

## THE SPECTACLE OF RESPECTABLE EQUALITY: QUEER DISCRIMINATION IN AUSTRALIAN LAW POST MARRIAGE EQUALITY

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*This article explores Australian legislation and policy since marriage equality to emphasise the pattern of prejudice that persists against the queer community through the theory of spectacles of 'respectable equality'. Spectacles of respectable equality describe theatrical legislation or policy that is qualified by heterosexual privilege and produces a faux imitation of equality. In demonstrating that this pattern amounts to discrimination against the queer community, this article explores direct and indirect forms of discrimination. Direct discrimination is scrutinised through an assessment of blood donation policy and birth certificate legislation. Indirect discrimination is considered through an analysis of gender-neutral legislative drafting policies in the Victorian and Commonwealth jurisdictions, and Australian interpretative legislation. Ultimately, this article identifies examples of spectacles of respectable equality to demonstrate how discrimination against the queer community is not a disparate issue, but a connected pattern that must be broken.*

### I INTRODUCTION

On 9 December 2017, 61.6% of Australians who participated in the postal survey rejoiced, as some queer<sup>1</sup> couples were officially able to lodge notice that they intended to marry.<sup>2</sup> Since then, over 17,000 same-sex couples have

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1 I use the term 'queer' to refer to members of the LGBTQIA+ community. Similarly to Lisa Duggan, I perceive the queer community to be 'unified only by a shared dissent from the dominant organization of sex and gender': Lisa Duggan, 'Making It Perfectly Queer' (1992) 22(1) *Socialist Review* 11, 20. Additionally, despite criticisms that queer theory and the use of 'queer' positions anti-normative queers in binary opposition to heteronormative society, this article relies on this dichotomy to further highlight how the normalisation of cis-heterosexuality is reinforced in Australian law and policy: see, eg, Jonathan Alexander, 'Beyond Identity: Queer Values and Community' (1999) 4(4) *Journal of Sexuality and Gender Studies* 293, 300–1; Cathy J Cohen, 'Punks, Bulldaggers, and Welfare Queens: The Radical Potential of Queer Politics?' (1997) 3(4) *GLQ* 437, 437–8 <<https://doi.org/10.1215/10642684-3-4-437>>.

2 *Marriage Amendment (Definition and Religious Freedoms) Act 2017* (Cth) ('MA(DRF) Act'); Australian Bureau of Statistics, *Australian Marriage Law Postal Survey* (Catalogue No 1800.0, 15 November 2017) <<https://www.abs.gov.au/ausstats/abs@.nsf/mf/1800.0>>.

wed<sup>3</sup> – a number that almost makes the queerphobic vitriol of the ‘No campaign’ worth the suffering.<sup>4</sup> Despite queers experiencing additional and significant psychological stress throughout the debate,<sup>5</sup> all trauma was allayed by ‘Yes campaign’ advertisements that featured respectable queers and white heterosexuals, espousing traditional and homonational values in favour of so-called ‘same love’.<sup>6</sup> Nevertheless, marriage equality was characterised by most of heteronormative society as an important right that must be afforded to queer people.<sup>7</sup> This ‘final frontier’ rhetoric was vehemently espoused in the public realm, but debate rarely centred upon the subsequent access to rights that a marital relationship would afford.<sup>8</sup> Instead, much of society, including members of the queer community, were fixated upon the symbolism that came with legal recognition and the associated public acceptance of same-sex marriage.<sup>9</sup> With this in mind, it is only reasonable to question what this kind of ‘equality’ was really about.

Marriage equality was positioned as the ultimate victory by mainstream gay rights advocates, after a slate of legal and policy reform in Australia granted other privileges.<sup>10</sup> These reforms included notable changes, such as the ban on gays, lesbians, and bisexuals serving in the military being lifted in 1992,<sup>11</sup> with trans

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- 3 Australian Bureau of Statistics, *Marriages and Divorces, Australia* (Catalogue No 3310.0, 10 November 2021) <<https://www.abs.gov.au/statistics/people/people-and-communities/marriages-and-divorces-australia/2021>>.
  - 4 Emily Gray, Eva Reimers and Jenny Bengtsson, ‘The Boy in a Dress: A Spectre for Our Times’ (2021) 24(1–2) *Sexualities* 176 <<https://doi.org/10.1177/136346072090463>>; Archie Thomas, Hannah McCann and Geraldine Fela, ‘“In This House We Believe in Fairness and Kindness”: Post-liberation Politics in Australia’s Same-Sex Marriage Postal Survey’ (2020) 23(4) *Sexualities* 475, 480–9 <<https://doi.org/10.1177/1363460719830347>>.
  - 5 Saan Ecker et al., ‘Impact of the Australian Marriage Equality Postal Survey and Debate on Psychological Distress among Lesbian, Gay, Bisexual, Transgender, Intersex and Queer/Questioning People and Allies’ (2019) 71(3) *Australian Journal of Psychology* 285, 290, 293–4 <<https://doi.org/10.1111/ajpy.12245>>.
  - 6 Thomas, McCann and Fela (n 4) 484–9. For a further explanation of ‘respectable queers’, see Yuvraj Joshi, ‘Respectable Queerness’ (2012) 43(2) *Columbia Human Rights Law Review* 415. See Jasbir K Puar who defines homonationalism as a hegemonic homosexuality that encompasses the maintenance of heteronormative norms which combine homonormative and white-nationalistic narratives: Jasbir K Puar, ‘Introduction: Homonationalism and Biopolitics’ in Inderpal Grewal, Caren Kaplan and Robyn Wiegman (eds), *Terrorist Assemblages* (Duke University Press, 2021) 1, 1–3 <<https://doi.org/10.1515/9780822390442-002>>.
  - 7 Thomas, McCann and Fela (n 4).
  - 8 Michael Warner, *The Trouble with Normal: Sex, Politics, and the Ethics of Queer Life* (Free Press, 1999) 99, 143; Steven P Philpot et al., ‘Gay and Bisexual Men’s Interest in Marriage: An Australian Perspective’ (2016) 18(12) *Culture, Health and Sexuality* 1347, 1348–9 <<https://doi.org/10.1080/13691058.2016.1184314>>; Thomas, McCann and Fela (n 4) 478–9.
  - 9 See generally Alex Greenwich and Shirleene Robinson, *Yes, Yes, Yes: Australia’s Journey to Marriage Equality* (NewSouth Publishing, 2018); Rodney Croome, *From This Day Forward: Marriage Equality in Australia* (Walleah Press, 2015); Philpot et al (n 8) 1348–9; Thomas, McCann and Fela (n 4) 478–9.
  - 10 Philpot et al (n 8) 1348–9. See Normann Witzleb within the context of relationship recognition of same-sex couples generally: Normann Witzleb, ‘Marriage as the “Last Frontier”? Same-Sex Relationship Recognition in Australia’ (2011) 25(2) *International Journal of Law, Policy and the Family* 135, 135–6 <<https://doi.org/10.1093/lawfam/ebf007>>.
  - 11 Noah Riseman, ‘Outmanoeuvring Defence: The Australian Debates over Gay and Lesbian Military Service, 1992’ (2015) 61(4) *Australian Journal of Politics and History* 562, 572–3 <<https://doi.org/10.1111/ajph.12119>>.

service permitted in 2010.<sup>12</sup> Also, male acts of homosexuality were completely decriminalised in 1997.<sup>13</sup> Then, in 2003, the Department of Foreign Affairs and Trade permitted the use of ‘X’ to signify unspecified sex or intersex on Australian passports,<sup>14</sup> with trans individuals able to update their passports without gender affirmation surgery in 2011.<sup>15</sup> A variety of reforms to federal and state legislation also occurred between 2008 and 2009, with the primary purpose being to recognise same-sex couples under the law, including by extending social security and other entitlements to these relationships.<sup>16</sup> Then, in 2013, the Family Court recognised that children experiencing gender dysphoria no longer required Court approval to access medication that blocked puberty in certain circumstances,<sup>17</sup> a liberty that was extended in 2017 to cross-sex hormone treatment,<sup>18</sup> and in 2018 to surgical treatment.<sup>19</sup> Finally, in 2014, the High Court recognised that ‘sex’ on birth certificates could be recorded as non-specific.<sup>20</sup> These necessary changes seemingly moved society towards greater equality, and yet queer people continued to remain

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- 12 But see Noah Riseman who demonstrates that the repeal of the ban on transgender service has resulted in a medicalised framework of policies that can demoralise transgender people: Noah Riseman, ‘Transgender Policy in the Australian Defence Force: Medicalization and Its Discontents’ (2016) 17(3–4) *International Journal of Transgenderism* 141 <<https://doi.org/10.1080/15532739.2016.1227759>>.
- 13 See generally Paul Johnson, ‘“Offences against Morality”: Law and Male Homosexual Public Sex in Australia’ (2008) 33(3) *Alternative Law Journal* 155 <<https://doi.org/10.1177/1037969X0803300306>>. But note that public homosexual acts were still criminalised in some states.
- 14 Julie Butler, ‘X Marks the Spot for Intersex Alex’, *The West Australian* (Perth, 11 January 2003). Note that the Department of Foreign Affairs and Trade’s Manual of Australian Passport Issue required a statement from the relevant state or territory registrar that confirmed a surgical intervention procedure had taken place: Australian Human Rights Commission, ‘Sex Files: The Legal Recognition of Sex in Documents and Government Records’ (Concluding Paper, Australian Human Rights Commission, March 2009) 19. Also note that the Darlington Statement recognises that ‘attempts to classify intersex people as a third sex/gender do not respect [their] diversity or right to self-determination’: Eve Black et al, ‘Darlington Statement: Joint Consensus Statement from the Intersex Community Retreat in Darlington’ (Working Paper, March 2017) [8] (‘Darlington Statement’).
- 15 Kevin Rudd, Minister for Foreign Affairs and Robert McClelland, Attorney-General, ‘Getting a Passport Made Easier for Sex and Gender Diverse People’ (Media Release, 14 September 2011) <[https://parlinfo.aph.gov.au/parlInfo/download/media/pressrel/1087482/upload\\_binary/1087482.pdf](https://parlinfo.aph.gov.au/parlInfo/download/media/pressrel/1087482/upload_binary/1087482.pdf)>.
- 16 See, eg, *Same-Sex Relationships (Equal Treatment in Commonwealth Laws – General Law Reform) Act 2008* (Cth); *Miscellaneous Acts Amendment (Same Sex Relationships) Act 2008* (NSW).
- 17 ‘Where there is a disagreement ... to proposed treatment between parents and/or their child or with the child’s treating doctors, an application to the court will be necessary’: *Re Jamie* (2013) 278 FLR 155, 189 [172] (Finn J).
- 18 *Re Kelvin* (2017) 327 FLR 15. But note that an application to the court is still required ‘where there is a dispute about diagnosis, consent or the nature of treatment’: *Re Imogen [No 6]* (2020) 61 Fam LR 344, 352 [38] (Watts J).
- 19 *Re Matthew* [2018] FamCA 161, [46] (Rees J).
- 20 *Registrar of Births, Deaths and Marriages (NSW) v Norrie* (2014) 250 CLR 490, 492–3 [1]–[3], 501–2 [46] (French CJ, Hayne, Kiefel, Bell and Keane JJ) (‘*NorrieSex Discrimination Act 1984* (Cth): see, eg, *Miscellaneous Amendment (Marriages) Act 2018* (NSW). Notably, Western Australia and Tasmania did not comply with the December 2018 deadline to repeal forced trans divorce provisions: *Gender Reassignment Amendment Act 2019* (WA); *Justice and Related Legislation (Marriage and Gender Amendments) Act 2019* (Tas).

unequal in comparison to cis-heteronormative society.<sup>21</sup> For instance, it was only in 2018 that the final Australian jurisdiction officially permitted same-sex couples to adopt children.<sup>22</sup> Further, in 2020, the final Australian jurisdiction formally abolished the ‘gay panic’ provocation defence to murder charges.<sup>23</sup> Accordingly, society is becoming increasingly aware as to how queer people remain unequal under the law, even after the enactment of marriage equality;<sup>24</sup> however, the historical development of law reform highlights that although queer rights have been granted, they are often only provided to a certain extent, with further reform made years later or not made at all.

In this article, I will examine Australian legislation and policy, since the implementation of marriage equality, to explore how the queer community continues to be discriminated against. I will utilise a definition of social discrimination,<sup>25</sup> as distinct from discrimination defined in legislation,<sup>26</sup> to argue that legislation and policy is discriminatory because it affords an illusory and theatrical form of equality, or inequality, that exists according to cis-heteronormative standards. Specifically, I will accentuate the persistent pattern of prejudice that subsists under the guise of equality to demonstrate how queer discrimination continues within Australian law.

It is important to note that in this article I do not intend to dictate matters that should be prioritised at the forefront of the queer rights movement. Rather, I consider

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- 21 For example, conversion therapy legislation has only been enacted in some states: see, eg, *Sexuality and Gender Identity Conversion Practices 2020* (ACT); *Health Legislation Amendment Act 2020* (Qld); *Change or Suppression (Conversion) Practices Prohibition Act 2021* (Vic). Also, there is significant variability in state legislation concerning assisted reproductive technology: see, eg, *Anti-discrimination Act 1991* (Qld) s 45A. Scholars have also addressed a variety of persisting issues across multiple countries: see, eg, Carlos A Ball, ‘A New Stage for the LGBT Movement: Protecting Gender and Sexual Multiplicities’ in Carlos A Ball (ed), *After Marriage Equality: The Future of LGBT Rights* (New York University Press, 2016) 157 <<https://doi.org/10.18574/nyu/9781479883080.003.0007>>.
- 22 *Adoption Amendment Act 2009* (No 2) (ACT); *Adoption Amendment (Same Sex Couples) Act 2010* (NSW); *Adoption of Children Legislation Amendment (Equality) Act 2017* (NT); *Adoption and Other Legislation Amendment Act 2016* (Qld); *Adoption (Review) Amendment Act 2016* (SA); *Adoption Amendment (Adoption by Same-Sex Couples) Act 2015* (Vic); *Acts Amendment (Lesbian and Gay Law Reform) Act 2001* (WA).
- 23 *Sexuality Discrimination Legislation Amendment Act 2004* (ACT) sch 2; *Crimes Amendment (Provocation) Act 2014* (NSW) sch 1; *Criminal Reform Amendment Act (No 2) 2006* (NT) s 17; *Criminal Law Amendment Act 2017* (Qld) s 10; *Statutes Amendment (Abolition of Defence of Provocation and Related Matters) Act 2020* (SA) s 6; *Crimes (Homicide) Act 2005* (Vic) s 3; *Criminal Law Amendment (Homicide) Act 2008* (WA) s 12.
- 24 Paul Karp, ‘Marriage Equality Is a Reality: So What’s the Next LGBTI Battle?’, *The Guardian* (online, 28 December 2017) <<https://www.theguardian.com/world/2017/dec/28/marriage-equality-is-a-reality-so-whats-the-next-lgbti-battle>>; Liam Elphick, ‘Marriage Equality Was Momentous, but There Is Still Much to Do to Progress LGBTI+ Rights in Australia’, *The Conversation* (online, 6 March 2019) <<https://theconversation.com/marriage-equality-was-momentous-but-there-is-still-much-to-do-to-progress-lgbti-rights-in-australia-110786>>.
- 25 Dinesh Bhugra, ‘Social Discrimination and Social Justice’ (2016) 28(4) *International Review of Psychiatry* 336, 336 <<https://doi.org/10.1080/09540261.2016.1210359>>; Dennis Altman, *Homosexual: Oppression and Liberation* (University of Queensland Press, 2012) 53, 58–9.
- 26 Cf *Sex Discrimination Act 1984* (Cth) ss 5–6, 7B–7D; *Equal Opportunity Act 2010* (Vic) ss 6–13. I consider that the classification of discrimination under current legislation is limited, with the concept better expressed through a social definition.

prominent or unexplored legislation and policy which cumulatively illustrates the pattern of social discrimination that perpetuates cis-heteronormativity,<sup>27</sup> at the expense of true equality. In other words, by considering certain legislation and policy, and assessing how different facets of the queer community are impacted by these laws, I define true equality by what it is not – true equality is not the affordance of rights that are unduly bound by, and embedded with, cis-heteronormativity. Under this perspective, my proposed solutions are presented as measured recommendations, or appropriate steps, that would move society away from the regulation of non-normativity and thus towards true equality. Gradual progress in the form of steps is required because, as per Dennis Altman, ‘legal changes [are ultimately] symbolic statements of social attitudes’.<sup>28</sup> Given the historical context surrounding queer rights, cis-heteronormative society would arguably only be receptive to minimal progress, so as not to drastically disturb cis-heterosexual dominance. Nonetheless, any progress is better than the discrimination that is inherent within the legislation and policy that I discuss.

I explore the contemporary discrimination of queers in two parts. In Part II, specific laws are assessed to establish how legislation and policy engages in direct discrimination.<sup>29</sup> First, the three-month blood donor deferral period is analysed to convey how this policy discriminates against certain queer men, and trans people. Second, the reform of birth certificate legislation across Australia is considered to emphasise how some models conserve transphobic and intersex-phobic social values. In Part III, a broad scope of legislation and policy is analysed to highlight how language can indirectly discriminate against the queer community.<sup>30</sup> First, I assess the use of gendered language in Victorian and Commonwealth legislation against gender-neutral drafting policies to demonstrate how legislation perpetuates heteronormative, cisgender, and endosex primacy. Second, I consider how interpretative legislation also maintains non-normative subordination. I will conclude this article by summarising that direct and indirect forms of discrimination are examples of a pattern of prejudice that is theatricalised to be equality. Ultimately, my aim in considering queer discrimination as it persists within Australian law is to encourage readers to ask: whose equality?

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27 Lauren Berlant and Michael Warner, ‘Sex in Public’ (1998) 24(2) *Critical Inquiry* 547, 554, heteronormativity is conceptualised as

[a] whole field of social relations [which] becomes intelligible as heterosexuality, and this privatized sexual culture bestows on its sexual practices a tacit sense of rightness and normalcy. This sense of rightness – embedded in things and not just in sex – is what we call heteronormativity. Heteronormativity is more than ideology, or prejudice, or phobia against gays and lesbians; it is produced in almost every aspect of the forms and arrangements of social life.

See also Michael Warner, ‘Introduction: Fear of a Queer Planet’ [1991] (29) *Social Text* 3. My inclusion of ‘cis’ to ‘heteronormativity’ is intended to specifically extend this concept to cisgender and endosex relations.

28 Dennis Altman, *The End of the Homosexual?* (University of Queensland Press, 2013) 163 (‘*End of the Homosexual*’).

29 I categorise direct discrimination as distinct from the legislative definition, to include instances where queer people are prejudiced by legislation or policy that directly requires compliance with normative behaviour.

30 I categorise indirect discrimination as distinct from the legislative definition, to include instances where queer people are prejudiced by legislation or policy that indirectly demands normative etiquette.

## A Discrimination as Respectable Equality

To demonstrate how legislation and policy can sustain a discriminatory form of equality that is illusory and theatrical, I propose the concept of ‘respectable equality’, as drawn from the politics of respectability and new homonormativity. Respectability politics was coined by Evelyn Brooks Higginbotham to describe a political strategy whereby black Baptist women in the United States adhered to white society’s norms to counter racism and negative racial stereotypes.<sup>31</sup> In reconfiguring black identity, the emphasis on self-regulation and conformity to dominant norms resulted in the demarcation of ‘negative black Others’.<sup>32</sup> When applied to queer society, the politics of respectability denotes the public performance of a queer social identity that represses anti-normative behaviours and exhibits heterosexual, middle-class, and white standards to gain acceptance and recognition.<sup>33</sup> In emphasising how conventional members of the queer community are the same as heterosexuals, this homonormativity demands the regulation of non-normative behaviours, with the outcome being the secondary marginalisation of unconventional queers who substantially deviate from the cis-heteronormative mainstream.<sup>34</sup> Expanding on these arguments is Lisa Duggan’s theory of new homonormativity, being

a [neoliberal] politics that does not contest dominant heteronormative assumptions and institutions but upholds and sustains them while promising the possibility of a demobilized gay constituency and a privatized, depoliticized gay culture anchored in domesticity and consumption ... *arrayed around a state-endorsed heterosexual primacy and prestige*.<sup>35</sup>

New homonormativity demonstrates how neoliberalism’s emphasis on individual responsibility reinforces the superiority of cis-heteronormativity by disrupting queer collectivity, in favour of heterosexual conservatism that embraces consumerism. Accordingly, the politics of respectability and new homonormativity can be drawn upon to explain the circumstances in which queer people, and heterosexual society, can maintain cis-heteronormativity.

Respectable equality therefore describes the provision of queer rights that are qualified by, and imbued with, cis-heteronormative standards. These rights

31 Evelyn Brooks Higginbotham, *Righteous Discontent: The Women’s Movement in the Black Baptist Church, 1880–1920* (Harvard University Press, 7<sup>th</sup> ed, 1993) 185–96.

32 Ibid 204.

33 See especially Warner (n 8) 23–34, 37, 59–60, 65–6, 78; Joshi (n 6) 415, 416, 418–9, 446–7; Dara Z Strolovitch and Chaya Y Crowder, ‘Respectability, Anti-respectability, and Intersectionally Responsible Representation’ (2018) 51(2) *Political Science and Politics* 340, 341; Mikaela Pitcan, Alice E Marwick and danah boyd, ‘Performing a Vanilla Self: Respectability Politics, Social Class, and the Digital World’ (2018) 23(3) *Journal of Computer-Mediated Communication* 163, 166 <<https://doi.org/10.1093/jcmc/zmy008>>.

34 Joshi (n 6) 446–7; Strolovitch and Crowder (n 33) 341; Lain AB Mathers, JE Sumerau and Ryan T Cragun, ‘The Limits of Homonormativity: Constructions of Bisexual and Transgender People in the Post-gay Era’ (2018) 61(6) *Sociological Perspectives* 1, 2 <<https://doi.org/10.1177/0731121417753370>>; Pitcan, Marwick and boyd (n 33) 163–5; Mariano Croce, ‘Homonormative Dynamics and the Subversion of Culture’ (2015) 18(1) *European Journal of Social Theory* 3, 9 <<https://doi.org/10.1177/1368431014534349>>.

35 Lisa Duggan, ‘The New Homonormativity: The Sexual Politics of Neoliberalism’ in Russ Castronovo and Dana D Nelson (eds), *Materializing Democracy: Toward a Revitalized Cultural Politics* (Duke University Press, 2002) 175, 179, 190 (emphasis added).



imitate equality by prescribing a version of privileges that are limited by what cis-heterosexual society deems acceptable. It is an illusory form of equality that essentially emphasises the dominance of cis-heterosexuality and reinforces anti-queer notions that demand assimilation to normative expectations. That is, the rights which are afforded to queer people are merely reproductions of cis-heterosexual privileges, or respectable variations of cis-heteronormative standards, that preserve the superiority of cis-heterosexuality by requiring queers to mirror cis-heterosexual society.

The faux nature of respectable equality is most damaging to the queer community when it is spectacularised as true equality. The theatrical nature of this discrimination can be explained by building upon Judith Butler's theorisations of the law as performance.<sup>36</sup> Butler argues that the law is a symbolic ideal representation of social norms that only derives form, power, and legitimacy from its performance within society.<sup>37</sup> In this respect, performance is taken to mean the physical implementation of written law (the symbolic ideal) through social relations.<sup>38</sup> In recognising that the law is personified by performative social acts, the supposed equality of legislation and policy can be questioned. In other words, when legislation or policy related to queer rights is publicly portrayed in a theatrical manner, it ultimately creates a spectacle that is perceived, by both society and the state, to be true equality. Subsequently, it is not merely the performance of respectable equality, but its theatricalisation in the public realm as being true equality, that gives it the spectacular nature. Further, rather than the law being embodied in a spectacle, it is that the law does not exist until the spectacle occurs. Written law only exists through its performance within society; without performance, the law is only an abstract, symbolic ideal. Accordingly, spectacles of respectable equality profess the idea that true equality has been achieved, while concealing cis-heteronormative social norms that demand queer respectability and homonormativity. The spectacularising of legislation and policy that are qualified by cis-heteronormative standards is ultimately detrimental because it implies that no further change is necessary, meaning inequality and discrimination is maintained.

