



## **Gay & Lesbian Health Alliance of SA Submission**

### **Statutes Amendment (Gender Identity and Equity) Bill 2015**

We would like to thank the South Australian Government for bringing this Bill forward in such a timely manner and its commitment to addressing discrimination against the LGBTIQ communities in South Australia, as demonstrated by its engagement of SALRI and public declarations by the Premier.

The Bill, by introducing all the Group One recommendations from SALRI's Audit Paper (September 2015) is a valuable first step in this project.

The provisions of the Bill that facilitate non-discriminatory board appointments, adopt inclusive language, amend the *Equal Opportunity Act 1984*, and provide for more humane search provisions in the criminal and corrections context are particularly valued.

We note however that the Bill only partially implements:

- Group Two, Recommendation 2.3, as the Bill appears to retain in a number of places 'sexuality' instead of 'sexual orientation' in the *Equal Opportunity Act 1984*, and does not introduce the term 'intersex status' to be consistent with the *Sex Discrimination Act 1984* (Cth).
- Group Three, Recommendation 3.1, as the Bill does not action the recommendation with regard to the amendment of the *Trustee Act 1936*, *Wills Act 1936*, or *Guardianship of Infants Act 1940*.

These matters are important to the LGBTIQ community.

With regard to SALRI Recommendation 2.3, the Audit Report lays out the case (at 299-301) based on comments by the Equal Opportunity Commission that protections against inter-sex discrimination are inadequate in South Australian legislation. Further, definitions and terms such as "sexual orientation" that are compatible with the *Sex Discrimination Act 1984* (Cth) are supported.

The discriminatory terms addressed by SALRI Recommendation 3.1 should be excised from South Australian legislation and replaced with more inclusive language. It is

disappointing that the full scope of Recommendation 3.1 across the range of identified laws has not been implemented by the Bill at this time.

We submit that the draft Bill be amended to be inclusive of these matters.

We note one other concern in the drafting of the Bill.

The draft at section 9 of the Bill is flawed as the proposed section 82A(6) of the *Criminal Law Consolidation Act 1935*, is incompatible with the recommendations of the SALRI Audit Paper (Recommendation 1.4). The new section 82A(6) actually introduces a new discriminatory provision or retains it.

Proposed section 82A(6) at section 9 of the Bill, refers to a '*pregnant woman*' when the preferred SALRI non-discriminatory usage is '*pregnant person*'.

The transgender community contains a number of male identified people who might be capable of becoming pregnant. Male identified individuals may have succeeded in having their gender amended on their birth certificate.

Proposed section 82A(6) of the *Criminal Law Consolidation Act 1935* appears to offer relevant protection for any person who might become pregnant.

We urge amendment of the Bill to replace "pregnant woman" with "pregnant person" so as to be compatible with the intention of SALRI Recommendation 1.4. This would not lessen the effect of the section with regard to women whose gender aligns with their birth registration.

Section 9 of the Bill.

*Criminal Law Consolidation Act 1935 - 82A Medical termination of pregnancy*

*6) Nothing in subsection (5) affects any duty to participate in treatment which is necessary to save the life, or to prevent grave injury to the physical or mental health, of a pregnant woman.*

While we have addressed several matters of concern, we would like to reiterate that the value of the Bill is appreciated and the commitment demonstrated to implement all seven of SALRI's Group One Recommendations is valued.

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