to the sexual orientation but not <i>physically</i> unable to conceive a child as individuals).</p> <p>Nevertheless, homosexual women can conceive a child under the Artificial Conception Act 1985 so arguably they are not discriminated against.</p> <p>However gay men (as a couple or single) may not access altruistic surrogacy in WA.</p>	Family and relationship law	4	

WA Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>(c) although able to conceive a child, is unable for medical reasons to give birth to a child.</p> <p>(3) The medical reasons for being unable to conceive a child that are referred to in the definitions of eligible couple and eligible person do not include -</p> <p>(a) a reason arising from a person's age; or</p> <p>(b) a reason prescribed for the purpose of the Human Reproductive Technology Act 1991 section 23(1)(d).</p>					
<a href="#">Criminal Code Act Compilation Act 1913</a>	<p><b>Chapter XXXI - Sexual offences</b></p> <p><b>321 Child of or over 13 and under 16, sexual offences against</b></p> <p><b>321A Child under 16, persistent sexual conduct with</b></p> <p><b>322 Child of or over 16, sexual offences against by person in authority etc.</b></p> <p><b>329 Relatives and the like, sexual offences by</b></p> <p><b>330 Incapable person, sexual offences against</b></p>	Marital status (sexual orientation)	Defences available if lawfully married to the child/incapable person - such a defence would not be available to same-sex couples.	Criminal	5	
Stamp Act 1921	<p><b><u>75C Power to exempt for certain conveyances between spouses</u></b></p> <p>(1) Upon application made in the manner provided in subsection (3), the</p>	Marital status (sexual orientation)	Threshold of 2 years applies to de-facto couples but not married couples. This indirectly discriminates	Financial	5	

WA Legislation	Key provisions	Attributes affected	Comments	Category of discrimination	Ass	Other exemptions
	<p>Commissioner may exempt from duty any instrument chargeable with duty under item 4(1) or 19 of the Second Schedule where -</p> <p>(a) the person from whom, and the person to whom, the property is conveyed or transferred, or agreed to be conveyed or transferred, are <u>married to each other or are de facto partners of 2 years</u>;</p>		against homosexual couples who cannot marry.			