## B The Spectacle of Marriage Equality

Marriage equality is the most prominent spectacle of respectable equality. The connection between marriage equality and the demand for a queer respectable identity is not a new concept;<sup>39</sup> however, current scholarship has not identified this pattern that exists within other forms of legislation and policy. While I recognise that respectable members of the queer community were granted rights associated with marriage, I suggest that marriage equality is a spectacle of respectable equality that

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36 Judith Butler, *Antigone's Claim: Kinship between Life and Death* (Columbia University Press, 2000) 21.

37 Ibid 19–21, 30; Judith Butler, *Undoing Gender* (Routledge, 2004) 44.

38 Ibid. For an application of Butler's theory of terrorism to describe the spectacle of post-9/11 security theatre, see generally Tamsin Phillipa Paige, 'Zombies as an Allegory for Terrorism: Understanding the Social Impact of Post-9/11 Security Theatre and the Existential Threat of Terrorism through the Work of Mira Grant' (2021) 33(1) *Law and Literature* 119 <<https://doi.org/10.1080/1535685X.2020.1776001>>.

39 Warner (n 8); Joshi (n 6); Thomas, McCann and Fela (n 4).

is discriminatory, in its current form, because it reinforces cis-heteronormativity and hinders true equality.

The symbolic representation is the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* (Cth) ('*MA(DRF) Act*'), which allowed '2 people' to be married instead of 'a man and a woman'.<sup>40</sup> The underlying social norms relate to the cis-heteronormative values which underscore the concept of assimilated 'normal gays'.<sup>41</sup> Normal gays were expected to conform to the normative standards associated with monogamy and the family unit, therefore 'filling the heterosexual mould' to access the same rights as heterosexuals.<sup>42</sup> Michael Warner further described this concept as good gays against bad queers.<sup>43</sup> Good gays would leave unchallenged normative standards and instead eschew queer minorities that valued anti-normative attributes, such as promiscuity.<sup>44</sup> Good gays would claim that homosexuality is the same as heterosexuality, which associates the gaining of rights with conformity to normalised ideals.<sup>45</sup> Yuvraj Joshi has further elaborated on this concept through the framework of 'respectable queerness', whereby it is noted that the

legal recognition [of marriage equality] does not only privatise and suppress homosexuality, [but] it also facilitates the discursive production of a respectable homosexual identity ... [which] function[s] as an ideological smoke screen for masking discrimination.<sup>46</sup>

The concept of normal gays ultimately insinuates that assimilation only achieves 'imaginary equality and the illusion of progress'.<sup>47</sup> Therefore, marriage equality legislation appears to grant equality to members of the queer community who are not in heterosexual relationships and would like to marry one other person. In actuality, the performance of this legislation within society acts to exclude the interests of people who are not deemed respectable, such as queers in polyamorous or non-monogamous relationships.<sup>48</sup> Accordingly, equality was only granted to an

40 *MA(DRF) Act* (n 2) s 3.

41 Mary Bernstein, Brenna Harvey and Nancy A Naples, 'Marriage, the Final Frontier? Same-Sex Marriage and the Future of the Lesbian and Gay Movement' (2018) 33(1) *Sociological Forum* 30, 34 <<https://doi.org/10.1111/soef.12392>>; Croce (n 34) 10–11.

42 Joshi (n 6) 422–3; Jess Lee, 'Race, Same-Sex Marriage, and the Politics of Respectability among Lesbian, Gay, and Bisexual Racial Minorities' (2021) 62(3) *Sociological Quarterly* 464, 464–5 <<https://doi.org/10.1080/00380253.2020.1773349>>; Mathers, Sumerau and Cragun (n 34) 2; Steven Seidman, *Beyond the Closet: The Transformation of Gay and Lesbian Life* (Routledge, 2004) 14; Strolovitch and Crowder (n 33) 240; Diane Richardson, 'Locating Sexualities: From Here to Normality' (2004) 7(4) *Sexualities* 391, 392 <<https://doi.org/10.1177/1363460704047059>>.

43 Warner (n 8) 113–4.

44 Ibid 114; Croce (n 34) 4, 14–15.

45 Warner (n 8) 80; Mary Bernstein, 'Same-Sex Marriage and the Assimilationist Dilemma: A Research Agenda on Marriage Equality and the Future of LGBTQ Activism, Politics, Communities, and Identities' (2018) 65(14) *Journal of Homosexuality* 1941, 1943–5 <<https://doi.org/10.1080/00918369.2017.1423211>>.

46 Joshi (n 6) 445.

47 Richardson (n 42) 294.

48 Warner (n 8) 68–9. Although there is debate regarding whether polygamous people are part of the queer community, Margaret Denike classifies polygamy as queer, due to its positioning as anti-normative in arguments against allowing marriage equality (ie, polygamy as the 'slippery slope'); Margaret Denike, 'What's Queer about Polygamy?' in Robert Leckey and Kim Brooks (eds), *Queer Theory: Law, Culture, Empire* (Routledge, 2010) 137, 137.



extent which was deemed appropriate by traditional cis-heteronormative society: respectable assimilators could marry but unconventional queers were limited.

The respectable equality of marriage equality was made a spectacle through its theatrical staging within society. Debate was immediately thrust into the public realm when parliamentarians decided to disregard typical procedures when changing legislation and instead rely on the concept of a postal ballot.<sup>49</sup> This process allowed marriage equality to be presented as a ‘triumphalist narrative’,<sup>50</sup> in that equality would finally be achieved. Even the dominant terminology of ‘marriage equality’ reinforced the notion that equality for queers would result from legal change. This terminology not only distracted society from persisting inequality but acted to maintain the cis-heteronormative privilege within politics that normalises anti-queer sentiment.<sup>51</sup> Therefore, the spectacularising of marriage equality as equality has resulted in respectable equality, not true equality.

## II DIRECT DISCRIMINATION

### A Blood Donation Eligibility

In 1981, the first case of ‘gay-related immune deficiency syndrome’, now known as human immunodeficiency virus (‘HIV’), was diagnosed in a homosexual man in the United States.<sup>52</sup> In identifying that an overwhelming number of HIV-positive diagnoses, and the associated acquired immunodeficiency syndrome (‘AIDS’), were among men who have sex with men (‘MSM’),<sup>53</sup> society was quick to label the spread of HIV/AIDS as the ‘gay plague’.<sup>54</sup> This homophobic stigma associated with the treatment of MSM during the HIV/AIDS pandemic provides

49 Sushi Das, ‘Fact Check: Is the Same-Sex Marriage Survey a Completely Novel Idea That Is Not Actually a Plebiscite?’, *ABC News* (online, 22 August 2017) <<https://www.abc.net.au/news/2017-08-22/fact-check-same-sex-marriage-postal-survey/8826300>>.

50 Warner (n 8) 146.

51 Ibid 100, 114, 143, 146; Altman, *End of the Homosexual* (n 28) 157, 192; Bernstein (n 45) 1942; Tanja Dreher, ‘The “Uncanny Doubles” of Queer Politics: Sexual Citizenship in the Era of Same-Sex Marriage Victories’ (2017) 20(1–2) *Sexualities* 176, 177, 181 <<https://doi.org/10.1177/1363460716645788>>.

52 Altman, *End of the Homosexual* (n 28) 106.

53 It is worth acknowledging that the acronym ‘MSM’, while used with the intention to move away from identity-based terms, is merely a semantic alteration that leaves intact heteronormative and homophobic beliefs that adjourn political discourse surrounding HIV/AIDS and the blood supply: Russell K Robinson and David M Frost, ‘The Afterlife of Homophobia’ (2018) 60(2) *Arizona Law Review* 213, 239–41 <<https://doi.org/10.2139/ssrn.3210390>>; Rebecca M Young and Ilan H Meyer, ‘The Trouble With “MSM” and “WSW”’: Erasure of the Sexual-Minority Person in Public Health Discourse’ (2005) 95(7) *American Journal of Public Health* 1144 <<https://doi.org/10.2105/AJPH.2004.046714>>.

54 Katy L Davison et al, ‘Blood Donation by Men Who Have Sex with Men: Using Evidence to Change Policy’ (2021) 116(3) *Vox Sanguinis* 260, 260–1 (‘Blood Donation’) <<https://doi.org/10.1111/vox.13033>>; Katy L Davison et al, ‘Changing the Deferral for Men Who Have Sex with Men: An Improved Model to Estimate HIV Residual Risk’ (2019) 114(7) *Vox Sanguinis* 666, 666 <<https://doi.org/10.1111/vox.12826>>; Gary W Dowsett, ‘The “Gay Plague” Revisited: AIDS and Its Enduring Moral Panic’ in Gilbert Herdt (ed), *Moral Panics, Sex Panics: Fear and the Fight over Sexual Rights* (New York University Press, 2009) 130, 133.

important context behind the continued use of gendered terminology and group targeting within blood donation deferral policies.

## 1 Australian Blood Donation Policies

### (a) Historical Development

Blood donation in Australia was initially a largely unregulated, voluntary process, that was managed differently in each state.<sup>55</sup> The HIV/AIDS pandemic impacted Australian blood donation policies, with the National Red Cross Blood Transfusion Committee recommending that donation centres ‘ask for sexually active homosexual or bisexual men with multiple partners, injecting drug users and their partners to abstain from donating blood’.<sup>56</sup> Nonetheless, this recommendation did not require specific guidelines to be introduced and therefore donation continued to operate on a voluntary basis.<sup>57</sup>

The increasing publicisation of medically acquired HIV/AIDS infection, the infection of haemophiliacs, and the death of babies resulting from blood traced to a HIV positive gay man resulted in calls for stricter regulation.<sup>58</sup> Specifically, in 1983, Sydney Red Cross Blood Transfusion Service requested that ‘promiscuous homosexuals’ stop blood donations.<sup>59</sup> This request did not apply to other previously identified high-risk groups, such as intravenous drug users.<sup>60</sup> Then, in 1984, each state introduced uniform donor questionnaires which required declaration of high-risk behaviours, including sexual activity.<sup>61</sup> Furthermore, in 1985, Australia became the first country in the world to screen blood donations for HIV/AIDS, through the use of questionnaires and permanent deferral.<sup>62</sup> Many scholars agree that initial policies that prevented some men from donating blood were necessary to protect the blood supply at the time,<sup>63</sup> given there was limited information about the spread, treatment, and prevention of HIV/AIDS, and the efficacy of screening tests.<sup>64</sup>

In 2000, Australia was again the first country in the world to introduce a temporary deferral period, whereby MSM, and women who have ever had sex with MSM, could donate blood, if they did not engage in certain sexual activity

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55 Paul Sendziuk, ‘Bad Blood: The Contamination of Australia’s Blood Supply and the Emergence of Gay Activism in the Age of AIDS’ (2001) 25(67) *Journal of Australian Studies* 75, 78 <<https://doi.org/10.1080/14443050109387641>>.

56 Ibid 81.

57 Ibid 82.

58 Ibid 75, 78–9, 82; Dowsett (n 54) 139, 143; Jeffrey A Bennett, *Banning Queer Blood: Rhetorics of Citizenship, Contagion, and Resistance* (University of Alabama Press, 2015) 15–16.

59 Sendziuk (n 55) 77.

60 Ibid 77, 80.

61 Ibid 83.

62 Ibid.

63 Christopher Park et al, ‘Blood Donation and COVID-19: Reconsidering the 3-Month Deferral Policy for Gay, Bisexual, Transgender, and Other Men Who Have Sex with Men’ (2021) 111(2) *American Journal of Public Health* 247, 248 <<https://doi.org/10.2105/AJPH.2020.305974>>; Robinson and Frost (n 53) 246. See generally Bennett (n 58) 2, 11.

64 Park et al (n 63) 248; Robinson and Frost (n 53) 246; Bennett (n 58) 2, 11.

for 12 months.<sup>65</sup> Despite research indicating there was no increase in HIV/AIDS following this change,<sup>66</sup> the Therapeutic Goods Administration ('TGA') did not reduce the deferral period to six months following a 2012 independent review, established by Australian Red Cross Lifeblood ('Lifeblood').<sup>67</sup> The TGA's rationale for rejecting the proposed deferral period reduction included that the change would be unlikely to result in an increase in blood supply and that risks remained with respect to non-compliance with donor questionnaires.<sup>68</sup>

(b) *Current Policies*

Donor selection and deferral criteria, and the testing of blood, is developed by Lifeblood, as regulated under the *Therapeutic Goods Act 1989* (Cth),<sup>69</sup> and prescribed in the Blood Service Technical Master File and Guidelines for the Selection of Blood Donors.<sup>70</sup>

In 2020, Lifeblood made a submission to the TGA to change the donor deferral period from 12 months to three months, including in relation to donors who are MSM, females who have ever had sex with MSM, and trans donors who have sexual contact with a male.<sup>71</sup> These changes, along with an updated questionnaire form, were approved on 31 January 2021.<sup>72</sup> The TGA accepted Lifeblood's submission because Lifeblood 'demonstrat[ed that] recipient safety remain[ed]

65 Mindy Goldman et al, 'Donor Deferral Policies for Men Who Have Sex with Men: Past, Present and Future' (2018) 113(2) *Vox Sanguinis* 95, 96 <<https://doi.org/10.1111/vox.12623>>.

66 Clive R Seed et al, 'No Evidence of a Significantly Increased Risk of Transfusion-Transmitted Human Immunodeficiency Virus Infection in Australia Subsequent to Implementing a 12-Month Deferral for Men Who Have Sex with Men' (2010) 50(12) *Transfusion* 2722 <<https://doi.org/10.1111/j.1537-2995.2010.02793.x>>.

67 Australian Red Cross Blood Service, *Review of Australian Blood Donor Deferrals Relating to Sexual Activity* (Independent Review, May 2012) 1 <[https://www.lifeblood.com.au/sites/default/files/resource-library/2021-12/158.-blood\\_donor\\_deferrals\\_relating\\_to\\_sexual\\_activity\\_1142.pdf](https://www.lifeblood.com.au/sites/default/files/resource-library/2021-12/158.-blood_donor_deferrals_relating_to_sexual_activity_1142.pdf)>.

68 Letter from John H Skerit, National Manager of Therapeutic Goods Administration, to Jennifer Williams, Chief Executive of Australian Red Cross Blood Service, 13 December 2013) 1 <<https://www.tga.gov.au/sites/default/files/foi-322-1415-01.pdf?fbclid=IwAR0EqLQudGrawy-074SNbLTPZDbIfzJ5-xHUyvgudFlvagE61ZCtKs7IONU>>.

69 Therapeutic Goods Administration, 'Regulation of Blood', *Department of Health and Aged Care (Cth)* (Web Page, 5 April 2019) <<https://www.tga.gov.au/regulation-blood>>; Therapeutic Goods Administration, 'Guideline for the Preparation of Technical Master Files for Blood, Blood Components and Haematopoietic Progenitor Cells' (Guideline, 3<sup>rd</sup> ed, 2008) 1, 10–11 [7.3]–[7.4] <<https://www.tga.gov.au/sites/default/files/bt-tmf-preparation.pdf>>.

70 These guidelines must maintain compliance to certain standards, including the *Therapeutic Goods Act 1989* (Cth): National Blood Authority Australia, 'Safety of Blood Products', *National Blood Authority Australia* (Web Page) <<https://www.blood.gov.au/safety-blood-products>>.

71 Therapeutic Goods Administration, 'TGA Approves Reduction of the Deferral Period for Blood and Plasma Donors', *Department of Health and Aged Care (Cth)* (Web Page, 4 August 2020) <<https://www.tga.gov.au/tga-approves-reduction-deferral-period-blood-and-plasma-donors>> ('Reduction of Deferral Period').

72 Australian Red Cross Lifeblood, 'Sexual Activity Deferral Review' (Web Page, 2021) <<https://web.archive.org/web/20210318160525/http://www.donateblood.com.au/sexual-activity-deferral-review>>. Note also in *Cain v The Australian Red Cross Society* [2009] TASADT 3 that the publication of the Australian Red Cross Blood Service Technical Master File, and any associated oral evidence, was prohibited by a suppression order: at [563] (Chairperson Wood, Members Otlowski and Rhineberger). Therefore, to determine current policies, I gave exclusive recourse to the Lifeblood website and any additional information provided by the Therapeutic Goods Administration ('TGA').

within accepted risk tolerance parameters' and CSL Behring noted that the change would not increase risk associated with manufactured plasma products.<sup>73</sup> The change was also in line with the United Kingdom's previous three-month deferral for MSM or people who have sex with MSM.<sup>74</sup>

The historical development of blood donation policy, and the change in TGA's rationale, arguably demonstrates that concern surrounding the transfusion-transmitted infection ('TTI') of HIV is related to the risk of TTI, instead of inaccurate testing of blood samples and donor non-compliance.<sup>75</sup> However, in 2020, Lifeblood confirmed that the residual risk of TTI of HIV is less than 1 in 1 million.<sup>76</sup> Also, a surveillance report found that during 2010 to 2019, there were no TTIs of HIV reported in Australia.<sup>77</sup> As such, it is reasonable to conclude that the risk of contamination of Australia's blood supply is miniscule and continues to decline. Subsequently, the reliance on risk as a justification for differential deferral policies between the sexual activity of queers and certain heterosexuals can be called into question.<sup>78</sup> Accordingly, I will argue below that the reliance on deferral periods is a form of respectable equality that discriminates against MSM and trans people.

## 2 Spectacles of Respectable Equality

### (a) MSM

The Lifeblood donor questionnaire specifies that male donors must wait three months from their last sexual contact with another man, including oral or anal sex that occurred with or without a condom, to donate whole blood and plasma.<sup>79</sup> Further, donors must wait three months since the last dose of pre-exposure HIV prophylaxis ('PrEP'), if they are taking this medication, to donate plasma, and

73 Therapeutic Goods Administration, 'Reduction of Deferral Period' (n 71).

74 Ibid; National Health Service, 'Who Can Give Blood', *NHS Blood and Transplant* (Web Page) <<https://www.blood.co.uk/who-can-give-blood/>>.

75 Park et al (n 63) 248–9. See Katy L Davison et al who note that there is high compliance with deferral periods: Katy L Davison et al 'Blood Donation' (n 54) 270. See Martin Stolz et al for scientific evidence regarding the accuracy of HIV testing: Martin Stolz et al, 'Safe-Testing Algorithm for Individual-Donation Nucleic Acid Testing: 10 Years of Experience in a Low-Prevalence Country' (2019) 46(2) *Transfusion Medicine and Hemotherapy* 104 <<https://doi.org/10.1159/000499166>>.

76 Australian Red Cross Lifeblood, *Blood Component Information: An Extension of Blood Component Labels* (June 2020) 47. Interestingly, this estimate was based on articles written in 2005 and 2011: at 49 nn 32–3.

77 Kirby Institute, University of New South Wales and Australian Red Cross Lifeblood, *Transfusion-Transmissible Infections in Australia* (Surveillance Report, 2020) 8 <<https://www.lifeblood.com.au/sites/default/files/resource-library/2021-12/17.-2020-TTI-Surveillance-report---Corrected-27-April-2021-version.pdf>>. Also note that in the five years to 2020, new HIV diagnoses in Australia declined by 37%: 'HIV', *Kirby Institute* (Web Page) <<https://web.archive.org/web/2021120113258/https://data.kirby.unsw.edu.au/hiv>>.

78 Unless restrictions based on other sexual activity apply, heterosexuals as a group are not subject to a deferral period: 'Is There Any Kind of Sexual Activity That Will Affect My Ability to Donate Blood?', *Australian Red Cross Lifeblood* (Web Page) <<https://www.lifeblood.com.au/faq/eligibility/lifestyle-and-identity/sexual-activity>>.

79 'Blood Donation and Sexual Activity', *Australian Red Cross Lifeblood* (Web Page) <<https://www.lifeblood.com.au/blood/eligibility/sexual-activity>> ('LGBTQI+ Donors').

12 months to donate whole blood.<sup>80</sup> This policy is the symbolic representation of respectable equality. It describes that MSM can donate, but only if they refrain from certain sexual contact, even if they are using protective measures such as condoms or PrEP.

Scholars argue that deferral periods, even a three-month period, stigmatises MSM because it perpetuates historical and socially constructed stereotypes that all MSM are carriers of HIV.<sup>81</sup> The labelling of MSM as dangerous during the initial outbreak is further reflected in restrictions that apply only to MSM behaviour,<sup>82</sup> as the conflation of HIV/AIDS risk, and MSM as a collective group, is described as a ‘stain’ that has persisted as a result of societal reactions and moral panic towards the ‘gay plague’.<sup>83</sup> Similarly, these ideas are also rooted in the ‘taint’ of homosexuality, whereby any kind of sexual behaviour that occurs between men is disparaged, due to fears that heterosexual constructions of masculinity are challenged.<sup>84</sup> Russell K Robinson and David M Frost further designate this form of discrimination as ‘gay/bisexual distinctiveness’, whereby MSM are perceived as inherently different from heterosexuals and women who have sex with women (‘WSW’).<sup>85</sup> For example, there are no additional deferral requirements for WSW who would like to donate blood.<sup>86</sup> Theoretically, this means that WSW could engage in unsafe, and so-called promiscuous behaviour, with multiple sexual partners, involving a myriad of sexual activities, without being subject to any deferral requirements. In comparison, MSM who use precautionary measures, like condoms or PrEP, or who are in monogamous relationships, are restricted.<sup>87</sup> Accordingly, there remains a persistent stereotype whereby all MSM are considered to engage in multiple, inherently risky, sexual relationships, in comparison to the privileged and monogamous cis-heterosexuals.<sup>88</sup> These stereotypes ultimately allow deferrals to be justified by ‘scientific realities’,<sup>89</sup> such as the level of risk, rather than discriminatory prejudice.

Blood donation policies associated with MSM have been spectacularised because group-based deferral periods still apply. Even though it appears that blood donation is more equitable after the implementation of a three-month deferral period, MSM continue to be discriminated against as a collective group, through

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80 Ibid. ‘Lifeblood subsequently submitted a separate application to reduce the 12-month post pre-exposure HIV prophylaxis (‘PrEP’) deferral period to three months, for both whole blood and plasma products. TGA assessed the submission and approved a reduced 3-month post-PrEP deferral period for donors of plasma only’: Email from Therapeutic Goods Administration to Emma Genovese, 6 May 2021. A deferral period for PrEP use is significant because PrEP is an antiretroviral drug that is highly effective at preventing HIV infection, which means that PrEP reduces the risk in contracting the virus: Sahar Saeed et al, ‘Evaluation of a Pre-exposure Prophylaxis (PrEP)/Post-exposure Prophylaxis (PEP) Deferral Policy among Blood Donors’ (2021) 61(6) *Transfusion* 1 <<https://doi.org/10.1111/trf.16349>>.

81 Robinson and Frost (n 53); Dowsett (n 54).

82 Dowsett (n 54) 130; Altman, *End of the Homosexual* (n 28) 107, 109; Bennett (n 58) 2.

83 Dowsett (n 54) 130–1, 133, 136, 138.

84 Robinson and Frost (n 53) 277–8. See generally Sandesh Sivakumaran, ‘Male/Male Rape and the “Taint” of Homosexuality’ (2005) 27(4) *Human Rights Quarterly* 1274 <<https://doi.org/10.1353/hrq.2005.0053>>.

85 Robinson and Frost (n 53) 217–8.

86 ‘LGBTQI+ Donors’ (n 79).

87 See Bennett (n 58) who discusses the ‘high risk group’ status of men who have sex with men: at 2.

88 Robinson and Frost (n 53) 220, 234–5, 260, 264.

89 Ibid 234.

the performance of the policy. The deferral period as it applies to PrEP users is a prime example, as people who take PrEP are more likely to be men using it for ‘lifestyle’ reasons.<sup>90</sup> Accordingly, while blood donation policies attempt to move away from identity-based terms, such as gay and bisexual,<sup>91</sup> the impact of current policies leaves intact cis-heteronormative and homophobic beliefs that have always adjoined political discourse surrounding HIV/AIDS and the Australian blood supply.

(b) *Trans People*

The policy related to trans donors is a further spectacle of respectable equality. The symbolic representation is that trans donors who have sexual contact with a male or trans partner must wait three months from their last sexual contact before donating blood.<sup>92</sup> Although trans donors are now officially recognised, this community is unreasonably distinguished from cisgender society.<sup>93</sup>

The new policy highlights the underlying cis-heteronormative standards that adhere to binary social categorisations. Particularly, there resides a failure to accept trans people, including because they do not align with so-called traditional, binary categorisations of sex/gender. For instance, early feminists relied on binaries, like sex/gender and male/female, to challenge patriarchal society.<sup>94</sup> Specifically, the category of ‘woman’ was rooted in the concept of gender essentialism, which specified that there are essential, biological characteristics that culminate to produce a universal category, which reflects the cisgender, white, middle-class perception of womanhood.<sup>95</sup> This universal category was relied on by some forms of feminism to challenge the position of ‘women’, as a singular group, within society.<sup>96</sup> As feminism progressed, intersectional feminists refuted these universalist assertions by highlighting that the experiences and subsequent oppression of women of different races vary significantly.<sup>97</sup> Accordingly, the ‘hegemonic normativity’ that

90 See, eg, Saeed et al (n 80) who note that in the Canadian Blood Services survey between June 2019 and October 2020, 94% of people taking PrEP identified as male: at 4.

91 Robinson and Frost (n 53) 239–41; Young and Meyer (n 53) 1144–7; Bennett (n 58) 22.

92 ‘Reduction of Deferral Period’ (n 71); ‘LGBTQI+ Donors’ (n 79).

93 See Robinson and Frost (n 53) who outline the United States’ policy on blood donation, which excludes transgender men from the MSM category: at 242. See also Grace et al who describe the confusion that transgender men have when dealing with gender-based policies: Daniel Grace et al, ‘It’s in Me to Give: Canadian Gay, Bisexual, and Queer Men’s Willingness to Donate Blood If Eligible Despite Feelings of Policy Discrimination’ (2020) 30(14) *Qualitative Health Research* 2234, 2242 <<https://doi.org/10.1177/1049732320952314>>.

94 See generally Dianne Otto, ‘Queering Gender [Identity] in International Law’ (2015) 33(4) *Nordic Journal of Human Rights* 299 <<https://doi.org/10.1080/18918131.2016.1123474>>.

95 Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (Routledge, 2006) 2–6; Charlotte Witt, ‘Anti-essentialism in Feminist Theory’ (1995) 23(2) *Philosophical Topics* 321, 321–3 <<https://doi.org/10.5840/philtopics19952327>>.

96 For example, MacKinnon argues for a universalistic definition of ‘women’ by asserting that race and sex are equal markers of oppression, as demonstrated by the hostile treatment of women in pornography: Catharine A MacKinnon, ‘From Practice to Theory, or What Is a White Woman Anyway?’ (1991) 4(13) *Yale Journal of Law and Feminism* 13, 18–22.

97 Kimberlé Crenshaw, ‘Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics’ [1989] (1) *University of Chicago*



is inherent within binary categorisations is ultimately challenged by trans women.<sup>98</sup> Dianne Otto specifically considers the exclusion of trans women from binaries as a result of the perceived threatening of the respectability of feminism from biological determinism, transphobia, and heteronormativity.<sup>99</sup> Therefore, the creation of a new deferral period for trans people is reflective of cis-heteronormative society's supposed inability to accept non-normative concepts of sex/gender.

The policy is a spectacle because mere recognition is provided, as opposed to equal standing with cis-heteronormative society. In particular, at the time of writing this article, the section relating to transgender donors on Lifeblood's 'LGBTQI+ donors' webpage outlined that the

Lifeblood policy allows gender to be self-identified and self-reported ... However, there are important physical differences between males and females which might change during gender transition. In these cases, we'll make certain adjustments to the donor assessment and blood collection process. In addition, transgender donors will be postponed from donating if they have had sex with a male or transgender partner in the last three months. This applies to donors who are either trans women or trans men.<sup>100</sup>

The first sentence of the extract appears to have regard to trans issues associated with sex/gender, but does not elaborate as to how trans donors are assessed. Furthermore, rather than simply allowing eligibility criteria to be applied according to self-reported gender, as is the case for gender diverse donors,<sup>101</sup> an entirely new deferral period has been included subjecting trans people to the same requirements as MSM. As such, trans WSW are not afforded the same privilege as cisgender WSW and cisgender heterosexuals. Further, any sexual relationship between trans people is equated to having the same high-risk status as anal or oral sex between MSM. Accordingly, trans people in straight-passing relationships, such as a trans man and a ciswoman, are captured by the change. This policy not only expands the MSM-style group targeting to trans people, but it demonstrates a fundamental lack of understanding about the trans community. Therefore, rather than meaningfully stepping towards equality, this policy highlights cis-heteronormative society's ignorance of, and inability to accept, non-normativity.

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*Legal Forum* 139, 140; Audre Lorde, *Sister Outsider: Essays and Speeches* (Crossing Press, 2007) 118; Mitsuye Yamada, 'Asian Pacific American Women and Feminism' in Cherríe Moraga and Gloria Anzaldúa (eds), *This Bridge Called My Back: Writings by Radical Women of Color* (Kitchen Table, 2<sup>nd</sup> ed, 1983) 71; bell hooks, *Ain't I a Woman: Black Women and Feminism* (Routledge, 2<sup>nd</sup> ed, 2015) 123 <<https://doi.org/10.4324/9781315743264>>.

98 Rhea Ashley Hoskin, 'Femme Interventions and the Proper Feminist Subject: Critical Approaches to Decolonizing Western Feminist Pedagogies' (2017) 3(1) *Cogent Social Sciences* 2, 3–4 <<https://doi.org/10.1080/23311886.2016.1276819>>.

99 Otto (n 94) 306.

100 'LGBTQI+ Donors' (n 79). Note that the current equivalent webpage maintains a three-month deferral period 'if you've had sex with a male or transgender partner in the last 3 months', but further explains why there are differences to platelet and blood donations: 'I'm Transgender: Can I Donate?', *Australian Red Cross Lifeblood* (Web Page) <<https://www.lifeblood.com.au/faq/eligibility/lifestyle-and-identity/transgender>>.

101 Albeit self-reported in accordance with 'male or female' categories: 'I'm Gender Non-conforming, Genderqueer, Gender Fluid, Agender or Non-binary: Can I Donate?', *Australian Red Cross Lifeblood* (Web Page) <<https://www.lifeblood.com.au/faq/eligibility/lifestyle-and-identity/gender>>.

### 3 Risk-based Deferral

Rather than changing the deferral period that targets MSM and trans people as groups, there are alternative policy structures that would decrease discrimination against queer people and better protect any risk to the Australian blood supply.<sup>102</sup> Several countries have moved towards individual risk-based deferral,<sup>103</sup> whereby risk is considered not on the basis of sexual orientation, but analysed on an individual level that separates donors into high and low risk categories.<sup>104</sup> In 2015, Argentina implemented an individual risk-based approach that does not consider sexual or gender identity.<sup>105</sup> The individual assessment aims to identify risk behaviours for TTIs generally, regardless of sexual orientation.<sup>106</sup> Sebastián Blanco et al's study concluded that the change from group-based deferral to individual risk-based deferral reduces the residual risk of TTIs generally.<sup>107</sup> In 2021, the United Kingdom updated their donor questionnaires to remove gendered terminology when asking about high-risk sexual behaviour.<sup>108</sup> From 14 June 2021, any person who has had anal sex in the last three months with a new partner, or more than one partner, will not be able to give blood.<sup>109</sup> The change was the result of an evidence-based,

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- 102 For example, some countries, like France, have implemented policies that allow MSM to donate plasma for fractionation as the risk of TTIs is minimal: Jessica Caruso et al, "'One Step Closer': Acceptability of a Programme of Plasma Donation for Fractionation from Men Who Have Sex with Men' (2019) 114(7) *Vox Sanguinis* 675, 676 <<https://doi.org/10.1111/vox.12827>>. However, it is recognised that the singling out of plasma donation is just as stigmatising as group-based deferral policies: Daniel Grace et al, 'Stepping Stones or Second Class Donors? A Qualitative Analysis of Gay, Bisexual, and Queer Men's Perspectives on Plasma Donation Policy in Canada' (2021) 21(444) *BMC Public Health* 2, 6–11 <<https://doi.org/10.1186/s12889-021-10480-x>>.
- 103 For instance, Italy has enacted deferral according to individually assessed high or low risk behaviour: Goldman et al (n 65) 98. See also the Food and Drug Administration's draft guidelines for the implementation of an individualised risk-based deferral: Food and Drug Administration, Department of Health and Human Services (US), 'Recommendations for Evaluating Donor Eligibility Using Individual Risk-based Questions to Reduce the Risk of Human Immunodeficiency Virus Transmission by Blood and Blood Products: Draft Guidance for Industry' (Guidance, January 2023).
- 104 Goldman et al (n 65) 98; Food and Drug Administration (n 103). Interestingly, countries such as Poland and Russia, which are notorious for queer discrimination, are actually able to produce better individual-risk based policies due to reticence surrounding queer sexual activities: Kumanan Wilson, Katherine Atkinson and Jennifer Keelan, 'Three Decades of MSM Donor Deferral Policies: What Have We Learned?' (2014) 18 *International Journal of Infectious Diseases* 1, 2 <<https://doi.org/10.1016/j.ijid.2013.09.016>>.
- 105 Park et al (n 63) 249; Sebastián Blanco et al, 'Gender-Neutral Donor Deferral Policies: Experience in Argentina Implementing Individual Risk-Assessment Policies' (2020) 115(7) *Vox Sanguinis* 548 <<https://doi.org/10.1111/vox.12933>>.
- 106 Blanco et al (n 105) 549.
- 107 Ibid 550–3.
- 108 'Blood Donor Selection Policy: More People Now Able to Give Blood', *NHS Blood and Transplant* (Web Page, 11 May 2021) <<https://www.blood.co.uk/news-and-campaigns/news-and-statements/fair-steering-group/>>.
- 109 Ibid. It must be noted that this change is not ideal, as the reference to anal sex only was still made within the context of MSM relationships: For the Assessment of Individualised Risk Steering Group, *Can Donor Selection Policy Move from a Population-based Donor Selection Policy to One Based on a More Individualised Risk Assessment? Conclusions from the For the Assessment of Individualised Risk (FAIR) Group* (Report, December 2020) 1 ('FAIR Group').

epidemiological analysis of high-risk sexual behaviours, which ultimately found that anal sex carried a high risk of TTI.<sup>110</sup>

Although it is recognised that risk-based approaches can be more invasive,<sup>111</sup> risk categories that focus on sexual activity, rather than sexual identity, are entirely reasonable within the context of the reduction of risk to the blood supply. Scholars argue that a general high-risk category is not only more inclusive, because it moves away from assumptions relating to MSM behaviour and risk, but it acts to capture high-risk activities that persist in heterosexual relationships, including unprotected sex with multiple partners, or unprotected sex with a monogamous partner who may be cheating.<sup>112</sup> The formulation of risk categories would necessitate consideration into whether cis-heterosexuals who engage in high-risk or unsafe sex should continue to be able to donate blood. Accordingly, calls for an individual risk-based system, and further data, may allow Lifeblood to accept the need for increased resources to expand the screening questionnaire to an individualised risk assessment.<sup>113</sup>

## B Birth Certificate Legislation

The birth certificate is one of the most important forms of legal identification that grants people admission to rights. However, for trans and intersex people, the recognition of sex/gender on birth certificates acts as an ‘arbiter of identity ... [that] connects the person certified to a whole regime of [cis-heteronormative] rights, entitlements, social scripts, and obligations’.<sup>114</sup> In demarcating sex boundaries at birth, scholars argue that the gender identity of all people is regulated by, and created through, the association of sex and gender as intrinsically linked concepts, and femininity and masculinity as entirely distinct notions.<sup>115</sup>

The consideration of sex/gender under case law, termed the formation of the ‘sex line’, has been described by Laura Grenfell and Anne Hewitt as occurring in three narratives.<sup>116</sup> The first narrative was the ‘sex as biology’ approach, which defined sex in biological or ‘genitocentric’ terminology, predominantly to uphold the sanctity of marriage as a cis-heterosexual institution for the purpose of procreation.<sup>117</sup> The second narrative was the anatomical and psychological view, which only recognised certain post-operative transgender people, including for the purposes of social payments and marriage.<sup>118</sup> The third narrative, as

110 *FAIR Group* (n 109) 3–6, 30–5, 42.

111 Caruso et al (n 102) 675.

112 ‘Blood Donation’ (n 54) 261; Park et al (n 63) 250; Robinson and Frost (n 53) 243, 271–3.

113 Lifeblood originally noted that an individual risk-based assessment was unavailable because of a lack of resources associated with screening capabilities: Advisory Committee on Biologicals, ‘Proposed Changes to the Guidelines for Selection of Blood Donors in Relation to Sexual Activity-based Deferrals’ (19 September 2013) 3 <<https://www.tga.gov.au/sites/default/files/foi-287-1617-03.pdf>>.

114 Annette Appell, ‘Certifying Identity’ (2014) 42(2) *Capital University Law Review* 361, 362, 367.

115 Ibid 387; Lena Holzer, ‘Sexually Dimorphic Bodies: A Production of Birth Certificates’ (2019) 45(1) *Australian Feminist Law Journal* 91, 102 <<https://doi.org/10.1080/13200968.2019.1649002>>.

116 Laura Grenfell and Anne Hewitt, ‘Gender Regulation: Restrictive, Facilitative or Transformative Laws?’ (2012) 34(4) *Sydney Law Review* 761, 761.

117 Ibid 762–5. See also Alex N Sharpe, ‘Transgender Marriage and the Legal Obligation to Disclose Gender History’ (2012) 75(1) *Modern Law Review* 33, 35–6 <<https://doi.org/10.1111/j.1468-2230.2011.00887.x>>.

118 Grenfell and Hewitt (n 116) 766–9.

is currently the position in Australian case law, prioritises psychological and behavioural considerations over anatomical references.<sup>119</sup> Specifically, the High Court affirmed in *Registrar of Births, Deaths and Marriages (NSW) v Norrie* (‘*Norrie*’)<sup>120</sup> that it was within the Registrar of Births, Deaths and Marriages’ power to record sex as non-specific, therefore acknowledging that ‘a person may be other than male or female’.<sup>121</sup>

Despite the finding in *Norrie*, sex/gender recognition legislation across Australian states is largely inconsistent,<sup>122</sup> with several schemes reinforcing damaging precepts surrounding the medicalisation and pathologising of trans and intersex bodies; those of which are ingrained with heteronormative, cisgender, and endosex rhetoric. Particularly, there are differences in the requirements for intervention, what sex/gender categories may be altered, the alteration for adults, and the alteration for children.

## 1 Australian Legislation

### (a) Intervention

There are three different variations of requirements that people must adhere to before they are able to change the sex/gender on their birth certificate or receive a recognition certificate. The first variation is surgical intervention, which exists in legislation in New South Wales (‘NSW’) and Queensland. Specifically, NSW requires a ‘sex affirmation procedure’,<sup>123</sup> and Queensland requires ‘sexual reassignment surgery’.<sup>124</sup> The second variation is non-surgical intervention, which exists in legislation in the Australian Capital Territory (‘ACT’), South Australia (‘SA’), Northern Territory (‘NT’) and Western Australia (‘WA’). Specifically, ACT and NT require ‘appropriate clinical treatment’ or intersex status,<sup>125</sup> SA requires ‘a sufficient amount of appropriate clinical treatment’,<sup>126</sup> and WA requires a

119 Ibid 769–70, 772.

120 *Norrie* (n 20).

121 Ibid 492–3 [1]–[3], 501–2 [46] (French CJ, Hayne, Kiefel, Bell and Keane JJ). See also *In the Marriage of C and D (falsely called C)* (1979) 28 ALR 524.

122 *Births, Deaths and Marriages Registration Act 1997* (ACT) (‘*BDMR Act* (ACT)’); *Births, Deaths and Marriages Registration Act 1995* (NSW) (‘*BDMR Act* (NSW)’); *Births, Deaths and Marriages Registration Act 1996* (NT) (‘*BDMR Act* (NT)’); *Births, Deaths and Marriages Registration Act 2003* (Qld) (‘*BDMR Act* (Qld)’); *Births, Deaths and Marriages Registration Act 1996* (SA) (‘*BDMR Act* (SA)’); *Births, Deaths and Marriages Registration Act 1999* (Tas) (‘*BDMR Act* (Tas)’); *Births, Deaths and Marriages Registration Act 1996* (Vic) (‘*BDMR Act* (Vic)’); *Gender Reassignment Act 2000* (WA) (‘*GR Act* (WA)’).

123 *BDMR Act* (NSW) (n 122) ss 32A–32C.

124 *BDMR Act* (Qld) (n 122) ss 22–3, sch 2 (definition of ‘sexual reassignment surgery’). But note that the passage of the Births, Deaths and Marriages Registration Bill 2022 (Qld) may alter this to a belief category: see, eg, s 39.

125 *BDMR Act* (ACT) (n 122) s 25(1)(a); *BDMR Act* (NT) (n 122) ss 28B(1)(c), 28B(2)(c), 28C. An application in ACT or NT may be made on the basis of belief or belief on reasonable grounds: *BDMR Act* (ACT) (n 122) ss 24(1)(c), 24(2)(b); *BDMR Act* (NT) (n 122) ss 28(1)(b), 28(2)(b). ‘Appropriate clinical treatment’ is not defined in ACT or NT legislation.

126 *BDMR Act* (SA) (n 122) ss 29I–29K. Note also that ‘clinical treatment need not involve invasive medical treatment (and may include or be constituted by counselling)’: at s 29H.

‘medical or surgical procedure’.<sup>127</sup> The third variation is belief, whereby Victoria only requires the applicant to hold a belief or reasonable belief.<sup>128</sup> Significantly, Tasmania does not permit the changing of sex on birth certificates,<sup>129</sup> but gender may be altered with counselling for a person 17 years and under,<sup>130</sup> and a ‘gender declaration’ for people 16 years and over.<sup>131</sup>

(b) *Alteration Categories*

There are three different variations of categories of sex/gender on a person’s birth certificate. The first variation is binary categories, whereby WA, Tasmania, and Queensland only allow male or female to be listed.<sup>132</sup> The second variation is semi-broad categories, whereby SA allows ‘male, female, non-binary, [and] indeterminate/intersex/unspecified’,<sup>133</sup> NSW allows ‘male, female, [and] non-specific’,<sup>134</sup> and NT allows ‘male, female, non-binary [and] unspecified’.<sup>135</sup> The

127 *GR Act* (WA) (n 122) ss 3 (definition of ‘reassignment procedure’), 14. See *AB v State of Western Australia* (2011) 244 CLR 390, 398 [11], 399–400 [15], 402–7 [23]–[39] (French CJ, Gummow, Hayne, Kiefel and Bell JJ). But note that the Western Australian Government intends to introduce legislation that will remove this requirement and instead replace it with clinical treatment: John Quigley, Attorney General and Minister for Electoral Affairs, ‘Reforming Sex and Gender Recognition Laws in Western Australia’ (Media Statement, 21 December 2022) <<https://www.mediastatements.wa.gov.au/Pages/McGowan/2022/12/Reforming-sex-and-gender-recognition-laws-in-Western-Australia.aspx>>.

128 Sex may be altered for adults if ‘the person believes the person’s sex to be as nominated in the application, as supported by a statutory declaration and supporting statement’: *BDMR Act* (Vic) (n 122) s 30A. Sex may be altered for children if the child consents, and the ‘parents believe on reasonable grounds that the alteration of the record of the child’s sex is in the best interests of the child’, as supported by a statutory declaration and a supporting statement made by a relevant person, including a doctor or psychologist: at s 30B(1)(c).

129 Tasmania does not permit the sex of a person to be registered as other than male or female, even where ‘variations of sex characteristics do not allow for an easy assignment of sex’: *BDMR Act* (Tas) (n 122) ss 15(1)(b), 16.

130 People aged 16 years and over are required to submit a ‘gender declaration’: *ibid* s 28A(5)(b)(i). People under the age of 16 years must submit ‘a statement ... that the [parents or guardians believe] on reasonable grounds that the registration of the gender in relation to the person is consistent with the will and preference of the person’: at s 28A(5)(b)(i). See also counselling requirements: at ss 28A, 28C.

131 *Ibid* s 28A(2).

132 For WA, see, *Gender Reassignment Regulations 2001* (WA) sch 1 forms 1–2. For Queensland, see Queensland Government, ‘Application to Note a Reassignment of Sex in the Birth Register or the Adopted Children Register’, *Publications Portal* (Web Page, 21 November 2019) <<https://www.publications.qld.gov.au/dataset/application-to-note-a-reassignment-of-sex-in-the-birth-register-or-the-adopted-children-register/resource/01fc8f9a-bd30-4f5d-8c0c-a3acf9bc39a2>> form 6 (v 4), as at 19 June 2018. But note that the passage of the Births, Deaths and Marriages Registration Bill 2022 (Qld) may extend these categories to include ‘any other descriptor of sex’ such as ‘genderqueer’: at sch 2 (definition of ‘sex descriptor’). Tasmania does not permit the sex of a person to be registered as other than male or female, even where ‘variations of sex characteristics do not allow for an easy assignment of sex’; however, Tasmania allows a gender identity to be registered: *BDMR Act* (Tas) (n 122) ss 3A, 15(1)(b), 16.

133 *Births, Deaths and Marriages Registration Regulations 2011* (SA) (*‘BDMR Regulations (SA)’*) s 7A.

134 Registry of Births, Deaths and Marriages (NSW), ‘Form 19: Application to Alter the Register to Record a Change of Sex’ (Web Form, October 2020) <<https://www.nsw.gov.au/sites/default/files/2020-10/apply-for-record-a-change-of-sex.pdf>> (‘Form 19’).

135 Northern Territory Government, ‘Register a Change of Sex or Gender on a Birth Certificate’, *Births, Deaths and Marriages (NT)* (Web Page, 20 December 2018) <<https://nt.gov.au/law/bdm/register-a-change-of-sex-or-gender-on-a-birth-certificate>>.

third variation is broad categories, whereby Victoria allows any sex descriptor, including ‘male, female, [or] any other sex’, as long as it is not a prohibited sex descriptor.<sup>136</sup> Tasmania also allows the optional inclusion of broad gender descriptions, as distinct from sex.<sup>137</sup>

(c) *Adults*

Most states and territories require a person who is 18 years and over to make an application to the Registrar or Registrar-General.<sup>138</sup> WA currently requires an application to be made to the Gender Reassignment Board for the issuance of a recognition certificate,<sup>139</sup> which is then presented to the Registrar; however, the Gender Reassignment Board is intended to be abolished, in favour of processing by the Registry of Births, Deaths and Marriages.<sup>140</sup>

(d) *Children*

There are three different variations of procedures for the alteration of a child’s birth certificate. The first is the parent/guardian model, where in NSW and NT, the sole parent, or both parents, or guardian may apply to the Registrar,<sup>141</sup> and in WA, a child’s guardian may apply to the Gender Reassignment Board.<sup>142</sup> The second is the alternate model, where in Queensland and Victoria, an application may be made by both parents or guardians to the Registrar, or by any one parent or guardian to the relevant court.<sup>143</sup> The third is the hybrid model, where in ACT, SA, and Tasmania, there are opportunities for some children to directly make an application to the Registrar, Registrar-General, Magistrate, or Tribunal.<sup>144</sup>

136 *BDMR Act* (Vic) (n 122) s 4(1) (definitions of ‘sex descriptor’ and ‘prohibited sex descriptor’).

137 Gender descriptions include ‘male, female, non-binary, indeterminate gender [or any] word or phrase that is used to indicate a person’s perception of the person’s self as being neither entirely male nor entirely female and that is prescribed’: at s 3A. See also ss 15(1)(b), 16.

138 *BDMR Act* (NSW) (n 122) ss 32B(1), 32D; *BDMR Act* (NT) (n 122) ss 28(1)(b), 28D; *BDMR Act* (SA) (n 122) ss 29I(1); *BDMR Act* (Vic) (n 122) s 30C(1), (3); *BDMR Act* (Qld) (n 122) s 22. In relation to the registration of gender, see *BDMR Act* (Tas) (n 122) ss 28A(1), 28C (child includes a person 16 years and over); *BDMR Act* (ACT) (n 122) ss 24, 29A (child includes a person 16 years and over).

139 *GR Act* (WA) (n 122) ss 15(1), 17.

140 Quigley (n 127).

141 *BDMR Act* (NSW) (n 122) s 32B(2); *BDMR Act* (NT) (n 122) s 28B(2)–(4).

142 *GR Act* (WA) (n 122) s 14(2)(b). Note that it is unclear how the process will differ under legislation intended to be introduced in WA: Quigley (n 127).

143 *BDMR Act* (Qld) (n 122) s 23(2)–(3); *BDMR Act* (Vic) (n 122) ss 30B–30BB.

144 In ACT, children who are at least 16 years old may directly apply to the Registrar-General. A child who is between 12 and 15 years old may obtain consent of their parent, or person with parental responsibility, to apply to the Registrar-General. Alternatively, a person who is under 16 years old, or a person who is under 12 years old, and has the consent of at least one parent or person with parental responsibility, may apply to the ACT Civil and Administrative Tribunal to seek leave to apply to the Registrar-General: *BDMR Act* (ACT) (n 122) pt 4. In Tasmania, children who are at least 16 years old may apply to the Registrar to have a specified gender registered, and if a child is 15 years old or younger, their parent or guardian may seek approval from a magistrate: *BDMR Act* (Tas) (n 122) ss 28A–28B. In SA, a child, or their parent or guardian, may apply to the Registrar, if the SA Civil and Administrative Tribunal approves the application: *BDMR Act* (SA) (n 122) s 29J.



## 2 Spectacles of Respectable Equality

Australian birth certificate legislation typically requires surgical and non-surgical interventions to change sex/gender within the range of binary or semi-broad categories. Some legislation also purports to recognise intersex people in the form of semi-broad categories, or ‘third marker’ categories,<sup>145</sup> such as ‘indeterminate/intersex/unspecified’,<sup>146</sup> ‘non-specific’,<sup>147</sup> or ‘X’.<sup>148</sup> Further, in the instances of children, most legislation requires parental/guardian consent to make the application, or that only the parent/s or guardian/s can make the application.<sup>149</sup> These restrictions, or systems that include these restrictions, are the symbolic representation of respectable equality. Trans people can change the sex/gender on their birth certificate, but only if they adhere to medicalised or pathologised interventions that align these individuals to dimorphic categories. Additionally, when intersex people are recognised, they are expected to be placed into an easily distinguishable, different category.

The underlying cis-heteronormative standards within these requirements and characterisations is the refusal to believe that sex/gender is a fluid, immovable concept that is not always characterisable. Specifically, trans and intersex ‘anomalous bodies’ provoke a ‘categorical crisis’, which challenges ideas surrounding the biology of sex and ultimately results in regulation in the form of medicalised and pathologised interventions.<sup>150</sup> Intersex bodies in particular are positioned as a problem that must be immediately fixed, irrespective of the impact on the child.<sup>151</sup> In comparison, trans people are subject to drawn-out processes laden with unnecessary requirements, framed as though to protect the person.<sup>152</sup> Georgiann Davis, Jodie M Dewey and Erin L Murphy further conceptualise these propositions using the theory of ‘giving sex’

where [medical] providers validate (the construction of) heteronormative bodies and invalidate intersex and trans embodiments according to their interpretations

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145 See, eg, Fae Garland and Mitchell Travis, ‘Legislating Intersex Equality: Building the Resilience of Intersex People through Law’ (2018) 38(4) *Legal Studies* 587, 596 <<https://doi.org/10.1017/lst.2018.17>>.

146 *BDMR Regulations* (SA) (n 133) reg 7A.

147 ‘Form 19’ (n 134).

148 Dylan Amy Davis, ‘The Normativity of Recognition: Non-binary Gender Markers in Australian Law and Policy’ in Vasilikie Demos and Marcia Texler Segal (eds), *Advances in Gender Research* (Emerald Publishing, 2017) 231 <<https://www.emerald.com/insight/content/doi/10.1108/S1529-212620170000024014/full/html>>; ‘Darlington Statement’ (n 14) [8].

149 See above nn 141–4.

150 Aileen Kennedy, ‘Fixed at Birth: Medical and Legal Erasures of Intersex Variations’ (2016) 39(2) *University of New South Wales Law Journal* 813, 813; Georgiann Davis, Jodie M Dewey and Erin L Murphy, ‘Giving Sex: Deconstructing Intersex and Trans Medicalization Practices’ (2016) 30(3) *Gender and Society* 490, 494 <<https://doi.org/10.1177/0891243215602102>>.

151 Davis, Dewey and Murphy (n 150) 491, 500, 509. In considering Australian cases associated with medical intervention that results in sterilisation, Carpenter noted that the court often considers stereotypical depictions of gender identity and (unfounded) future medical risks, without considering the appropriateness of any intervention: Morgan Carpenter, ‘The “Normalization” of Intersex Bodies and “Othering” of Intersex Identities in Australia’ (2018) 15(4) *Journal of Bioethical Inquiry* 487, 490, 492 <<https://doi.org/10.1007/s11673-018-9855-8>>.

152 Davis, Dewey and Murphy (n 150) 491, 500, 509.

of appropriate gender expectations ... [with the] ultimate success [being] the enactment of a gender normative heterosexual identity'.<sup>153</sup>

In other words, birth certificates can be recognised as a discursive practice, whereby trans people are required to conform to a binary, whether it be through invasive surgery or psychological intervention. Similarly, intersex people are required to conform to cis-heteronormative notions by neatly identifying as part of a third category, which reinforces a new binary – normal and abnormal – where endosex people are perceived as normal, with variations that do not conform to those standards deemed abnormal. Additionally, it is not merely medical providers and the law that are regulating the representation of bodies and identities, but the reliance on the consent of parent/s or guardian/s of children, thus permission is only granted where parent/s or guardian/s are supportive. Accordingly, any recognition process that requires adherence to strict sex/gender categories, and/or prevents the opportunity for children to apply to make the alteration, are a form of respectable equality. These requirements reinforce the supremacy of cisgender and endosex identities, preserve the overregulation of intersex and trans bodies, and ultimately restrict the idea that sex/gender are fluid and constantly changing concepts that are not qualified by material, biological, or psychological precepts.<sup>154</sup>

Birth certificate legislation that allows trans people to amend their sex/gender has been spectacularised where compliance with surgical or non-surgical interventions are still required. Scholars recognise that the necessitation of surgical intervention reinforces the cis-heteronormative perspective that sex/gender is determined by genitalia that is sufficiently considered masculine or feminine, thus delineating between the “‘authentic’ transgender identity’ that engages in all surgical interventions and trans people who do not or cannot.”<sup>155</sup> Dean Spade extends this notion further to explain that the ‘rigidity of the diagnostic and treatment criteria ... and the version of transsexuality that it posits produce and reify a fiction of normal, healthy gender that works as a regulatory measure for the gender expression of all people’.<sup>156</sup> The continued reliance on surgical intervention imposes a caveat on the alteration of sex/gender on a birth certificate, that being that it can only occur if a person is perceived by cis-heteronormative society to conform enough to one side of the boundary – not both and not neither. This is further exemplified in the reliance on non-surgical interventions, such as clinical treatment, which often involves counselling. In pathologising some trans identities through the category of gender dysphoria, scholars argue that trans people are labelled as ‘disordered’ or ‘medically “atypical”’ individuals, whose only end to

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153 Ibid 492, 495.

154 Also note that recognition processes that prevent children from making an application reinforce the centrality of the heteronormative, nuclear family, which requires submission to parents as the heads of those families.

155 Alex N Sharpe, *Transgender Jurisprudence: Dysphoric Bodies of Law* (Cavendish, 2002) 161 <<https://doi.org/10.4324/9781843144236>>; Dean Spade, ‘Mutilating Gender’ in Susan Stryker and Stephen Whittle (eds), *The Transgender Studies Reader* (Routledge, 2006) 315, 328–9; Holzer (n 115) 104.

156 Spade (n 155) 329.

suffering is at the hands of (gatekeeping) mental health professionals.<sup>157</sup> Although this model has utility in ensuring that trans people can access hormonal or surgical treatment more easily where needed,<sup>158</sup> it recognises trans identity under the perception that it is a deviant abnormality; much like how homosexuality was previously considered a mental disorder.<sup>159</sup> In this sense, non-surgical interventions permit the amendment of sex/gender on birth certificates if it is deemed sufficiently necessary within the realm of a ‘mental illness model’.<sup>160</sup> The ultimate result is the supremacy of cisgender identity, with any deviations authorised to the extent of binary or semi-broad categories. Accordingly, the theatricalisation of the mere ability to amend sex/gender on a birth certificate is harmful because most Australian jurisdictions continue to rely on manifestations of identity that uphold normative expectations of femininity and masculinity. That is, surgical and non-surgical interventions enforce notions of normalcy on gender and uphold the idea that gender is not a personal belief that is held, but a quantifiable determination that must be obtained.

Birth certificate legislation that provides a third sex/gender category for intersex people has been spectacularised as sufficient recognition, thus delaying reform that restricts the normalisation of intersex bodies. Currently, the practice in Australia is to engage in procedures that normalise intersex bodies,<sup>161</sup> as there is no legislative prohibition against the surgical intervention of intersex variations – only farcical recognition that ‘prevents’ discrimination of intersex status in other areas.<sup>162</sup> In other words, the ‘knife of the norm’ demands that young children undergo surgery to ‘correct’ intersex variations, in order to normalise bodies as female or male.<sup>163</sup> This occurs irrespective of the views of the intersex person, lack of health benefit, and long-term issues, such as ‘a loss of sexual function and sensation, a need for repeat surgeries, incorrect legal sex assignment, infertility and lifelong need for hormone replacement, genital examinations, loss of bodily integrity and trauma’.<sup>164</sup> This rift between extended identification categories, and failure to prevent medical interventions, is further contextualised through the concept of formal and substantive equality. Specifically, Fae Garland and

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157 Sharpe (n 117) 41; Holzer (n 115) 105; James Lindemann Nelson, ‘Still Quiet after All These Years: Revisiting “The Silence of the Bioethicists”’ (2012) 9(3) *Journal of Bioethical Inquiry* 254 <<https://doi.org/10.1007/s11673-012-9377-8>>.

158 Spade recognises that pathologising transgender people has some benefits in that it is treated as an illness, which means it can potentially be covered by healthcare programs at lower costs: Spade (n 155) 328.

159 Alex N Sharpe, ‘A Critique of the *Gender Recognition Act 2004*’ (2007) 4(1) *Journal of Bioethical Inquiry* 33, 41 <<https://doi.org/10.1007/s11673-007-9032-y>>.

160 Ibid 38.

161 Kennedy (n 150) 812. But note that the ACT Parliament has drafted the Variations in Sex Characteristics (Restricted Medical Treatment) Bill 2023, which if passed, would restrict certain medical intervention procedures.

162 See, eg, *Sex Discrimination Act 1984* (Cth) s 5C. Note also purported references to intersex people in certain anti-discrimination legislation conflates intersex identity with ‘transgender’ and ‘gender identity’: *Anti-discrimination Act 1977* (NSW) s 38A; *Anti-discrimination Act 1991* (Qld) sch 1 (definition of ‘gender identity’).

163 Butler, *Undoing Gender* (n 37) 53.

164 Carpenter (n 151) 492, 487–8.

Mitchell Travis explain that formal equality only provides legal recognition and not substantive protections; meaning that ‘[i]f bodily integrity is not prioritised, anti-discrimination law risks being symbolic and worse, potentially entrenches intersex embodied persons into systems of marginalisation’.<sup>165</sup> In drawing from Spade’s critiques of the counterproductive nature of legal recognition,<sup>166</sup> Davis considers the ‘politics of containment’ that results from additional sex/gender categories to fortify binary conceptions, ‘by creating an illusion of equality while institutions of regulatory power continue to marginalize many non-binary trans [and intersex] people’.<sup>167</sup> Additional critiques of semi-broad categories, such as ‘indeterminate/intersex/unspecified’, recognise that not only are these categories rarely utilised, but they conflate intersex with some trans identities, thus resulting in the erasure, or inadvertent exposure, of non-normative sex/gender description.<sup>168</sup> As such, while semi-broad legal categories do recognise intersex people, and are better than binary categories that do not, semi-broad categories remain ineffective when compared to broad categories that permit self-identification.

### 3 Self-identification

The change of sex/gender on Australian birth certificate registration must move towards an approach that does not require medicalised or pathologised interventions, but favours broad alteration categories, and a hybrid-based system that allows children to personally change their legal identity. Within Australia, the Victorian scheme affords the closest representation of a self-identification model, whereby individuals determine their own legal sex/gender identity on identity documents.<sup>169</sup> Specifically, the requirement of ‘belief’ in the Victorian legislation recognises that a person’s sex does not depend on surgical intervention. Further, the broad nature of available sex categories adequately acknowledges that sex/gender are distinct and fluid, social constructs.

However, recent commentary on the *Births, Deaths and Marriages Registration Act 1999* (Tas) demonstrates that law reform associated with trans and intersex communities, such as that related to intersex genital mutilation or other holistic reforms, is still necessary.<sup>170</sup> For instance, Louise Richardson-Self’s analysis of social media commentary on the Tasmanian amendments represents how Australian society continues to align with a ‘ciscentric’ view, that relies on

165 Garland and Travis (n 145) 588, 597, 605–6.

166 Dean Spade, *Normal Life: Administrative Violence, Critical Trans Politics, and the Limits of Law* (Duke University Press, 2015) 8–9, 11–2; Davis (n 148) 233–4.

167 Davis (n 148) 228–9, 34.

168 Carpenter (n 151) 488, 492; Holzer (n 115) 91–2, 97, 99, 103, 109; Garland and Travis (n 145) 588, 596, 599; Davis (n 148) 234, 237.

169 Note there are limitations to the Victorian scheme, such as the issues with applications made by children: Intersex Human Rights Australia, *Shadow Report Submission: Australia* (Report, 30 October 2018) <<https://ihra.org.au/wp-content/uploads/2018/11/IHRA-2018-CRC.pdf>>.

170 Holzer (n 115) 110.

biological determinism and dimorphic concepts of sex/gender, that of which ‘creates a hostile “aesthetic” for trans and intersex Australians’.<sup>171</sup>

Further, calls for a self-identification model are often associated with additional recommendations, including that the general registration and recognition of sex/gender be eradicated or reduced, in favour of a technologically-based identification system.<sup>172</sup> Recent scholarship has explored the concept of ‘decertification’, which considers how the assignment of legal sex/gender at birth could be abolished, resulting in the organisation of society that is not centred around legal sex/gender but non-legal self-identification.<sup>173</sup> Accordingly, any movement away from the current birth certificate registration scheme must be enacted alongside other holistic reform, and operate with a view to encourage self-identification – that of which should ideally occur outside the remit of a legal classification of sex/gender.

### III INDIRECT DISCRIMINATION

#### A Gendered Language

The use of gendered language in legislative drafting and the potential for discrimination has long been subject to analysis.<sup>174</sup> Despite this, scholars have typically focused exclusively on criticising ‘the masculine rule’:<sup>175</sup> a sexist drafting technique whereby masculine language and pronouns are exclusively utilised in legislation.<sup>176</sup> Arguments criticising this rule maintain that the use of masculine language perpetuates ideas that women are subordinate to men.<sup>177</sup> In response to these criticisms, ‘gender-neutral language’ was largely implemented; however,

171 Louise Richardson-Self, “‘There Are Only Two Genders: Male and Female ...’: An Analysis of Online Responses to Tasmania Removing “Gender” from Birth Certificates’ (2020) 1(1) *International Journal of Gender, Sexuality and Law* 295, 297, 317 <<https://doi.org/10.19164/ijgsl.v1i1.995>>.

172 Dean Spade, ‘Documenting Gender’ (2008) 59(4) *Hastings Law Journal* 731, 736–9. See especially Davis (n 148) who argues that ‘photographs, digital signatures, retinal scans, blood type, and other technology exists to identify people more accurately, [meaning that] gender markers are no longer necessary or useful for the purposes of correctly identifying individuals’: at 229, 243–4.

173 See Davina Cooper et al, *Abolishing Legal Sex Status: The Challenge and Consequences of Gender Related Law Reform* (Final Report, Future of Legal Gender Project, 2022). See also ‘Darlington Statement’ (n 14) [8].

174 Sandra Petersson, ‘Gender Neutral Drafting: Historical Perspective’ (1998) 19(2) *Statute Law Review* 93 <<https://doi.org/10.1093/slr/19.2.93>> (‘Historical Perspective’); Sandra Petersson, ‘Locating Inequality: The Evolving Discourse on Sexist Language’ (1998) 32(1) *University of British Columbia Law Review* 55; Sandra Petersson, ‘Gender-Neutral Drafting: Recent Commonwealth Developments’ (1999) 20(1) *Statute Law Review* 35 <<https://doi.org/10.1093/slr/20.1.35>> (‘Recent Commonwealth Developments’); Debora Schweikart, ‘The Gender Neutral Pronoun Redefined’ (1998) 20(1) *Women’s Rights Law Reporter* 1; Christopher Williams, ‘The End of the “Masculine Rule”? Gender-Neutral Legislative Drafting in the United Kingdom and Ireland’ (2008) 29(3) *Statute Law Review* 139 <<https://doi.org/10.1093/slr/hmn015>>.

175 Petersson, ‘Historical Perspective’ (n 174); Petersson, ‘Recent Commonwealth Developments’ (n 174).

176 Petersson, ‘Recent Commonwealth Developments’ (n 174) 36.

177 Kadija Kabba, ‘Gender-Neutral Language: An Essential Language Tool to Serve Precision, Clarity and Unambiguity’ (2011) 37(3) *Commonwealth Law Bulletin* 427, 429 <<https://doi.org/10.1080/03050718.2011.595141>>; Schweikart (n 174) 2, 4; Attorney-General’s Department (Cth), ‘Moves to Modify Language Sex Bias in Legislation’ (Press Release No 142/84, 30 September 1984). See generally Deborah Cameron,

this meant that rather than referring to masculine pronouns only, feminine and masculine pronouns were used, along with gender non-specific terminology, such as ‘chairperson’.<sup>178</sup> The advantages of gender-neutral language were considered to include an improvement in accuracy and clarity, and the ultimate removal of sexist inferences.<sup>179</sup> Opponents argued that feminine and masculine terms increased uncertainty,<sup>180</sup> ambiguity,<sup>181</sup> the length and cost of legislation,<sup>182</sup> and were distracting.<sup>183</sup>

Recently, scholars such as Donald L Revell and Jessica Vapnek have called for the implementation of ‘gender-silent legislative drafting’.<sup>184</sup> Drafting under this structure would involve using various techniques to achieve actual gender-neutrality, in order to include non-binary and gender diverse identities.<sup>185</sup> Identified drafting techniques include the repetition of the gender non-specific nouns or other relevant nouns,<sup>186</sup> omission or elimination of pronouns,<sup>187</sup> rephrasing,<sup>188</sup> drafting in the plural or passive manner,<sup>189</sup> and replacing gendered pronouns with the singular and plural ‘they’, ‘their’, and ‘them’.<sup>190</sup> Gender-silent legislative drafting would therefore not only ensure greater adherence to obligations surrounding plain language, but be better inclusive of queer people.<sup>191</sup>

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‘Feminist Linguistic Theories’ in Stevi Jackson and Jackie Jones (eds), *Contemporary Feminist Theories* (Edinburgh University Press, 1998) 147 <<https://doi.org/10.1515/9781474469500-011>>.

- 178 Donald L Revell and Jessica Vapnek, ‘Gender-Silent Legislative Drafting in a Non-binary World’ (2020) 48(2) *Capital University Law Review* 103, 107; Williams (n 174) 140; Kabba (n 177) 429; Giulia Adriana Pennisi, ‘A Linguistic Insight into the Legislative Drafting of English-Speaking Jurisdictions: The Use of “Singular They”’ (2020) 22(1) *European Journal of Law Reform* 3, 8–9 <<https://doi.org/10.5553/EJLR/138723702020022001001>> (‘Singular They’).
- 179 Kabba (n 177) 431.
- 180 Schweikart (n 174) 7.
- 181 *Ibid* 7–8.
- 182 Daniel Greenberg, ‘The Techniques of Gender-Neutral Drafting’ in Constantin Stefanou and Helen Xanthaki (eds), *Drafting Legislation: A Modern Approach* (Routledge, 2016) 67, 67 <<https://doi.org/10.4324/9781315578026>>.
- 183 Daniel T Kobil, ‘Do the Paperwork or Die: Clemency, Ohio Style?’ (1991) 52(3) *Ohio State Law Journal* 655, 664.
- 184 Revell and Vapnek (n 178) 105–6. See also Ruby King and Jasper Fawcett, ‘The End of “He or She”? A Look at Gender-Neutral Legislative Drafting in New Zealand and Abroad’ (2018) 2 *New Zealand Women’s Law Journal* 107. See also Pennisi, ‘Singular They’ (n 178).
- 185 Revell and Vapnek (n 178) 105–8.
- 186 *Ibid* 136–7.
- 187 *Ibid* 138.
- 188 *Ibid* 137.
- 189 *Ibid*.
- 190 *Ibid* 137–8.
- 191 *Ibid* 134–5; Emily Grabham, ‘Exploring the Textual Alchemy of Legal Gender: Experimental Statutes and the Message in the Medium’ (2020) 10(2) *feminists@law* 1 <<https://doi.org/10.22024/UniKent/03/fal.950>>. But note, Cameron (n 177) argues in relation to feminist perspectives, that focusing on individual terms can overlook other forms of sexism in language, stating that the ‘aim in reforming language cannot be simply to change surface linguistic forms, but must be to change the *meanings* underlying them’: at 153 (emphasis in original). Irrespective of this critique, my argument in favour of gender-silent legislative drafting is warranted, considering my subsequent arguments which specify that Australian drafting policies purport to draft in an inclusive manner, but do not achieve this goal.



## 1 Current Drafting Policies

### (a) Victoria

In the Victorian jurisdiction, the drafting of legislation is undertaken by the Office of the Chief Parliamentary Counsel Victoria ('OCPC'), as guided by various preparatory documents.<sup>192</sup> Drafting must also be in accordance with plain English drafting standards,<sup>193</sup> with the expression of statutory rules occurring 'in language that is clear and unambiguous; in a way which ensures that its meaning is certain and there are no inconsistencies [and] in language that gives effect to its stated purpose'.<sup>194</sup> Notably, the OCPC's Drafting Manual: General Bills Drafting Guidance ('OCPC Drafting Manual') specifically assists drafters in using gender-neutral language.<sup>195</sup> The manual notes that 'complete gender neutrality has been used' since the decision in *Norrie*.<sup>196</sup> The policy supposedly achieves gender neutrality by providing guidance in the form of suggested techniques.<sup>197</sup> These techniques include: repeating the noun, using a relative clause, using something other than a pronoun, changing the phrasing, using 'they', 'their' and 'them' as a singular noun, 'if there is no possible ambiguity and the use does not jar', and using the plural 'in authorising provisions or where the pronoun refers to people who are not the primary subject of the provision'.<sup>198</sup>

The OCPC also identified that the policy with respect to provisions in pre-1984 acts that use the masculine form is 'to replace them with gender-neutral language but only when there are other amendments being made to the provision or the relevant provision is being substituted with a new provision'.<sup>199</sup> Further,

a similar policy [exists] in relation to references [to] 'he or she', 'his or her' and 'him or her' in provisions of Acts and statutory rules ... [with drafters] replac[ing] those formulations with formulations that are consistent with the current OCPC policy, but only if there are other amendments being made to the relevant provisions or if the relevant provisions are being substituted.<sup>200</sup>

192 'About the Office of the Chief Parliamentary Counsel', *Victorian Government* (Web Page, 30 March 2021) <<https://www.vic.gov.au/about-office-chief-parliamentary-counsel>>. See, eg, Office of the Chief Parliamentary Counsel (Vic), 'Notes for Guidance on the Preparation of Statutory Rules' (Guidance, Victorian Government, May 2017) 1 <<https://www.vic.gov.au/sites/default/files/2019-12/Notes-for-guidance-on-the-preparation-of-statutory-rules-Office-of-the-Chief-Parliamentary-Counsel-Victoria.pdf>> ('Notes for Guidance'). The drafting of subordinate legislation is also governed by the *Subordinate Legislation Act 1994* (Vic).

193 The OCPC outlines that the plain English policy is located on the OCPC's website, however this does not appear to be the case: OCPC, 'Notes for Guidance' (n 192) 14 [4.1].

194 *Ibid.*

195 I gained access to the OCPC Drafting Manual, which is an internal gender-neutral drafting policy, via email to the OCPC: Email from Jim Soundias to Emma Genovese, 10 May 2021; Office of the Chief Parliamentary Counsel (Vic), 'Drafting Manual: General Bills Drafting Guidance' (Manual) ('OCPC Drafting Manual').

196 'OCPC Drafting Manual' (n 195) 6, [24] citing *Norrie* (n 20).

197 See, eg, 'OCPC Drafting Manual' (n 195) pt 3.

198 *Ibid.*

199 Email from Jim Soundias to Emma Genovese, 10 May 2021.

200 *Ibid.*

(b) *Commonwealth*

In the federal jurisdiction, the drafting of legislation is undertaken by the Office of Parliamentary Counsel ('OPC'), as guided by a variety of resources.<sup>201</sup> Specifically, the OPC Drafting Manual,<sup>202</sup> Plain English Manual,<sup>203</sup> and Drafting Direction on English Usage, Gender-Specific and Gender-Neutral Language, Grammar, Punctuation and Spelling ('Drafting Direction No 2.1'),<sup>204</sup> appear to relate to the gender-neutral drafting of all legislation, while the *Instruments Handbook* and the *Legislation Act 2003* (Cth) applies solely to the drafting of legislative instruments and notifiable instruments.<sup>205</sup> Drafting using gender-neutral language is encouraged through the following techniques: 'us[ing] the description of the relevant person (eg "the taxpayer's") instead of relying on gendered pronouns',<sup>206</sup> and in circumstances related to 'cumbersome expressions like "he, she or it", "him, her or it" and "his, her or its" [t]ry[ing] to avoid these by rearranging the sentence so as to do without the pronouns',<sup>207</sup> or 'say[ing] "it", "them", "they" ... whenever there's no ambiguity'.<sup>208</sup> Additionally, when drafting new legislation, the policy is that

a masculine personal pronoun in draft legislation must always be accompanied by a feminine personal pronoun (and vice versa) except in the very rare care of legislation intended to apply to people of one sex but not the other (e.g. maternity leave legislation). Drafters should use their discretion in deciding, in individual cases, whether it would be better to avoid the use of pronouns altogether by repeating the relevant noun instead.<sup>209</sup>

Also, "Chair" should be used (instead of "Chairperson" or "Chairman"),<sup>210</sup> and '[w]ords ending in "man" which might reasonably be seen as importing the masculine gender should be avoided in favour of gender-neutral words'.<sup>211</sup> When drafting amendments to existing legislation, the OPC has deemed it unnecessary

201 These resources include drafting manuals, drafting directions, drafting templates, legislative handbooks, materials related to drafting of plain language and reducing complexity, and word note examples: see, eg, Office of Parliamentary Counsel, 'Drafting Resources' (Web Page) <<https://www.opc.gov.au/drafting-resources>>.

202 Office of Parliamentary Counsel (Cth), 'OPC Drafting Manual' (July 2019) 14 <<https://www.opc.gov.au/sites/default/files/2023-01/s05pq37.v27.pdf>> ('Drafting Manual').

203 Office of Parliamentary Counsel (Cth), 'Plain English Manual' (19 December 2013) 19 <[https://www.opc.gov.au/sites/default/files/2023-01/plain\\_english\\_0\\_0.pdf](https://www.opc.gov.au/sites/default/files/2023-01/plain_english_0_0.pdf)> ('PE Manual').

204 Office of Parliamentary Counsel (Cth), 'English Usage, Gender-Specific and Gender-Neutral Language, Grammar, Punctuation and Spelling' (Drafting Direction No 2.1, 1 March 2016) 3–5 <<https://www.opc.gov.au/sites/default/files/2023-01/dd2.1.pdf>> ('Drafting Direction No 2.1').

205 Office of Parliamentary Counsel (Cth), *Instruments Handbook* (May 2019) <<https://webarchive.nla.gov.au/awa/20190808034924/https://www.opc.gov.au/sites/default/files/m17jfl42.v24.pdf>> ('*Handbook*'). Note that although an updated version of this document was released in August 2022, the only changes to the extracts relevant to these sections related to pinpoint references: Office of Parliamentary Counsel (Cth), *Instruments Handbook* (August 2022) <[https://webarchive.nla.gov.au/awa/20220816072826/https://www.opc.gov.au/sites/default/files/instruments\\_handbook\\_0.docx](https://webarchive.nla.gov.au/awa/20220816072826/https://www.opc.gov.au/sites/default/files/instruments_handbook_0.docx)>.

206 'Drafting Manual' (n 202) 14 [97].

207 'PE Manual' (n 203) 19 [76].

208 *Ibid* 20 [81].

209 'Drafting Direction No 2.1' (n 204) 3 [15].

210 *Ibid* 3 [16], 4 [19].

211 *Ibid* 4 [17].

for feminine pronouns to be inserted alongside masculine pronouns, in instances that include

occurrences in agreements or other documents set out in legislation ([which] would only be amended if the agreements or other documents are themselves amended); occurrences in legislation that have little or no current or future operation ... [because] it would be a waste of time to update their language'; [and] occurrences in legislation in which the use of masculine pronouns alone might reflect a deliberate policy, and where amendments should not be made without a conscious policy decision.<sup>212</sup>

Further, if 'feminine pronouns should be inserted, [drafters] should make the necessary amendments if time permits'.<sup>213</sup>

There are also additional specifications related to the drafting of legislative instruments only. Particularly, section 16(3)(a) of the *Legislation Act 2003* (Cth) ('*LA*') requires steps to be taken 'to prevent the use of gender-specific language in legislative instruments ... in circumstances where it is not necessary to identify persons by their sex'. This is supplemented by the *Instruments Handbook*, which clarifies that 'inappropriate use of gender-specific language is clearly identified in the *LA* as undesirable',<sup>214</sup> and that '[l]anguage that might be reasonably seen to imply a single gender should be avoided, unless ... the instrument is intended to apply only to people of one sex; or ... it is important to use a particular term for consistency with the enabling legislation'.<sup>215</sup> Despite this, the term 'gender-specific language' is not defined in the *LA*, and in the Drafting Direction No 2.1 'gender-specific words' are only discussed with respect to terms such as 'Ombudsman'.<sup>216</sup> Thus, the definition of gender-specific language likely does not extend to language which favours cis-gender descriptions and conservative notions of femininity and masculinity.

## 2 *Corpus Analysis*

### (a) *Overview*

While scholars have started to explore gender-neutral legislative drafting policies, literature rarely considers how these policies are applied in practice.<sup>217</sup> Giulia Adriana Pennisi's scholarship provides one of the most in-depth considerations of gendered terms in legislation, through analysing the use of 'they', 'them', and 'their', and feminine and masculine pronouns, in specific public general acts passed

212 Ibid 4 [18]. The latter instance is somewhat clarified through noting that gender-specific words, such as 'Ombudsman' or 'masters of ships', should be discussed amongst drafters: at 5 [24]–[25].

213 'Drafting Direction No 2.1' (n 204) 4 [19].

214 Ibid 24 [101].

215 *Handbook* (n 205) 23–4 [100]. The *Handbook* also requires drafters to take care when replacing a sunset instrument that 'contains gender-specific language': at 79 [352].

216 'Drafting Direction No 2.1' (n 204) 5 [24]. The *Handbook* directs readers to the Drafting Direction No. 2.1 for further guidance as to the meaning of gender-specific language: ibid 24 [102].

217 In relation to an extensive audit of Canadian legislation, see Richard Haigh, 'Thirty Years with Section 15 of the *Charter*: A Report on Legislative Terminology in Canada' (2018) 38(1) *National Journal of Constitutional Law* 7.

in the United States, Canada, New Zealand, Australia, and the United Kingdom.<sup>218</sup> While Pennisi's initial analysis considered gendered pronouns in acts passed across 2000, 2005, 2010 and 2016, this focus was limited to the frequency of references, without extensively considering the context of these terms.<sup>219</sup> In noting the use of gendered language in legislation, Pennisi's later analysis concludes that Canada was the only jurisdiction to regularly use the singular 'they', 'them', and 'their', with other jurisdictions instead preferring to employ techniques such as restructuring the sentence, omitting pronouns, repeating terms, or using the passive voice.<sup>220</sup> Another prominent analysis is Richard Haigh's audit of a majority of Canadian acts,<sup>221</sup> which found that legislation was potentially discriminatory in using one gender to represent all genders, engaging in gender stereotypes, maintaining archaic gendered language in older statutes, and using suspected outdated terms.<sup>222</sup> Significantly, there appears to be no consideration of gendered terms in legislation other than acts, nor an extensive analysis of legislation in Australian jurisdictions. As such, there is scope to assess the drafting techniques of Australian jurisdictions, not only to determine the extent of gendered terms used, but to consider the level of complicity with gender-neutral drafting policies.

In analysing gendered terminology within Victorian and Commonwealth legislation, I aim to reveal the extent of inconsistent or unnecessary gendered language, and to demonstrate that policy reform and broad-scale legislative review is necessary. The Victorian and Commonwealth jurisdictions were selected to ensure a cross-section of Australian legislative drafting policies could be analysed. The time period assessed was legislation which received royal assent, commenced, was dated or signed after 8 December 2017, being the date that the *MA(DRF) Act* received royal assent, and 30 June 2021.<sup>223</sup> As part of the corpus analysis, I searched for a variety of gendered terms in legislation, including: 'he/she', 'his/her', 'him/her',<sup>224</sup> 'husband/wife', 'man/woman', 'male/female', 'boy/girl', and 'son/daughter'. I chose these terms because they covered a range of gendered

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218 Giulia Adriana Pennisi, 'Gender Neutrality in Legislative Drafting Techniques: Where Conventionality in English Language Meets Creativity in a Diachronic Perspective' in Veronica Bonsignori, Gloria Cappelli and Elisa Mattiello (eds), *Worlds of Words: Complexity, Creativity, and Conventionality in English Language, Literature and Culture* (Pisa University Press, 2019) vol 1 347, 356–9 ('Gender Neutrality'); Pennisi, 'Singular They' (n 178) 17–18.

219 Pennisi, 'Gender Neutrality' (n 218).

220 Pennisi, 'Singular They' (n 178) 18.

221 Haigh searched every statute in Canada, not including Quebec and not including regulations, to consider gender discrimination within the meaning of section 15 of the *Canadian Charter of Rights and Freedoms*: Haigh (n 217); *Canada Act 1982* (UK) c 11, sch B pt 1. With respect to drafting techniques, Haigh noted that "[o]ne of the most common [neutral drafting techniques] was to rely on the third person singular style, [which] typically [occurred] by using the pronouns "he or she"": at Haigh (n 217) 22.

222 Haigh (n 217) 14–28.

223 *MA(DRF) Act* (n 2) s 2(1).

224 Note that singular inclusions of 'her' were considered under the 'his/her' category, rather than the 'him/her' category, to prevent any double counting. 'Him/her' was used as a category to retain clarity and to recognise that almost every reference included the term 'him or her'.

words that differed from previous analysis of language in legislation.<sup>225</sup> Further, the range of terms in this article was intended to allow effective consideration into whether such terms could be replaced by gender-silent terms, or whether the inclusion was justified. The analysis was produced using the Victorian Legislation and Federal Registrar of Legislation websites,<sup>226</sup> to identify Acts as enacted, or statutory rules and legislative instruments as made,<sup>227</sup> that featured the specific gendered terms. Legislation as made or enacted was selected to identify any trends in the drafting of all legislation over the period considered.

(i) *Victoria*

In the analysed period, a total of 180 Acts as enacted and 607 statutory rules as made ('SRs') came into effect, with 478 being amending legislation,<sup>228</sup> and 309 being principal legislation (see Table 1). Overall, there were 90 different pieces of legislation, 46 being SRs and 44 being Acts, that contained at least one provision that featured one or more gendered terms (see Table 2 and Annexure A of this article). Generally, there was a larger proportion of Acts which included gendered terms that amended legislation, and a larger proportion of SRs which included gendered terms that were principal legislation (see Table 3).<sup>229</sup>

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225 For example, Pennisi analysed corpus, such as the Public General Acts passed in 2008, 2013 and 2018, as enacted by the United Kingdom, Canada, New Zealand, Australia, and the United States: Pennisi, 'Singular They' (n 178). Further, only the 'singular they', 'them', and 'their' is considered: at 17–18. Additionally, Haigh (n 217) focuses analysis on all Canadian statutes, aside from Quebec, and does not consider 'boy/girl' or 'son/daughter'. I did not search for gender-neutral terms such as 'they', 'them' or 'their' because the aim of my analysis was to determine instances where gender-neutral policies have not been implemented. Irrespective of this, only two provisions in the analysed data substituted 'his or her' with 'their': *Energy Safety Legislation Amendment (Victorian Energy Safety Commission and Other Matters) Act 2020* (Vic) ss 12(3), 34(3).

226 *Victorian Legislation* (Web Page) <<https://www.legislation.vic.gov.au/>>; *Federal Registrar of Legislation* (Web Page) <<https://www.legislation.gov.au/>>. At the time of writing this article, the Federal Registrar of Legislation website did not have the terms 'he', 'his', 'her' or 'him' indexed. Additionally, the search for terms that were indexed resulted in multiple documents that did not contain the searched term. As a result, each act and statutory instrument between the considered period was individually downloaded and searched offline.

227 I did not analyse notifiable instruments, given the nature of these instruments were irrelevant and the amount was infeasible.

228 When examining amending legislation, I only noted the first mention of a specific gendered term within the provision, rather than considering every reference. For example, regulation 9(2) of the *Occupational Health and Safety Amendment Regulations 2018* (Vic) inserted regulation 198(1A) into the *Occupational Health and Safety Regulations 2017* (Vic). Regulation 9(2) *Occupational Health and Safety Amendment Regulations 2018* (Vic) was recorded once under the category of 'man or woman', due to the term to be inserted as regulation 198(1A)(a) of the *Occupational Health and Safety Regulations 2017* (Vic): 'for a woman not of reproductive capacity or a man'. The additional reference of the term 'for a woman of reproductive capacity' to be inserted as regulation 198(1A)(b) of the *Occupational Health and Safety Regulations 2017* (Vic) was not entered as a provision for consideration. This was consistent with the analysis of multiple references within one provision in principal legislation.

229 While there was principal legislation that also amended other legislation, principal legislation was counted as principal, but the relevant provisions were discussed as amending provisions.

Table 1: Number of Total Legislation Introduced

Type	Kind	2017	2018	2019	2020	2021	Total
Act	Total	8	49	50	47	26	180
	Amending	8	34	42	31	20	135
	Principal	0	15	8	16	6	45
SR	Total	16	192	173	150	76	607
	Amending	13	108	92	90	40	343
	Principal	3	84	81	60	36	264
Total		24	241	223	197	102	787

Table 2: Number of Legislation Including Gendered Terms

Type	Kind	2017	2018	2019	2020	2021	Total
Act	Total	3	14	14	10	3	44
	Amending	3	9	11	6	3	32
	Principal	-	5	3	4	-	12
SR	Total	1	21	15	8	1	46
	Amending	1	9	2	2	1	15
	Principal	-	12	13	6	-	31
Total		4	35	29	18	4	90

Table 3: Percentage of Total Legislation Introduced Including Gendered Terms

Type	Kind	2017	2018	2019	2020	2021
Act	Total	37.5%	28.6%	28.0%	21.3%	11.5%
	Amending	100.0%	64.3%	78.6%	60.0%	100.0%
	Principal	0.0%	35.7%	21.4%	40.0%	0.0%
SR	Total	6.3%	10.9%	8.7%	5.3%	1.3%
	Amending	100.0%	42.9%	13.3%	25.0%	100.0%
	Principal	0.0%	57.1%	86.7%	75.0%	0.0%

In total, there were 439 provisions that mentioned a gendered term at least once, 372 being different provisions that mentioned one or more gendered terms at least once, with more provisions identified in principal legislation and SRs (see



Tables 4, 5, 6 and Appendix B); however, 56 of the 439 provisions, stemming from 11 SRs and 4 Acts, were identified as using an appropriate term.<sup>230</sup>

Further, 318 provisions stemmed from principal legislation and 121 from amending legislation. Of the 318 provisions in principal legislation, 70 referred to a gendered term because a reference was made to another provision in an Act or SR that featured a gendered term, and 225 provisions introduced a gendered term. Interestingly, 117 of the 225 provisions introduced only a singular reference to a gendered term.<sup>231</sup> Additionally, 121 provisions from amending legislation, and 23 provisions from principal legislation that made amendments, were identified as including a gendered term. Significantly, 65 provisions inserted gendered terms,<sup>232</sup> with the remaining 57 provisions, and 22 from principal legislation, engaging in a gender-neutral drafting technique.<sup>233</sup>

Table 4: Provisions Including Gendered Terms by Year

Gendered Terms	2017	2018	2019	2020	2021	Total
He or She	2	39	15	4	4	64
His or Her	1	50	61	23	3	138
Him or Her	0	15	12	0	2	29
Man or Woman	0	4	68	22	0	94
Male or Female	11	13	24	18	0	66
Boy or Girl	0	0	2	30	2	34
Son or Daughter	0	2	0	10	0	12
Husband or Wife	0	0	1	1	0	2
Total	14	123	183	108	11	439

230 An appropriate term is defined to be the use of a singular gendered term that is justified because of the context. Identified appropriate terms included references to an animal's sex, 'Her Majesty', 'Boy Scouts', 'Girl Guides', 'Man from Snowy River Bush Festival' and 'male coupling': See, eg, *Corrections Regulations 2019* (Vic) sch 2 form 21.

231 A singular reference to a gendered term includes where a gendered term has been introduced outside of the binary formulation, ie, 'he' only instead of 'he or she'. Note that there were 27 provisions in principal legislation that were deemed to be appropriate terms and therefore not discussed as part of singular references.

232 Thirty-eight of the 65 provisions that inserted a gendered term inserted a singular reference only, with 29 of these provisions deemed appropriate.

233 The remaining provision from principal legislation, and 2 of the 121 provisions from amending legislation, referred to a gendered term because it was mentioned in another Act.

Table 5: Provisions Including Gendered Terms by Type of Legislation

Gendered Terms	Act	SR	Total
He or She	34	30	64
His or Her	50	88	138
Him or Her	14	15	29
Man or Woman	25	69	94
Male or Female	29	37	66
Boy or Girl	32	2	34
Son or Daughter	11	1	12
Husband or Wife	0	2	2
Total	195	244	439

Table 6: Provisions Including Gendered Terms by Kind of Legislation

Gendered Terms	Amending	Principal	Total
He or She	19	45	64
His or Her	48	90	138
Him or Her	13	16	29
Man or Woman	10	84	94
Male or Female	26	40	66
Boy or Girl	4	30	34
Son or Daughter	1	11	12
Husband or Wife	0	2	2
Total	121	318	439

(ii) *Commonwealth*

In the analysed period, a total of 6,361 legislative instruments as made ('LIs') and 531 Acts came into effect, with 3,378 being amending legislation,<sup>234</sup> and 3,514 being principal legislation (see Table 7). Overall, there were 536 different pieces of legislation, 452 being LIs and 84 being Acts, that contained at least one provision that featured at least one gendered term (see Table 8 and Annexure B of this article). There was also a larger proportion of Acts which included gendered

234 See above n 228.

terms that amended legislation, whereas there was a larger proportion of LIs which included gendered terms that were principal legislation (see Table 9).<sup>235</sup>

Table 7: Number of Total Legislation Introduced

Type	Kind	2017	2018	2019	2020	2021	Total
Act	Total	4	170	129	154	74	531
	Amending	3	142	103	119	60	427
	Principal	1	28	26	35	14	104
LI	Total	109	1,848	1,713	1,718	973	6,361
	Amending	56	777	781	879	458	2,951
	Principal	53	1,071	932	839	515	3,410
Total		113	2,018	1,842	1,872	1,047	6,892

Table 8: Number of Legislation Including Gendered Terms

Type	Kind	2017	2018	2019	2020	2021	Total
Act	Total	2	41	22	12	7	84
	Amending	2	32	18	10	6	68
	Principal	0	9	4	2	1	16
LI	Total	12	184	102	106	48	452
	Amending	4	47	32*	39	12	134
	Principal	8	137	70	67	36	318
Total		14	225	124	118	55	536

\* Note that this includes the *Financial Sector (Collection of Data) (Reporting Standard) Determination (No 17) 2019* (Cth), which mistakenly includes 'he' instead of 'the' in clause 2 of the Reporting Form ARF 748.0A Instructions.

235 Principal legislation was counted as principal, but any amending provisions within principal legislation were discussed as amending provisions.

Table 9: Percentage of Total Legislation Introduced Including Gendered Terms

Type	Kind	2017	2018	2019	2020	2021
Act	Total	50.0%	24.1%	17.1%	7.8%	9.5%
	Amending	100.0%	78.0%	81.8%	83.3%	85.7%
	Principal	0.0%	22.0%	18.2%	16.7%	14.3%
LI	Total	11.0%	10.0%	6.0%*	6.2%	4.9%
	Amending	33.3%	25.5%	31.4%	36.8%	25.0%
	Principal	66.7%	74.5%	68.9%	63.2%	75.0%

\* Note that this includes the *Financial Sector (Collection of Data) (Reporting Standard) Determination (No 17) 2019* (Cth), which mistakenly includes ‘he’ instead of ‘the’ in clause 2 of the Reporting Form ARF 748.0A Instructions.

In total, there were 2,634 provisions that mentioned a gendered term at least once, 2,450 being different provisions that mentioned one or more gendered terms at least once, with more provisions identified in principal legislation and LIs (see Tables 10, 11, 12 and Appendix C); however, 555 of the 2,634 provisions, stemming from 91 LIs and 5 Acts, were identified as using an appropriate term.<sup>236</sup>

Further, 2,028 provisions stemmed from principal legislation and 606 provisions from amending legislation. Of the 2,028 provisions in principal legislation, 1,978 provisions introduced a gendered term, 744 provisions of which introduced only a singular reference to a gendered term,<sup>237</sup> 11 provisions referred to a gendered term because a reference was made to another provision in an LI that featured a gendered term, and one provision mistakenly referred to a gendered term. Additionally, 606 provisions from amending legislation, and the 38 provisions from principal legislation that made amendments, were identified as having included a gendered term. Notably, 511 provisions also inserted gendered terms,<sup>238</sup> with the remaining 125 provisions engaging in a gender-neutral drafting technique.

236 See above n 230. Identified appropriate terms included references to actual people, examples, images on a coin, an animal or plant’s sex, ‘Isle of Man’, ‘Her Majesty’, ‘Man and the Biosphere Program’, ‘her’ in relation to Britain and ‘Cascades Female Factory (Hobart)’: see, eg, *Treasury Laws Amendment (International Tax Agreements) Act 2019* (Cth) sch 1 cl 2. Note that ‘His Excellency’, as mentioned at the beginning of regulations, was not analysed, given it was not part of any provision.

237 See above n 231 in relation to the meaning of ‘singular reference’. Notably, 462 of these provisions introduced a pronoun that was considered appropriate.

238 Interestingly, 180 of these provisions inserted a singular reference only, with 80 of these singular reference provisions deemed appropriate.

Table 10: Provisions Including Gendered Terms by Year

Gendered Terms	2017	2018	2019	2020	2021	Total
He or She	25	226	130*	122	49	552
His or Her	56	705	271	247	69	1348
Him or Her	2	118	19	15	4	158
Man or Woman	0	86	53	37	15	191
Male or Female	1	62	85	72	73	293
Boy or Girl	0	3	0	1	0	4
Son or Daughter	0	8	2	5	1	16
Husband or Wife	0	61	5	3	3	72
Total	84	1269	565	502	214	2634

\* Note that one provision from the *Financial Sector (Collection of Data) (Reporting Standard) Determination (No 17) 2019* (Cth) mistakenly includes 'he' instead of 'the' and two provisions from the *Customs Legislation Amendment (2019 Measures No 1) Regulations 2019* (Cth).

Table 11: Provisions Including Gendered Terms by Type of Legislation

Gendered Terms	Act	LI	Total
He or She	100	452*	552
His or Her	182	1166	1348
Him or Her	10	148	158
Man or Woman	35	156	191
Male or Female	6	287	293
Boy or Girl	0	4	4
Son or Daughter	0	16	11
Husband or Wife	60	12	72
Total	393	2241	2634

\* Note that one provision from the *Financial Sector (Collection of Data) (Reporting Standard) Determination No 17 2019* (Cth) mistakenly includes 'he' instead of 'the' and two provisions from the *Customs Legislation Amendment (2019 Measures No 1) Regulations 2019* (Cth).

Table 12: Provisions Including Gendered Terms by Kind of Legislation

Gendered Terms	Amending	Principal	Total
He or She	147*	405**	552
His or Her	268	1080	1348
Him or Her	27	131	158
Man or Woman	63	128	191
Male or Female	37	256	293
Boy or Girl	0	4	4
Son or Daughter	5	11	16
Husband or Wife	59	13	72
Total	606	2028	2634

\* Note that two provisions from the *Customs Legislation Amendment (2019 Measures No 1) Regulations 2019* (Cth) replace an erroneous 'he' with 'the'.

\*\* Note that one provision from the *Financial Sector (Collection of Data) (Reporting Standard) Determination No 17 2019* (Cth) mistakenly includes 'he' instead of 'the'.

### (b) References to Other Legislation

Most clauses that referred to a gendered term for the purpose of referencing another Act or SR were contained in the *Worker Screening Act 2020* (Vic) ('WSA'). These clauses referred to various repealed offences in the *Crimes Act 1958* (Vic), those of which included offences that distinguished between sex/gender, to specify National Disability Insurance Scheme category offences.<sup>239</sup> For instance, referenced offences included the 'aggravated assault of *male* child under the age of 14 or any *female*',<sup>240</sup> and '*male* person commits or is party to the commission of or procures or attempts act of gross indecency with another *male* person'.<sup>241</sup> Although the aforementioned offences are now repealed, their inclusion in legislation that remains in force raises concerns with respect to reliance on archaic conceptions of sex/gender and sexuality, particularly in criminal legislation.<sup>242</sup> Accordingly, the *WSA* emphasises the need to review older legislation that continues to be in force, to determine whether any distinction in sex/gender is necessary or appropriate.

239 *Worker Screening Act 2020* (Vic) schs 1, 3 ('WSA').

240 *Ibid* sch 1 cl 46(a), citing *Crimes Act 1958* (Vic) s 24(1)(a) (emphasis added).

241 *WSA* (n 239) sch 3 cl 6(o), citing *Crimes Act 1958* (Vic) s 69(4) (emphasis added).

242 See also *Social Services Legislation Amendment (Welfare Reform) Act 2018* (Cth), whereby 56 provisions inserted feminine terms only in relation to payments including: 'wife pension', 'widow pension' and 'pensioner concession card'.



(c) *Singular References*(i) *Masculine Pronoun Only*

There were seven provisions in Victorian legislation, and 166 provisions in Commonwealth legislation,<sup>243</sup> that inappropriately introduced masculine pronouns only.<sup>244</sup> For instance, in the *County Court Civil Procedure Rules 2018* (Vic), Form 43A included the phrase: '[t]his is the exhibit marked [eg, "ABC1"] now produced and shown to [identify deponent] at the time of swearing his affidavit',<sup>245</sup> and Form 61P included the phrase: 'a warrant was issued for the apprehension of the [judgement debtor] for his or her failure to comply with a summons requiring him to attend before the court'.<sup>246</sup> Further, there were 36 provisions in Commonwealth legislation that used masculine pronouns only to unjustifiably describe terms such as 'worker' or 'driver'.<sup>247</sup> In each instance, there is no reasonable justification as to why only masculine pronouns were included.

There were also provisions in Commonwealth legislation that were unnecessarily gendered, including 13 provisions that used the phrase 'man made',<sup>248</sup> 11 provisions that used the term 'man-made',<sup>249</sup> and 7 provisions that used the phrase 'man [humankind]'.<sup>250</sup> In comparison, there were only two provisions in Victorian legislation that included the term 'man-made'.<sup>251</sup> The general reversion to the masculine rule suggests that alternative measures, other than policy guidelines reliant upon discretion, must be implemented.

(ii) *Feminine Pronouns*

There were a variety of provisions that included unnecessarily gendered terms that reinforced stereotypical ideas about the sex/gender of a person who can be pregnant or give birth to a child.<sup>252</sup> In Victorian legislation, there were 77

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243 All provisions in Commonwealth legislation stemmed from LIs.

244 This occurred despite the requirement in Victoria to use the suggested techniques to avoid pronouns altogether, and the Commonwealth requirement to include both feminine and masculine pronouns: 'Drafting Direction No 2.1' (n 204) 3 [15].

245 Emphasis added to 'his'.

246 Emphasis added to 'him'.

247 See, eg, *National Disability Insurance Scheme (Practice Standards – Worker Screening) Rules 2018* (Cth). A majority of these provisions related to regulations that were determined under the *Motor Vehicle Standards Act 1989* (Cth), such as the *Vehicle Standard (Australian Design Rule 94/00 – Audible Warning) 2018* (Cth), and referred to terms including: 'holder', 'vehicle manufacturer', 'driver', or 'vehicle manufacturer or authorized representative'.

248 See, eg, Duncan Marshall, *National Library of Australia Conservation Management Plan* (Plan, 2018) 101.

249 See, eg, *Civil Aviation Order 95.32 (Exemption from Provisions of the Civil Aviation Regulations 1988 – Weight-Shift-Controlled Aeroplanes and Powered Parachutes) Instrument 2018* (Cth).

250 See, eg, *Grant Guidelines for the Linkage Program (2018) Linkage Infrastructure, Equipment and Facilities 2018* (Cth). It is worth noting that equating the term 'man' to 'human' reinforces the sexist and cis-gendered dominant paradigm that ultimately subordinates women and gender diverse people.

251 See, eg, *Fisheries Regulations 2019* (Vic).

252 While one regulation in the *Child Support (Registration and Collection) Regulations 2018* (Cth) used the masculine 'he' to refer to a 'father of a child', and three provisions in the *Assisted Reproductive Treatment*

regulations that referred to a ‘woman’ with respect to pregnancy and birth,<sup>253</sup> and 3 regulations that included the term ‘mother’ with respect to surrogacy.<sup>254</sup> There were also 10 provisions in amending legislation that inserted feminine pronouns only in relation to reproduction.<sup>255</sup> Interestingly, all 3 regulations that included the term ‘mother’ also included the pronoun ‘her’, and 36 regulations that included the term ‘woman’ also included the pronoun ‘her’.<sup>256</sup> The addition of feminine pronouns reinforces the notion that the distinction between ‘woman’ and ‘man’ in this context was not intended to be for health purposes, but is instead a heteronormative by-product. As Anniken Sørli argues with respect to Norwegian legislation and the ‘othering’ of transgender parents, ‘biology continues to serve as the basis of legal gender orthodoxy’;<sup>257</sup> meaning that the legal description of parenthood and subsequent classification of reproduction reinforces normative and cisgender expectations, irrespective of any change in legal sex.<sup>258</sup> Furthermore, for a society that is so willing to recognise the ability of a ‘man’ to be pregnant (for entertainment purposes),<sup>259</sup> it is unclear why each gendered term could not instead have been omitted, reworded, or replaced with actual gender-neutral language, such as ‘person’ or ‘parent’.<sup>260</sup> This observation also exists for Commonwealth legislation, where of the 118 provisions that introduced a feminine pronoun only,<sup>261</sup> 88 provisions were associated with health matters,<sup>262</sup> many of which used feminine terms when referring to pregnancy and reproductive capacity.

### (iii) Justifiable Provisions

There were several provisions that introduced a feminine term only, where the distinction of sex/gender was justifiable. For instance, the identical sub-rules 37B.03(2)(f)(i) of the *County Court Civil Procedure Rules 2018* (Vic) and

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*Regulations 2019* (Vic) included the phrase ‘man who produced the sperm’, an overwhelming number of singular references associated with gendered terms were feminine, thus necessitating a lengthier discussion.

253 Specifically, 77 regulations were in the *Assisted Reproductive Treatment Regulations 2019* (Vic) and 3 were in the *Health Complaints Regulations 2019* (Vic).

254 These provisions were all located in the *Assisted Reproductive Treatment Regulations 2019* (Vic).

255 See, eg, *Assisted Reproductive Treatment Amendment Act 2020* (Vic).

256 Note that an additional provision also included the term ‘herself’; however, ‘herself’ was not considered in this analysis: *Health Complaints Regulations 2019* (Vic) reg 3 (definition of ‘self-insemination’).

257 Anniken Sørli, ‘Governing (Trans)Parenthood: The Tenacious Hold of Biological Connection and Heterosexuality’ in Dianne Otto (ed), *Queering International Law: Possibilities, Alliances, Complicities, Risks* (Routledge, 2018) 171, 180 <<https://doi.org/10.4324/9781315266787-10>>.

258 Ibid 173, 180, 182, 187.

259 James Orr, ‘“Pregnant Man” Gives Birth to Baby Girl’, *The Guardian* (online, 4 July 2008) <<https://www.theguardian.com/world/2008/jul/04/usa.gender>>; Alex Hern, ‘Pregnant Man and Multiracial Handshake Emojis Unveiled before Launch’, *The Guardian* (online, 16 July 2021) <<https://www.theguardian.com/technology/2021/jul/16/pregnant-man-and-multiracial-handshake-emojis-approved-for-launch>>.

260 For example, schedule 4 item 5(2)(c)(ii) of the *Assisted Reproductive Treatment Regulations 2019* (Vic) could have instead read: ‘the [person] who produced the oocyte’.

261 All of which stemmed from LIs.

262 These terms included: ‘woman of child-bearing/child bearing age’, ‘female luer adaptor’, ‘female genital mutilation’, ‘female hypogonadism’, ‘female sexual dysfunction’, and references associating feminine terms with motherhood – such as ‘her’ to refer to ‘expectant mother’ or ‘maternity care’: see, eg, *Poisons Standard (No 2) June 2020* (Cth) app D cl 2.

the *Magistrates' Court General Civil Procedure Rules 2020* (Vic) specified that if a premises ordered to be searched is only occupied by 'a female', the Court is required to consider whether the independent solicitor that must be present at the search 'should be a woman or the search party should otherwise include a woman'.<sup>263</sup> This sub-rule demonstrates that there are circumstances where gendered terms must be included in legislation to ensure that any disadvantages that disproportionately impact women are acknowledged, to provide for reasonable alterations. The purpose behind the inclusion of these rules is not dissimilar to other provisions, such as those which specify that a 'licensee or permittee must ensure that at least one of the licensed crowd controllers is *female*',<sup>264</sup> or that allocate a 'rest room where amenities are provided for *female* authorised officers'.<sup>265</sup> A similar distinction is also made for specific research programs and fellowships to be available to 'female' people only.<sup>266</sup>

#### (iv) *Other References*

There were 182 provisions in Commonwealth legislation which related to an example. While it was inferred that the correct pronouns were utilised, and therefore the inclusion of pronouns was appropriate, the examples often presented heteronormative scripts.<sup>267</sup> For instance, five examples across five LIs referred to the relationship between 'Freya ... [and] her husband', and one provision referred to a 'person ... [and] his wife ... [and] baby'.<sup>268</sup> While the example where the gender-neutral 'person' has replaced a name seemingly indicates progress, the use of gendered pronouns undoes the gender neutrality. Additionally, these examples maintain the heteronormative idea that marriage and children can only occur between people who have different pronouns.<sup>269</sup> Significantly, no examples presented a queer relationship nor used alternative pronouns.<sup>270</sup>

263 See, eg, County Court of Victoria, *Practice Note PNC1 2-2007: Search Orders*, 1 January 2007, para 15.

264 *Liquor Control Reform Interim Regulations 2020* (Vic) reg 42(3) (emphasis added).

265 See, eg, *Export Control (Poultry Meat and Poultry Meat Products) Rules 2021* (Cth). The allocation of a separate room for people who are female is a reasonable distinction to ensure women have access to a safe space.

266 See, eg, *Grant Guidelines for the Discovery Program (2018)* (Cth). This can be contrasted with reg 7(i) in the *Australian Institute of Health and Welfare (Ethics Committee) Regulations 2018* (Cth), which while also beneficial, reinforces binary notions of gender through requiring there to be at least two people 'including at least one man and at least one woman'.

267 The names included in the analysed provisions were also typically of Western origin, which further questions the reflection of diversity in examples (eg, 'Scott', 'George', 'Mary', 'Barbara'): See, eg, *Taxation Administration Act Withholding Schedules 2018* (Cth) sch 4.

268 See, eg, *ibid* sch 13.

269 I do recognise that a person of any sex/gender could use the 'his' pronoun; however, I highly doubt that this was intended in the example.

270 Feminine pronouns were referred to in 95 provisions and masculine pronouns were referred to in 87 provisions.

(d) *Notable Provisions*(i) *References to Sex/Gender*

There were various provisions that referred to sex/gender, often reinforcing binary conceptions or inadequate classifications. Across both Victorian and Commonwealth legislation, five forms referred to sex in the binary female and male,<sup>271</sup> and three provisions relied on binary distinctions of sex/gender as a form of identification or assessment.<sup>272</sup> Comparatively, Form 1 of the *Victims of Crime Assistance Rules 2020* (Vic) instead used the phrase ‘male, female, indeterminate/intersex/unspecified’ to describe gender.<sup>273</sup> Although the inclusion of an additional category relating to the identification of gender is a positive step, this expression is misguided because of the distinct mention of ‘intersex’. That is, Intersex Human Rights Australia specifically recommends that ‘intersex should *never* be inserted into a question asking people to record sex or gender ... [instead] a question should support non-binary options, such as “X” or “non-binary”’, or the opportunity to self-identify in a nominated space.<sup>274</sup> Furthermore, section 5(d) of the *Births, Deaths and Marriages Registration Amendment Act 2019* (Vic) defined ‘sex descriptor’ as ‘male, female or any other sex’. Additionally, while the schedule to the *Financial Sector (Collection of Data) (Reporting Standard) Determination (No 12) 2021* (Cth) classifies sex as including ‘female’, ‘male’, ‘other’, and ‘not stated or inadequately described’,<sup>275</sup> the definitions of sex heavily rely on the term ‘biological characteristics’.<sup>276</sup> For instance, ‘female (sex)’ is defined to mean ‘persons who have female or predominantly feminine biological characteristics, or female sex assigned at birth’.<sup>277</sup> Not only is the terminology ‘predominantly feminine’ problematic, but the reliance on biological characteristics, and not sex characteristics, conflicts with accepted definitions of intersex.<sup>278</sup> Additionally, the reversion to binary sex/gender in legislation that does not specifically relate to sex/gender is a further example of how current drafting policies ineffectively prevent the presence of cis-heteronormative views.

271 See, eg, *Supreme Court (Criminal Procedure) Rules 2017* (Vic) forms 6–4G, 6–4H.

272 Most notably, an assessment as part of schedule 1 part 2 item 6 of the *Disability Care Load Assessment (Child) Determination 2020* (Cth) relies on a child ‘know[ing] whether they are a boy or a girl’.

273 Although not included in the data, due to containing multiple reference in the same provision, form 1 of the *Victims of Crime Assistance Rules 2020* (Vic) at another instance instead used the different phrase: ‘male, female, indeterminate/other’.

274 ‘Forms and Data Collection’, *Intersex Human Rights Australia* (Web Page, 24 June 2022) <<https://ihra.org.au/forms/>> (emphasis in original). See also ‘Darlington Statement’ (n 14) [8].

275 See, eg, Australian Prudential Regulation Authority, ‘Private Health Insurance Reform Data Collection’ (Reporting Standard HRS 605.0, 22 March 2021) cl 1 item 2, cl 2 item 2 <[https://www.apra.gov.au/sites/default/files/2020-12/Reporting%20Standard%20HRS%20605.0%20Private%20Health%20Insurance%20Reform%20Data%20Collection%20-%20clean\\_0.pdf?fbclid=IwAR1K2jeYP4ieEd5RDghJ7D8G5ZKB8tODXHW1hxYjYOk3e-3a\\_JAY-2SdXrw](https://www.apra.gov.au/sites/default/files/2020-12/Reporting%20Standard%20HRS%20605.0%20Private%20Health%20Insurance%20Reform%20Data%20Collection%20-%20clean_0.pdf?fbclid=IwAR1K2jeYP4ieEd5RDghJ7D8G5ZKB8tODXHW1hxYjYOk3e-3a_JAY-2SdXrw)>.

276 Ibid, Instruction Guide (definitions of ‘sex’, ‘male (sex)’ and ‘female (sex)’).

277 Ibid (definition of ‘female (sex)’).

278 See, eg, Mauro Cabral Grinspan et al, *The Yogyakarta Principles Plus 10* (Document, 10 November 2017) <[http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5\\_yogyakartaWEB-2.pdf](http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf)>.

(ii) *Terms of Art*

Some provisions introduced gendered terms because certain terminology is standard in specific industries. For instance, there were 89 provisions associated with the health and safety industry that comprised of singular feminine or masculine terms,<sup>279</sup> including the (unnecessarily) gendered ‘male luer lock’.<sup>280</sup> Additionally, six provisions included terms such as ‘Deck Boy’, ‘Catering Boy’, ‘man-ropes’, and ‘man overboard’/‘man-overboard’.<sup>281</sup> Most provisions in legislation referring to terms of art must include gendered terms until industry standards change; however, there is a substantial lack of clarity regarding terms used by the health sector.<sup>282</sup>

Despite the above concession, there are other provisions that highlight how current legal phrasing encourages the continuation of harmful terms of art. Notably, there were five provisions that referred to the term ‘female genital mutilation’, with the full item reading ‘[v]ulvoplasty or labioplasty for repair of: (a) female genital mutilation; or (b) *anomalies associated with major congenital anomalies of the uro-gynaecological tract*’.<sup>283</sup> While this provision appropriately recognises the practice of female genital mutilation in some cultures, the practice is phrased alongside a provision that appears to refer to the ‘repair’ of intersex variations. That is, explanatory note TN.8.123 of the Medicare Benefits Schedule indicates that surgery for ‘major congenital anomalies’ would apply ‘where a patient who has previously received treatment for cloacal extrophy [sic], bladder extrophy or congenital adrenal hyperplasia requires additional or follow-up treatment’,<sup>284</sup> therefore referring to ‘treatments’ that are often associated with intersex variations.<sup>285</sup> Accordingly, rather than use a more appropriate term, such as ‘intersex genital mutilation’, the provision reinforces damaging ideas that intersex variations require ‘[s]ex “normalising” interventions, to reinforce a sex assignment, including feminising and masculinising surgical and hormonal interventions ... before the recipient can consent [because they are a child] and without firm evidence of necessity’.<sup>286</sup>

279 These terms included: ‘male pattern baldness’, ‘male factor infertility’, ‘male relative’, ‘male hypogonadism’, ‘post-pubertal male’, ‘adult male’, ‘male fertility’, and ‘male luer lock’: see, eg, *Health Insurance (Pathology Services Table) Regulations 2020* (Cth) sch 1 cl 3.1.

280 *Private Health Insurance (Prostheses) Rules (No 4) 2019* (Cth) sch 1 cl 3.

281 See, eg, *Seacare Authority Code of Practice Approval 2018 – Health and Safety in Shipboard Work, Including Offshore Support Vessels 2018* (Cth).

282 That is, it is unclear how health-related terms would apply to trans or intersex communities, particularly where these provisions relate to insurance: see, eg, *Health Insurance (General Medical Services Table) Regulations 2021* (Cth).

283 See, eg, *ibid* sch 1 cl 5.10.18 item 35533 (emphasis added).

284 Department of Health and Aged Care (Cth), ‘Medicare Benefits Schedule: Note TN.8.123’, *MBS Online Medicare Benefits Schedule* (Web Page) <<http://www9.health.gov.au/mbs/fullDisplay.cfm?type=note&qt=NoteID&q=TN.8.123>>.

285 Intersex Human Rights Australia (n 169). Further, the five provisions each distinguish items related to initial procedures that are also associated with intersex variations and appear under the subheading ‘paediatric/neonate’: see, eg, *Health Insurance (General Medical Services Table) Regulations 2018* (Cth) sch 1 cl 2.35.4 table item 35533, referring to *Health Insurance (General Medical Services Table) Regulations 2018* (Cth) sch 1 cl 2.35.4 item 37836.

286 Morgan Carpenter, ‘The Human Rights of Intersex People: Addressing Harmful Practices and Rhetoric of Change’ (2016) 24(47) *Reproductive Health Matters* 74, 75 <<https://doi.org/10.1016/j.rhm.2016.06.003>>.

(e) *Inserting Gendered Terms*

There were a larger proportion of amending provisions in Commonwealth legislation than Victorian legislation that unnecessarily inserted pronouns to describe a person.<sup>287</sup> In these instances, it was unclear why alternative techniques, as required by drafting policies, were not used.<sup>288</sup> Additionally, there were three provisions that unnecessarily listed phrases, such as ‘husband, wife, spouse or partner’.<sup>289</sup> As opposed to including the shortened phrase ‘spouse or partner’, the provisions favoured a longer phrase which infers primacy to heterosexual unions.

Four regulations from the *Occupational Health and Safety Amendment Regulations 2018* (Vic) also inserted the term ‘woman not of reproductive capacity or a man’, or ‘woman of reproductive capacity’, with respect to lead-risk work.<sup>290</sup> The distinction was intended to relate to reproductive capacity, and specifically the ability to breastfeed, given that some mixtures contained toxins that impact lactation.<sup>291</sup> The need for this phrasing is unnecessary, particularly given the legislation could have been made less complex and shorter if ‘person’ was utilised instead of gendered terms. For instance, there would be no need for the discriminatory section 179 of the *Occupational Health and Safety Regulations 2017* (Vic), which specifies that ‘a female employee ... is to be treated as being of reproductive capacity, unless she provides her employer with a written statement advising the contrary’. This section is concerning because it presumes that only females, and all females, have reproductive capacity or the ability to breastfeed, thus excluding some male and non-binary people. This section would also require some trans and intersex people to disclose their identity, even where they may not feel comfortable doing so.

Additionally, and most notably, schedule 1 clause 18 of the *Enhancing Online Safety (Non-consensual Sharing of Intimate Images) Act 2018* (Cth) inserted a new provision relating to when material is considered to be an intimate image, which extended to ‘if the person is female or a transgender or intersex person

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The Senate Standing Committee on Community Affairs recognised that ‘non-therapeutic surgery may still be considered, to produce the physical appearance of “normal” male or female genitalia’: Senate Standing Committee on Community Affairs, Parliament of Australia, *Involuntary or Coerced Sterilisation of Intersex People in Australia* (Second Report, 2013) 35 [3.2].

287 Victorian provisions inserted pronouns to refer to terms including: ‘person’, ‘owner’, ‘party’, ‘Costs Judge’ and ‘offender’: see, eg, *State Taxation Acts Amendment Act 2020* (Vic) s 53(1)(a). Commonwealth provisions inserted pronouns (including the inconsistent ‘him or herself’) instead of repeating terms including: ‘person’, ‘Commissioner’, ‘holder’, ‘individual’, ‘minister’ and ‘attendee’: see, eg, *Civil Aviation Order 40.7 Amendment Instrument 2019 (No 1)* (Cth) sch 1 cl 2.

288 ‘Drafting Direction No 2.1’ (n 204) 3 [15]; Email from Jim Soundias to Emma Genovese, 10 May 2021.

289 See, eg, *Federal Circuit and Family Court of Australia Act 2021* (Cth) s 126(5). Additionally, section 11 of the *Liquor and Gambling Legislation Amendment Act 2018* (Vic) inserted provisions that unnecessarily referred to gendered terms. The provision could have been inserted differently, to read: ‘grandparent, parent, step-parent, [parent or step-parent’s siblings], [child], sibling, [parent or step-parent’s children], grandchild, or child of the [transferor’s parent’s siblings]’: at s 86AA(e)(ii). Alternatively, gender-neutral variations of niece or nephew, such as ‘pibling’ or ‘nibling’ respectively, could have been used: Kasandra Brabaw, ‘Why Aren’t We All Using These Adorable Gender-Neutral Terms?’, *Refinery* 29 (online, 5 June 2019) <<https://www.refinery29.com/en-us/2017/11/175870/gender-neutral-relationship-terms-lgbt>>.

290 *Occupational Health and Safety Amendment Regulations 2018* (Vic) regs 8, 9(2), 10(2), 12(3).

291 *Occupational Health and Safety Regulations 2017* (Vic) sch 7 cl 4.



identifying as female – either or both of the person’s breasts’.<sup>292</sup> Although this term specifically includes transgender and intersex people, the phrasing excludes other people who identify as female or do not identify with any gender, and rather than simply phrasing ‘if the person identifies as female’, the terminology instead creates a new binary, being female/female-identifying. As such, rather than including transgender or intersex people, the phrase fortifies the boundaries between the cisgender and endosex norm, and the queer minority.

#### (f) Gender-Neutral Drafting

There were 74 provisions across Victorian legislation, and 135 provisions across Commonwealth legislation, that used a gender-neutral drafting technique when amending legislation. In Victorian legislation, 53 sections amended gendered terms to gender-silent nouns,<sup>293</sup> 9 provisions omitted gendered terms, 6 provisions reworded phrases to omit gendered terms, and 3 provisions merely inserted ‘her’ alongside a masculine pronoun. Interestingly, there were only three provisions that amended ‘his or her’ to ‘their’,<sup>294</sup> or ‘body in their’,<sup>295</sup> as required by the drafting policy. In Commonwealth legislation, 82 provisions omitted gendered terms, 45 provisions amended pronouns to gender non-specific nouns,<sup>296</sup> some of which resulted in the repetition of gender non-specific nouns,<sup>297</sup> and 8 provisions reworded phrases to omit gendered terms.

#### (g) Inconsistent Drafting

##### (i) General Phrasing

There were multiple provisions that were drafted inconsistently, such as the varying use of grammar and terms across specific legislation,<sup>298</sup> the use of gendered

292 *Enhancing Online Safety Act 2015* (Cth) s 9B, as inserted by *Enhancing Online Safety (Non-consensual Sharing of Intimate Images) Act 2018* (Cth) sch 1 cl 18.

293 These gender-silent nouns included: ‘person’, ‘Parks Victoria’, ‘it/s’, ‘Chairperson’s’, ‘trustees’ and ‘authorised officer’s or another person’s’: see, eg, *National Parks (Tour Operator Licence Fee) Amendment Regulations 2018* (Vic) reg 12(2).

294 *Energy Safety Legislation Amendment (Victorian Energy Safety Commission and Other Matters) Act 2020* (Vic) ss 12(3), 34(4), amending *Gas Safety Act 1997* (Vic) s 86(4) and *Electricity Safety Act 1998* (Vic) s 121(4).

295 *Disability (National Disability Insurance Scheme Transition) Amendment Act 2019* (Vic) s 35(2)(c), amending *Disability Act 2006* (Vic) s 39(3). The phrase now reads ‘person or body in their’: at s 39(3). The use of ‘their’ to describe multiple nouns differs from the use of ‘his or her’ in a principal regulation, which described four nouns: *Confiscation Regulations 2019* (Vic) form 21.

296 These gender non-specific nouns included: ‘person’, ‘operator’, ‘employee’, ‘practitioner’, ‘individual’ and ‘chairperson’: see, eg, *Civil Aviation Order 20.16.1 Amendment Instrument 2018 (No 1)* (Cth) sch 1 cl 8.

297 For example, section 284(3) of the *Migration Act 1958* (Cth) was amended by the *Migration Amendment (Regulation of Migration Agents) Act 2020* (Cth) schedule 1 clause 12 to read: ‘an Australian legal practitioner from advertising that the practitioner gives immigration assistance in connection with legal practice’.

298 There was inconsistency in the use of hyphenations including: ‘man made/man-made’ and ‘man overboard/man-overboard’: see, eg, *Fisheries Regulations 2019* (Vic) reg 283(1)(c). There were also inconsistencies with the drafting of forms, such as using ‘[insert name of person]’ or ‘[Name]’ to refer to the name of a

pronouns to refer to multiple parties,<sup>299</sup> and the inclusion of ‘it’ alongside gendered terms.<sup>300</sup> The inconsistent drafting of the same terms across both principal and amending legislation further supports the notion that additional mechanisms are necessary when drafting legislation, in order to prevent inconsistencies that may result from discretion.

## (ii) Gender-Neutral Drafting

Despite the minimal use of gender-neutral drafting techniques, many were inconsistently applied. Interestingly, the technique used when amending legislation from a masculine pronoun only varied, with more inconsistency viewed in Victorian provisions.<sup>301</sup>

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person: see, eg, *Victorian Civil and Administrative Tribunal Rules 2018* (Vic) sch 2 form 2. There were also inconsistencies with terms in examples, whereby the *Social Security (Assurance of Support) Determination 2018* (Cth) was the only legislation that featured examples which used repetition of terms such as: ‘person’, ‘assurer’, and ‘assuree’, instead of relying on names: at cl 25 examples 1–2. Despite this, gendered terms were still attributed to the examples, thus rendering any benefit from repetition largely redundant. While not included in the data, there were several instances in Victorian and Commonwealth legislation where ‘himself/herself’ was used along with other pronouns or gendered terms: see, eg, *Health Complaints Regulations 2019* (Vic) reg 3 (definition of ‘self-insemination’); *Primary Industries Legislation Amendment Act 2019* (Vic) s 11(d)(i), amending *Melbourne Market Authority Act 1977* (Vic) cl 8(1); *Disability Care Load Assessment (Child) Determination 2020* (Cth) sch 1 pt 1.

299 There were 128 provisions in Commonwealth legislation that used pronouns to refer to multiple terms, including: ‘specialist or consultant physician’, ‘consultant physician or specialist’, and ‘minister or secretary’: see, eg, *Health Insurance (Section 3C – Allied Health Services) Amendment Determination 2019* (Cth) sch 1; *Health Insurance (General Medical Services Table) Regulations 2018* (Cth) sch 1 cl 2.5.1 item 135; *Road Vehicle Standards Rules 2019* (Cth) r 192(2). In these instances, it would have been preferable to use the term ‘their’, particularly because there are multiple people being referred to, and it would not impact the clarity of the provisions. For example, schedule 1 clause 2.23.5 item 3040 of the *Health Insurance (General Medical Services Table) Regulations 2018* (Cth) would read: ‘Attendance by a specialist, or consultant physician, in the practice of [their] speciality of palliative medicine’.

300 Six Victorian provisions and four Commonwealth provisions included the word ‘it’, along with pronouns, to refer to terms such as ‘judgement debtor’, ‘person’, ‘person or entity’, or ‘solicitor/Australian lawyer’: see, eg, *Magistrates’ Court General Civil Procedure Rules 2020* (Vic) form 29B; *Charter of the United Nations Act 1945 Listing (No 1) 2020* (Cth) sch 2. The addition of ‘it’ is not only needlessly lengthy, and required to be avoided by Commonwealth drafting policies, but the inclusion of any pronouns is unnecessary, as ‘they’ would have effectively accounted for any variation in the referenced person or body: ‘PE Manual’ (n 203) 19 [76], 20 [81]. Also, the inclusion is reminiscent of instances where ‘it’ is used to describe people who do not identify in binary classifications: Kristin Wenstrom, “‘What the Birth Certificate Shows’: An Argument to Remove Surgical Requirements from Birth Certificate Amendment Policies” (2008) 17 *Tulane Journal of Law and Sexuality* 131, 135.

301 Thirty-seven provisions of the 78 in Victorian legislation that utilised a gender-neutral drafting technique when amending legislation, amended from a masculine pronoun only. Specifically, 26 provisions changed masculine pronouns to gender non-specific nouns, including: ‘authorised officer’, ‘person’ and ‘tenant, permittee or licensee’, and 3 provisions merely inserted ‘her’: see, eg, *Primary Industries Legislation Amendment Act 2019* (Vic) s 78(7). Six provisions also directly omitted masculine pronouns, including two instances where the change occurred from ‘him or them’: see, eg, *Melbourne Market Authority Act 1977* (Vic) sch 1 pt II cl 8(1). Three provisions were reworded to omit ‘his’: see, eg, *Justice Legislation Amendment (Family Violence Protection and Other Matters) Act 2018* (Vic) s 60. Concerningly, at the time of writing, the provisions that reworded sections failed to remove all masculine terms, with three of the six provisions that omitted terms failing to address the additional references to ‘his or her’, or masculine only terms: see, eg, *Justice Legislation Amendment (Family Violence Protection and Other Matters) Act 2018* (Vic) s 60, amending *County Court Act 1958* (Vic) s 7(4). In comparison, of the 135

Also of note is schedule 3 clause 2 of the *Bankruptcy Regulations 2021* (Cth), which specifies that for Part X of the *Bankruptcy Act 1966* (Cth), ‘if used in relation to a debtor ... “he or she” is to be read as “they” ... “his or her” is to be read as “their” ... [and] “him or her” is to be read as “them”’. Rather than actually amend provisions with pronouns, this insertion creates an interpretative section. The reasoning for this introduction is unclear for two key reasons. First, there are five other provisions within the *Bankruptcy Regulations 2021* (Cth) that replace pronouns in other sections of the *Bankruptcy Act 1966* (Cth) with terms such as ‘joint debtor’ or ‘deceased debtor’. As such, if the intention was for every gendered term to be replaced when discussing a debtor, it is unclear why this interpretative provision was not included at the start of the legislation. Second, within Part X of the *Bankruptcy Act 1966* (Cth), there are currently 18 provisions that use the term ‘he or she’, 40 provisions that use the term ‘his or her’ and 8 provisions that use the term ‘him or her’.<sup>302</sup> It is unclear why the interpretative provision was preferred over individual amendments, given the amendments do not appear to be too arduous, as numerous amendments associated with gender non-specific drafting techniques have occurred before,<sup>303</sup> and the phrase ‘(wherever occurring)’ has also been previously used.<sup>304</sup>

### (iii) Mistakes

The inclusion of mistakes, such as three provisions that inserted ‘he’ instead of ‘the’,<sup>305</sup> and two items that incorrectly used masculine pronouns to refer to the Hon Julia Gillard,<sup>306</sup> emphasises the lack of extensive scrutiny of legislation, and specifically LIs.

## 3 Spectacles of Respectable Equality

Policy guidelines associated with legislative drafting is a spectacle of respectable equality because it reinforces cis-heteronormativity and hinders true equality. The symbolic representation is policies that recommend gender-neutral drafting techniques.<sup>307</sup> These drafting techniques do not allow actual gender-neutrality

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provisions that utilised a gender-neutral drafting technique in Commonwealth legislation, 34 provisions amended legislation from a masculine pronoun only: see, eg, *Customs Legislation Amendment (2019 Measures No 1) Regulations 2019* (Cth). Overwhelmingly, 31 provisions omitted the masculine term, 2 provisions replaced the pronoun with a gender non-specific noun, and 1 provision reworded the provision: see, eg, *Customs Legislation Amendment (2019 Measures No 1) Regulations 2019* (Vic).

302 In the entire *Bankruptcy Act 1966* (Cth), there were 234 references to ‘he or she’, 383 references to ‘his or her’, and 101 references to ‘him or her’.

303 In particular, the *Customs Legislation Amendment (2019 Measures No 1) Regulations 2019* (Cth) used gender non-specific drafting techniques in relation to 26 provisions.

304 See, eg, *ibid* sch 1 cls 51, 63. This phrase was extended to apply across multiple sub-provisions.

305 *Ibid* sch 1 cls 24, 32, amending *Customs (Prohibited Imports) Regulations 1956* (Cth); *Financial Sector (Collection of Data) (Reporting Standard) Determination 2019* (Cth), Australian Prudential Regulation Authority, ‘ABS/RBA Wholesale Funding Stocks, Flows and Interest Rates’ (Reporting Standard ARS 748.0, December 2018) cl 2 <[https://www.apra.gov.au/sites/default/files/ars\\_748.0\\_absrba\\_wholesale\\_funding\\_stocks\\_flows\\_and\\_interest\\_rates\\_2.pdf](https://www.apra.gov.au/sites/default/files/ars_748.0_absrba_wholesale_funding_stocks_flows_and_interest_rates_2.pdf)>.

306 *Parliamentary Business Resources (Former Prime Ministers) Determination 2017* (Cth).

307 See generally ‘Drafting Manual’ (n 202) 14 [95]–[98].

because binary gender references and unnecessarily gendered terms continue to be implemented in practice. Cis-heteronormativity is therefore reinforced by the failure to adhere to policies, and true equality is hindered by the drafting being described as allowing ‘complete gender neutrality’.<sup>308</sup>

The social norms that underscore the policy are that heteronormative, cisgender, and endosex society will always be superior to the queer society. That is, the arguments that criticise the universal he can also be applied to the ‘universal he/she’, whereby non-normative society, and non-normative gender, is deemed subordinate to cisgender society. The Australian Government specifically ‘accept[ed] that drafting [legislation] in “masculine” language may contribute to some extent to the perpetuation of a society in which men and women see women as lesser beings’.<sup>309</sup> Comparably, drafting legislation in feminine and masculine language contributes to the perpetuation of a society in which all people see queer people as lesser beings. Accordingly, while equality was theoretically granted in the written policy, the inconsistent performance of applying the policy results in the notion that the respectable identity is one which can conform to a cisgender binary, or a new characterisation that sits outside of, but similar to, heteronormative, cisgender and endosex society.

The policy has been spectacularised through the theatrical performance in practice. The inconsistent performance, whereby the policy is not in fact implemented, is theatricalised as being true equality because the policy itself presents the notion that Victorian and Commonwealth legislation is drafted using techniques that promote gender non-specificity. Without any analysis as to whether the policy is being applied, society would infer that legislation is drafted in accordance with the policy.<sup>310</sup> Further, Part II(A)(2) of this article has highlighted that since 2017, there has been principal and amending legislation introduced that preferences feminine and masculine pronouns, rather than engaging in gender non-specific alternatives. Accordingly, because the performance of the policy has resulted in inconsistent application, the policy is a spectacle that has been theatricalised as true equality, presenting the idea that no further changes to any policies or procedures are necessary.

#### ***4 Gender-Silent Legislative Drafting***

Scholars have recognised that the move towards gender-silent legislation is not without its difficulties. Sandra Petersson specifically identified with respect to gender-neutral legislation that there are difficulties in changing masculine language to include the feminine, due to the cost in amending legislation and procedural issues associated with the consistency of amended provisions to the original

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308 ‘OCPC Drafting Manual’ (n 195) 6.

309 Gareth Evans, ‘Moves to Modify Language Sex Bias in Legislation’ (Press Release No 142/84, Attorney-General’s Department (Cth), 30 September 1984) 128 <[https://parlinfo.aph.gov.au/parlInfo/download/media/pressrel/HPR09007449/upload\\_binary/HPR09007449.pdf](https://parlinfo.aph.gov.au/parlInfo/download/media/pressrel/HPR09007449/upload_binary/HPR09007449.pdf)>.

310 Current scholarship recognises Australia as ‘[t]he most progressive country in the English-speaking world in terms of drafting techniques ... [given that] [t]here is a drafting direction in Victoria that [drafters] are no longer to use “he or she” [or] “his or her”’: Haigh (n 217) 31.

legislation.<sup>311</sup> Further, Petersson appropriately highlights that drafting provisions (in a heteronormative and patriarchal society) specify that ‘sexist language alone is an insufficient reason for amendment’.<sup>312</sup> Despite this, there have been previous attempts in the NSW and Commonwealth jurisdictions, albeit limited, to make legislation gender-neutral and gender-silent.<sup>313</sup>

The above analysis of the application of drafting principles in the Victorian and Commonwealth jurisdictions demonstrates that there are substantial inconsistencies and errors in the drafting of Acts, SRs and LIs, that of which coincides alongside unnecessarily gendered terminology. Subsequently, the resolution of inconsistent drafting, archaic provisions, and discriminatory provisions, corresponds with the introduction of clear, gender non-specific guidelines, and a substantial review of in force legislation.

Despite the promising gender-silent policies within Canada and New Zealand,<sup>314</sup> whether these policies are adhered to has not been exclusively considered in scholarship. Further, although a lack of training of parliamentary drafters may still be questioned,<sup>315</sup> current gender-neutral policies are entirely insufficient at ensuring complete gender-neutrality, let alone gender non-specificity. As such, similar to what was recommended for South Australian legislation,<sup>316</sup> the legislation of all Australian jurisdictions should be reviewed to remove all unnecessarily gendered terminology or terms that can be seen to perpetuate cis-heteronormativity. Furthermore, until further research identifies the most proficient method/s to ensuring gender non-specificity in legislative drafting, Australian jurisdictions should amend drafting policies to include strict requirements around the inclusion of gendered language and inclusive pronoun use.<sup>317</sup>

## B Interpretative Legislation

Interpretative legislation is used to import meaning and increase the clarity of legislation, including by affording definitions to gendered terms. Initially, the two-way rule, where masculine pronouns were interpreted as including feminine pronouns, was used to circumvent the sexist drafting techniques of the ‘masculine rule’ or ‘universal he’.<sup>318</sup> Scholars have reasoned that the two-way rule provided a ‘false-neutrality’,<sup>319</sup> whereby the sexism inherent within this rule was not challenged through interpretative legislation, because it did not displace the

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311 Petersson, ‘Recent Commonwealth Developments’ (n 174) 48–50.

312 Ibid 48.

313 Ibid 51; Pennisi, ‘Singular They’ (n 178) 14.

314 King and Fawcett (n 184) 113, 118, 123; Pennisi, ‘Singular They’ (n 178) 12–13.

315 Victorian Law Reform Commission, *Plain English and the Law: The 1987 Report Republished* (Report, 2017) 54–5 [110]–[111] <<https://apo.org.au/sites/default/files/resource-files/2018-01/apo-nid135076.pdf>>.

316 South Australian Law Reform Institute, *Discrimination on the Grounds of Sexual Orientation, Gender, Gender Identity and Intersex Status in South Australian Legislation* (Audit Report, September 2015) 12, 40–1, 43.

317 For instance, examples in legislation could include completely new terms or pronouns or other gender non-specific pronouns, such as ‘zi/zim/zieself’: *Royal Commission on Human Relationships* (Final Report, April 1977) vol 5, 41–2 [230]–[234].

318 Petersson, ‘Recent Commonwealth Developments’ (n 174) 36; Revell and Vapnek (n 178) 109, 111–12.

319 Petersson, ‘Recent Commonwealth Developments’ (n 174) 40.

masculine rule, but made a theoretical addition.<sup>320</sup> Australia has since moved beyond the two-way rule to implement what Petersson terms the ‘all-gender rule’, where reference to one gender is taken to mean every other gender.<sup>321</sup> While Petersson notes that the all-gender rule is ineffective in addressing sexist drafting styles, as it does not necessitate a change in the use of masculine language,<sup>322</sup> scholars have not extensively considered the impact of the all-gender rule with respect to heteronormativity.<sup>323</sup>

## 1 Australian Legislation

Every jurisdiction within Australia has interpretative legislation that specifies where words indicate a gender, this includes every other gender.<sup>324</sup> Some gendered terms are also attributed meaning in other legislation to provide additional context in certain circumstances.<sup>325</sup> I will focus on references to gender in interpretative legislation only, as this legislation is predominantly utilised to assist in interpreting the legislation of a particular jurisdiction.<sup>326</sup>

## 2 Spectacles of Respectable Equality

The symbolic representation of interpretative legislation is that any reference to gender will include all other genders.<sup>327</sup> The underlying social norm of this legislation is the dominant cis-heteronormative presumption that every person has a gender. The performance of interpretative legislation results in the exclusion of non-normative gender/s by maintaining that the default position is feminine and masculine binaries. Although rights are afforded, in that genders other than female and male are recognised, this recognition is only provided to a theoretical extent, rather than actually ensuring legislative terminology is gender-silent. For instance, the idea that one gender is taken to mean every other gender specifically

320 Ibid 41–2; King and Fawcett (n 184) 109; Revell and Vapnek (n 178) 113–15; Haigh (n 217) 15–16.

321 Petersson, ‘Recent Commonwealth Developments’ (n 174) 43, 45.

322 Ibid 44–5.

323 Note that Revell and Vapnek (n 178) ‘recommend that interpretation acts be rewritten to be truly gender-silent, with no reference to gender’: at 113.

324 *Acts Interpretation Act 1901* (Cth) s 23(a): ‘words importing a gender include every other gender’; *Legislation Act 2001* (ACT) s 145(a): ‘words indicating a gender include every other gender’; *Interpretation Act 1987* (NSW) s 8(a): ‘a word or expression that indicates one or more particular genders shall be taken to include every other gender’; *Interpretation Act 1978* (NT) s 24(1): ‘language that indicates or could be taken to indicate a person of a particular gender or sex includes any individual, regardless of gender or sex’; *Acts Interpretation Act 1954* (Qld) s 32B: ‘words indicating a gender include each other gender’; *Acts Interpretation Act 1915* (SA) s 26(a): ‘every word implying a particular gender will be construed as including every other gender’; *Acts Interpretation Act 1931* (Tas) s 24A(1): ‘a word or expression that indicates one or more particular genders is taken to include every other gender’; *Interpretation of Legislation Act 1984* (Vic) s 37(a): ‘words importing a gender include every other gender’; *Interpretation Act 1984* (WA) s 10(a): ‘words denoting a gender or genders include every other gender’.

325 See, eg, *BDMR Act* (Tas) (n 122) s 28D(3) which provides further information as to references to sex and gender ‘in any law in force’ in Tasmania.

326 Every interpretation statute, except South Australia, includes prescribed material that may assist in the interpretation of legislation: see, eg, *Acts Interpretation Act 1901* (Cth) s 15AB.

327 See above n 324.



fails to acknowledge trans or other gender non-conforming people who do not subscribe to any gender. Accordingly, Petersson's argument that the all-gender rule is ineffective to address sexism,<sup>328</sup> and arguments regarding the false-neutrality of the two-way rule,<sup>329</sup> can be extrapolated to argue that cis-heteronormativity is not challenged through the implementation of the all-gender rule, but is actually maintained.

The all-gender rule maintains cis-heteronormativity by increasing instances where gendered terms will be used over gender-silent language. The all-gender rule disincentivises the use of gender-silent language because interpretative legislation ensures that references to feminine or masculine terms will include all other gendered terms. When drafters do not use gender-silent language, and instead adhere to a binary, this reinforces cis-heteronormative perceptions that exclude trans and other gender non-conforming people and, in some instances, queer relationships.

A prominent example of the drafting of legislation that reinforces cis-heteronormativity is the *Public Health (COVID-19 Northern Beaches) Order 2020* (NSW).<sup>330</sup> Clause 9(3)(c)(iii) stipulates that at a wedding, 'all persons attending ... [must] wear masks, except ... for the purposes of the groom kissing the bride'. The (possessive) use of the words, 'groom' and 'bride', reinforces cis-heteronormativity by presuming that every marital kiss will occur between a woman and a man. This wording emphasises that the normative presumption of a marital kiss is that it will occur between a heterosexual couple, despite marriage being able to occur between two people, regardless of gender.<sup>331</sup> In this instance, the *Interpretation Act 1987* (NSW) has allowed a gendered reference to be utilised, at the expense of inclusive terminology.

Interpretative legislation is a spectacle because it is merely theatrical in its representation that gender is a fluid and non-binary concept. Most interpretative legislation includes provisions that indicate that a contrary intention may displace the notion that references to one gender include all other genders, or that recourse must be given to the context in the specific act or statutory rule.<sup>332</sup> Therefore, while it appears that gender beyond the binary is recognised, the carveout of contrary intention or context permits stereotypical meanings to be imported onto gender. In particular, what it means to be female, or male, can be conservatively policed by the caveat that the all-gender rule may be displaced. The case of *Coonan v Registrar of Births, Deaths and Marriages (Qld)* ('*Coonan*')<sup>333</sup> particularly emphasises how interpretative legislation can be superseded by contextual references in legislation. In *Coonan*, the applicant appealed the decision of the Registrar to record him as

328 Petersson, 'Recent Commonwealth Developments' (n 174) 44–5.

329 Ibid 41–2; King and Fawcett (n 184) 109; Revell and Vapnek (n 178) 113–15.

330 *Public Health (COVID-19 Northern Beaches) Order 2020* (NSW), as amended by *Public Health (COVID-19 Northern Beaches) Amendment Order 2020* (NSW).

331 *MA(DRF) Act* (n 2) s 3.

332 *Acts Interpretation Act 1901* (Cth) s 2; *Legislation Act 2001* (ACT) s 6; *Interpretation Act 1987* (NSW) s 5; *Interpretation Act 1978* (NT) s 3; *Acts Interpretation Act 1954* (Qld) s 4; *Acts Interpretation Act 1931* (Tas) s 4; *Interpretation of Legislation Act 1984* (Vic) ss 4, 37; *Interpretation Act 1984* (WA) s 3.

333 [2020] QCAT 434 ('*Coonan*').

his child's 'mother', rather than 'father', where he gave birth to his child.<sup>334</sup> In issue was the definition of 'mother' in the *Births, Deaths and Marriages Registration Act 2003* (Qld) ('*BDMR Act* (Qld)'), and whether the Registrar had the power to record the applicant as the child's father.<sup>335</sup> In conducting statutory construction, the Court found that section 32B of the *Acts Interpretation Act 1954* (Qld) was displaced by the contrary intention in *BDMR Act* (Qld) – being that the identity of a person who gives birth to a child is to be referred to as 'mother'.<sup>336</sup> This case demonstrates that interpretative legislation is only a theoretical recognition that gender beyond female and male exists. In reality, cis-heterosexual society continues to maintain conservative notions associated with women and men, as viewed in the interpretation that only a mother can give birth.

### 3 Utility of All-Gender Interpretations

Although the all-gender rule is a spectacle of respectable equality, it is useful to address legislation drafted in the masculine and the inability to apply gender-neutral/gender non-specific drafting techniques. That is, the all-gender rule cannot simply be removed, because it has utility as a temporary measure in rectifying drafting issues that may be unable to be reasonably resolved, such as archaic provisions. Further, the above discussion has identified that drafting techniques are inconsistently applied and sometimes even introduce masculine terms only.<sup>337</sup> Accordingly, until drafting policies are adhered to, and improved, the all-gender rule must remain in place. Nonetheless, interpretative legislation could be amended to specify that where words indicate a gender, this includes every other gender 'or [those] who [are] not of that gender'.<sup>338</sup> This would ensure that trans and other gender non-conforming people are adequately included in an all-gender/no-gender rule. Furthermore, interpretative legislation could also be amended to provide an exception that the all-gender rule is not ousted by a contrary intention. While this will not remedy circumstances where the all-gender rule reinforces cis-heteronormativity, it would assist with expanding the conception of gender from conservative presumptions. These minor amendments would ultimately be an interim step that can be implemented, until drafting policies and practices improve and unnecessarily gendered language in legislation is rectified.

## IV CONCLUSION

Spectacles of respectable equality are a discriminatory pattern that exists within Australian legislation and policy. A spectacle of respectable equality describes theatrical legislation or policy that is qualified by cis-heterosexual privilege and reinforces queer assimilation to normative standards.

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334 Ibid [1] (Member Traves).

335 Ibid [2]–[3], [50].

336 Ibid [14], [22]–[33], [51]–[85].

337 See above Part III(A)(2)(c)(i), (g).

338 Grabham (n 191) 17.

The pattern of spectacles of respectable equality has continued since marriage equality by directly or indirectly discriminating against the queer community. Instances of direct discrimination include Lifeblood's blood donation deferral period and state birth certificate legislation. In particular, the blood donation deferral period and the discriminatory impact on MSM and trans people emphasises the need for an individual risk-based deferral system. Also, legislation that allows for the change of sex/gender on birth certificates discriminates against trans and intersex people by relying on characterisations of sex/gender that maintain cisgender and endosex primacy. The issues in current birth certificate legislation highlight that any movement towards the self-identification of sex/gender, alongside other holistic reform, is necessary. Additionally, the queer community is indirectly discriminated against through the drafting of Victorian and Commonwealth legislation, which often does not comply with gender-neutral legislative drafting policies, and instead continues to refer to gender in a binary and uses unnecessarily gendered terms. Furthermore, the all-gender rule within interpretative legislation reinforces cis-heteronormative presumptions that act to restrict gender identity; however, removal of this rule cannot occur until the transition to gender-silent legislation is complete.

In exploring examples of spectacles of respectable equality, the identification of avenues for reform indicates the steps that can be taken to move society towards true equality. Ultimately, the recognition of spectacles of respectable equality allows us to acknowledge that the inequality we have is cis-heteronormative society's equality, and it is only with continued reform that true equality can prevail.

## ANNEXURE A

Table 13: Different Victorian Provisions Including Gendered Terms by Legislation

Legislation	Total
<b>Act</b>	<b>163</b>
<i>Assisted Reproductive Treatment Amendment (Consent) Act 2019 No 24</i>	3*
<i>Assisted Reproductive Treatment Amendment Act 2020 No 15</i>	3
<i>Audit Amendment Act 2019 No 12</i>	1
<i>Building Amendment (Registration of Building Trades and Other Matters) Act 2018 No 46</i>	1
<i>Child Wellbeing and Safety (Child Safe Standards Compliance and Enforcement) Amendment Act 2021 No 23</i>	1*
<i>Children's Services Amendment Act 2019 No 37</i>	3
<i>Corrections Amendment (Parole) Act 2018 No 29</i>	1
<i>COVID-19 Omnibus (Emergency Measures) Act 2020 No 11</i>	2*
<i>Disability (National Disability Insurance Scheme Transition) Amendment Act 2019 No 19</i>	1

<b>Legislation</b>	<b>Total</b>
<i>Disability Service Safeguards Act 2018 No 38</i>	1
<i>Education Legislation Amendment (Victorian Institute of Teaching, TAFE and Other Matters) Act 2018 No 31</i>	1
<i>Energy Safety Legislation Amendment (Victorian Energy Safety Commission and Other Matters) Act 2020 No 4</i>	2
<i>Firefighters' Presumptive Rights Compensation and Fire Services Legislation Amendment (Reform) Act 2019 No 20</i>	1
<i>Food Amendment Act 2020 No 38</i>	1
<i>Gambling Regulation Amendment (Gaming Machine Arrangements) Act 2017 No 62</i>	1
<i>Industrial Relations Legislation Amendment Act 2021 No 14</i>	3
<i>Justice Legislation Amendment (Access to Justice) Act 2018 No 15</i>	1
<i>Justice Legislation Amendment (Family Violence Protection and Other Matters) Act 2018 No 33</i>	4
<i>Justice Legislation Amendment (Terrorism) Act 2018 No 32</i>	2
<i>Justice Legislation Miscellaneous Amendment Act 2018 No 48</i>	2
<i>Liquor and Gambling Legislation Amendment Act 2018 No 20</i>	1
<i>National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Act 2018 No 21</i>	6
<i>North East Link Act 2020 No 18</i>	2
<i>Oaths and Affirmations Act 2018 No 6</i>	1
<i>Parks and Crown Land Legislation Amendment Act 2020 No 40</i>	1
<i>Parks Victoria Act 2018 No 19</i>	15
<i>Primary Industries Legislation Amendment Act 2019 No 40</i>	24
<i>Rail Safety Legislation Amendment (National Services Delivery and Related Reforms) Act 2019 No 41</i>	1
<i>State Taxation Acts Amendment Act 2020 No 47</i>	3
<i>State Taxation Acts Further Amendment Act 2017 No 67</i>	1
<i>Transport Legislation Amendment Act 2019 No 49</i>	4
<i>Transport Legislation Amendment Act 2020 No 41</i>	1
<i>Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act 2019 No 5</i>	5
<i>Wage Theft Act 2020 No 21</i>	1

<b>Legislation</b>	<b>Total</b>
<i>Worker Screening Act 2020 No 34</i>	44*
<i>Workplace Injury Rehabilitation and Compensation Amendment (Arbitration) Act 2021 No 15</i>	2*
<i>Domestic Animals Amendment (Puppy Farms and Pet Shops) Act 2017 No 69</i>	11
<i>Births, Deaths and Marriages Registration Amendment Act 2019</i>	1
<i>Justice Legislation Amendment (Victims) Act 2018 No 5</i>	1
<i>Justice Legislation Amendment (Drug Court and Other Matters) Act 2020 No 43</i>	1
<i>Serious Offenders Act 2018 No 27</i>	2
<b>SR</b>	<b>209</b>
<i>Aboriginal Heritage Regulations 2018 No 59</i>	1
<i>Accident Towing Services Regulations 2019 No 139</i>	2
<i>Adoption Regulations 2019 No 8</i>	1
<i>Assisted Reproductive Treatment Regulations 2019 No 115</i>	64*
<i>Building Regulations 2018 No 38</i>	1
<i>Cemeteries and Crematoria Amendment Regulations 2020 No 71</i>	1
<i>Child Wellbeing and Safety Amendment Regulations 2019 No 85</i>	1*
<i>Children's Court (Family Violence Protection) and (Personal Safety Intervention Orders) Amendment Rules 2020 No 10</i>	3
<i>Children's Court Criminal Procedure Amendment Rules 2018 No 70</i>	1
<i>Children's Services Regulations 2020 No 32</i>	1
<i>Confiscation Regulations 2019 No 43</i>	5
<i>Corrections Regulations 2019 No 27</i>	4*
<i>County Court (Chapters I and III Miscellaneous Amendments) Rules 2017 No 143</i>	1
<i>County Court Civil Procedure Rules 2018 No 170</i>	21*
<i>County Court Criminal Procedure Rules 2019 No 126</i>	2
<i>County Court Miscellaneous Rules 2019 No 28</i>	1
<i>Crown Land (Reserves) (Tour Operator Licence Fee) Amendment Regulations 2018 No 122</i>	1
<i>Domestic Animals Amendment (Puppy Farms and Pet Shops) Regulations 2018 No 35</i>	3
<i>Domestic Animals Amendment Regulations 2019 No 36</i>	7
<i>Family Violence Protection Regulations 2018 No 161</i>	1

<b>Legislation</b>	<b>Total</b>
<i>Fisheries Regulations 2019 No 163</i>	13
<i>Forests (Licences and Permits) Regulations 2019 No 130</i>	1
<i>Forests (Tour Operator Licence Fee) Amendment Regulations 2018 No 124</i>	1
<i>Health Complaints Regulations 2019 No 12</i>	3
<i>Liquor Control Reform Interim Regulations 2020 No 119</i>	1
<i>Local Government (Electoral) Regulations 2020 No 72</i>	1
<i>Magistrates' Court (Family Violence Protection) Rules 2018 No 182</i>	2
<i>Magistrates' Court General Civil Procedure (Miscellaneous Amendments) Rules 2018 No 158</i>	1
<i>Magistrates' Court General Civil Procedure Rules 2020 No 112</i>	9
<i>Metropolitan Fire Brigades (General) Interim Regulations 2018 No 163</i>	4
<i>Metropolitan Fire Brigades (General) Interim Regulations 2019 No 92</i>	4
<i>Mineral Resources (Sustainable Development) (Mineral Industries) Interim Regulations 2018 No 78</i>	19
<i>National Parks (Tour Operator Licence Fee) Amendment Regulations 2018 No 126</i>	1
<i>Occupational Health and Safety Amendment Regulations 2018 No 71</i>	4
<i>Owner Drivers and Forestry Contractors Amendment Regulations 2021 No 4</i>	1*
<i>Prevention of Cruelty to Animals Regulations 2019 No 133</i>	2
<i>Professional Boxing and Combat Sports Regulations 2018 No 79</i>	2
<i>Residential Tenancies Regulations 2019 No 14</i>	1
<i>Road Safety (General) Regulations 2019 No 88</i>	1
<i>Road Safety (Vehicles) Interim Regulations 2020 No 96</i>	4
<i>Supreme Court (Chapter I Costs Court Amendment) Rules 2018 No 131</i>	1
<i>Supreme Court (Criminal Procedure) Rules 2017 No 126</i>	3
<i>Victims of Crime Assistance Rules 2020 No 88</i>	1*
<i>Victorian Civil and Administrative Tribunal Rules 2018 No 77</i>	1
<i>Wildlife (Marine Mammals) Regulations 2019 No 109</i>	5
<i>Wildlife (Tour Operator Licence Fee) Amendment Regulations 2018 No 129</i>	1
<b>Total</b>	<b>372</b>

\* This legislation contained multiple different gendered terms within the same provision.



## ANNEXURE B

Table 14: Different Commonwealth Provisions Including Gendered Terms by Legislation

<b>Legislation</b>	<b>Total</b>
<b>Act</b>	<b>365</b>
<i>Anti-money Laundering and Counter-terrorism Financing Amendment Act 2017 No 130</i>	2
<i>Civil Law and Justice Legislation Amendment Act 2019 No 130</i>	3
<i>Combatting Child Sexual Exploitation Legislation Amendment Act 2019 No 72</i>	2
<i>Coronavirus Economic Response Package Omnibus Act 2020 No 22</i>	2
<i>Corporations Amendment (Asia Region Funds Passport) Act 2018 No 61</i>	1
<i>Counter-Terrorism (Temporary Exclusion Orders) Act 2019 No 53</i>	4
<i>Crimes Legislation Amendment (International Crime Cooperation and Other Measures) Act 2018 No 34</i>	8*
<i>Crimes Legislation Amendment (Sexual Crimes against Children and Community Protection Measures) Act 2020 No 70</i>	3
<i>Defence Legislation Amendment Act 2019 No 1</i>	7
<i>Education and Other Legislation Amendment (VET Student Loan Debt Separation) Act 2018 No 116</i>	3*
<i>Education Legislation Amendment (Tuition Protection and Other Measures) Act 2019 No 111</i>	4
<i>Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Act 2018 No 147</i>	6
<i>Electoral Legislation Amendment (Modernisation and Other Measures) Act 2019 No 2</i>	6
<i>Enhancing Online Safety (Non-consensual Sharing of Intimate Images) Act 2018 No 96</i>	5
<i>Fair Work Amendment (Improving Unpaid Parental Leave for Parents of Stillborn Babies and Other Measures) Act 2020 No 105</i>	7
<i>Fair Work Amendment (Repeal of 4 Yearly Reviews and Other Measures) Act 2018 No 170</i>	1
<i>Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021 No 25</i>	3
<i>Family Assistance and Child Support Legislation Amendment (Protecting Children) Act 2018 No 36</i>	3
<i>Financial Sector Legislation Amendment (Crisis Resolution Powers and Other Measures) Act 2018 No 10</i>	9
<i>Foreign Influence Transparency Scheme Act 2018 No 63</i>	5
<i>Foreign Investment Reform (Protecting Australia's National Security) Act 2020 No 114</i>	1

<b>Legislation</b>	<b>Total</b>
<i>Future Drought Fund Act 2019 No 55</i>	6
<i>Great Barrier Reef Marine Park Amendment (Authority Governance and Other Matters) Act 2018 No 12</i>	4
<i>Higher Education Support Amendment (Job-Ready Graduates and Supporting Regional and Remote Students) Act 2020 No 93</i>	1
<i>Higher Education Support Legislation Amendment (Student Loan Sustainability) Act 2018 No 76</i>	1
<i>Home Affairs and Integrity Agencies Legislation Amendment Act 2018 No 31</i>	7*
<i>Imported Food Control Amendment Act 2018 No 108</i>	2
<i>Industrial Chemicals (Notification and Assessment) Amendment Act 2019 No 14</i>	1
<i>Industrial Chemicals Act 2019 No 12</i>	9
<i>Intellectual Property Laws Amendment (Productivity Commission Response Part 1 and Other Measures) Act 2018 No 77</i>	3
<i>Intelligence Services Amendment (Establishment of the Australian Signals Directorate) Act 2018 No 25</i>	5*
<i>Migration Amendment (Regulation of Migration Agents) Act 2020 No 71</i>	2
<i>My Health Records Amendment (Strengthening Privacy) Act 2018 No 154</i>	1
<i>National Collecting Institutions Legislation Amendment Act 2021 No 20</i>	1
<i>National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Act 2017 No 131</i>	8*
<i>National Emergency Declaration (Consequential Amendments) Act 2020 No 129</i>	1
<i>National Housing Finance and Investment Corporation Act 2018 No 65</i>	13
<i>National Redress Scheme for Institutional Child Sexual Abuse (Consequential Amendments) Act 2018 No 46</i>	1
<i>National Redress Scheme for Institutional Child Sexual Abuse Act 2018 No 45</i>	6
<i>National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018 No 67</i>	14
<i>Norfolk Island Amendment (Supreme Court) Act 2020 No 83</i>	1
<i>Offshore Petroleum and Greenhouse Gas Storage Amendment (Miscellaneous Amendments) Act 2019 No 92</i>	1
<i>Private Health Insurance Legislation Amendment Act 2018 No 101</i>	1
<i>Public Sector Superannuation Legislation Amendment Act 2018 No 80</i>	2
<i>Regional Investment Corporation Act 2018 No 6</i>	14
<i>Road Vehicle Standards Act 2018 No 163</i>	4

<b>Legislation</b>	<b>Total</b>
<i>Security of Critical Infrastructure Act 2018 No 29</i>	1
<i>Shipping Registration Amendment Act 2018 No 140</i>	1
<i>Social Security (Administration) Amendment (Income Management and Cashless Welfare) Act 2019 No 45</i>	1
<i>Social Services and Other Legislation Amendment (Simplifying Income Reporting and Other Measures) Act 2020 No 17</i>	5
<i>Social Services and Other Legislation Amendment (Supporting Retirement Incomes) Act 2019 No 5</i>	2
<i>Social Services Legislation Amendment (Energy Assistance Payment) Act 2019 No 28</i>	1
<i>Social Services Legislation Amendment (Overseas Welfare Recipients Integrity Program) Act 2019 No 74</i>	2
<i>Social Services Legislation Amendment (Welfare Reform) Act 2018 No 26</i>	83*
<i>Statute Update (Smaller Government) Act 2018 No 4</i>	2
<i>Therapeutic Goods Amendment (2017 Measures No 1) Act 2018 No 7</i>	8
<i>Treasury Laws Amendment (2018 Measures No 1) Act 2018 No 23</i>	1
<i>Treasury Laws Amendment (2018 Measures No 3) Act 2018 No 93</i>	1
<i>Treasury Laws Amendment (2018 Measures No 4) Act 2019 No 8</i>	2
<i>Treasury Laws Amendment (2019 Measures No 2) Act 2019 No 94</i>	2
<i>Treasury Laws Amendment (2020 Measures No 5) Act 2020 No 118</i>	1
<i>Treasury Laws Amendment (2020 Measures No 6) Act 2020 No 141</i>	14*
<i>Treasury Laws Amendment (APRA Governance) Act 2018 No 81</i>	2*
<i>Treasury Laws Amendment (Australian Consumer Law Review) Act 2018 No 132</i>	1
<i>Treasury Laws Amendment (Banking Executive Accountability and Related Measures) Act 2018 No 5</i>	3*
<i>Treasury Laws Amendment (Enhancing ASIC's Capabilities) Act 2018 No 122</i>	1*
<i>Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019 No 10</i>	2
<i>Treasury Laws Amendment (Illicit Tobacco Offences) Act 2018 No 82</i>	1
<i>Treasury Laws Amendment (International Tax Agreements) Act 2019 No 107</i>	1
<i>Treasury Laws Amendment (Making Sure Foreign Investors Pay Their Fair Share of Tax in Australia and Other Measures) Act 2019 No 34</i>	1
<i>Treasury Laws Amendment (Protecting Your Superannuation Package) Act 2019 No 16</i>	3

<b>Legislation</b>	<b>Total</b>
<i>Treasury Laws Amendment (Putting Consumers First – Establishment of the Australian Financial Complaints) Authority Act 2018 No 13</i>	2
<i>Treasury Laws Amendment (Registries Modernisation and Other Measures) Act 2020 No 69</i>	1
<i>Treasury Laws Amendment (Reuniting More Superannuation) Act 2021 No 24</i>	1
<i>Treasury Laws Amendment (Your Future, Your Super) Act 2021 No 46</i>	1
<i>Treatment Benefits (Special Access) (Consequential Amendments and Transitional Provisions) Act 2019 No 42</i>	1
<i>Treatment Benefits (Special Access) Act 2019 No 41</i>	1
<i>Underwater Cultural Heritage Act 2018 No 85</i>	2
<i>Unexplained Wealth Legislation Amendment Act 2018 No 126</i>	1
<i>VET Student Payment Arrangements (Miscellaneous Amendments) Act 2021 No 17</i>	1
<i>Veterans' Affairs Legislation Amendment (Partner Service Pension and Other Measures) Act 2019 No 75</i>	2
<i>Veterans' Affairs Legislation Amendment (Veteran-centric Reforms No 1) Act 2018 No 17</i>	8
<i>Water Legislation Amendment (Inspector-General of Water Compliance and Other Measures) Act 2021 No 74</i>	1
<i>Federal Circuit and Family Court of Australia Act 2020 No 12</i>	7
<b>LI</b>	<b>2085</b>
<i>Adult Disability Assessment Determination 2018</i>	1
<i>Agricultural and Veterinary Chemicals Code (MRL Standard) Instrument 2019</i>	1
<i>Air Navigation (Aircraft Noise) Regulations 2018</i>	2
<i>Anti-money Laundering and Counter-terrorism Financing Rules Amendment Instrument 2018 No 1</i>	4
<i>Anti-money Laundering and Counter-terrorism Financing Rules Amendment Instrument 2018 No 2</i>	1
<i>Archives Regulations 2018</i>	1
<i>ASIC Corporations (Disclosure of Fees and Costs) Instrument 2019/1070</i>	1
<i>ASIC Market Integrity Rules (Capital) 2021</i>	1
<i>Australian Aged Care Quality Agency Legislation Amendment (Unannounced Re-accreditation Audits) Principles 2018</i>	1
<i>Australian Crime Commission Regulations 2018</i>	1*
<i>Australian Federal Police Regulations 2018</i>	4

<b>Legislation</b>	<b>Total</b>
<i>Australian Hearing Services (Declared Hearing Services) Determination 2019</i>	11
<i>Australian Institute of Health and Welfare (Ethics Committee) Regulations 2018</i>	1
<i>Australian National University (Sir Roland Wilson Foundation) Statute 2019</i>	1
<i>Australian Prudential Regulation Authority Supervisory Levies Determination 2020</i>	1
<i>Australian Prudential Regulation Authority Supervisory Levies Determination 2021</i>	1
<i>Australian Radiation Protection and Nuclear Safety Regulations 2018</i>	1
<i>Australian Security Intelligence Organisation (Statement of Procedures) Instrument 2020</i>	2
<i>Australian Sports Anti-doping Authority Amendment (Sport Integrity Australia) Regulations 2020</i>	1
<i>Autonomous Sanctions (Designated and Declared Persons – Democratic People’s Republic of Korea) Continuing Effect Declaration and Designation Instrument 2019</i>	3
<i>Autonomous Sanctions (Designated and Declared Persons – Former Federal Republic of Yugoslavia) Continuing Effect Declaration and Revocation Instrument 2018</i>	5*
<i>Autonomous Sanctions (Designated and Declared Persons and Entities – Democratic People’s Republic of Korea) Continuing Effect Declaration (No 1) 2020</i>	1
<i>Autonomous Sanctions (Designated and Declared Persons – Former Federal Republic of Yugoslavia) Amendment (Continuation of Effect) Instrument 2020</i>	3
<i>Autonomous Sanctions (Designated Persons and Entities – Democratic People’s Republic of Korea) Continuing Effect Declaration 2018</i>	1
<i>Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Libya) Continuing Effect Declaration and Revocation Instrument 2018</i>	2
<i>Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Syria) Continuing Effect Declaration and Revocation Instrument 2018</i>	50
<i>Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Ukraine) Continuing Effect Declaration (No 1) 2020</i>	2
<i>Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Ukraine) Continuing Effect Declaration (No 2) 2020</i>	2*
<i>Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Democratic People’s Republic of Korea) Amendment (No 1) Instrument 2020</i>	2
<i>Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Libya) Amendment (Continuation of Effect) Instrument 2020</i>	1
<i>Banking Exemption (No 1) 2017</i>	1
<i>Banking Exemption (No 1) 2021</i>	1
<i>Banking Exemption (No 2) 2018</i>	1

<b>Legislation</b>	<b>Total</b>
<i>Bankruptcy Regulations 2021</i>	9*
<i>Biosecurity (Conditionally Non-prohibited Goods) Determination 2021</i>	1
<i>Cape Byron Lighthouse Heritage Management Plan 2020</i>	2
<i>Carbon Credits (Carbon Farming Initiative – Industrial Equipment Upgrades) Methodology Determination 2018</i>	8
<i>Carbon Credits (Carbon Farming Initiative – Animal Effluent Management) Methodology Determination 2019</i>	1
<i>CASA 02/20 – Global Navigation Satellite System (GNSS) Instructions 2020</i>	1
<i>CASA 28/18 – Flight Time Limitations for Helicopter Mustering Operations – Direction 2018</i>	6
<i>CASA 33/18 – Required Communication Performance and Required Surveillance Performance (RCP 240 and RSP 180) Capability Declarations – Direction 2018</i>	1
<i>CASA 69/18 – CASA 125/09 (Further Body Sample Collection Procedure – Quantisal Oral Fluid Collection Device) Amendment Instrument 2018</i>	1
<i>CASA 84/18 – Conduct of Parachute Training Operations Directions 2018</i>	1
<i>CASA AD/BELL 206/99 Amendment 4 – Bell Helicopter Textron Canada (BHTC) 206 and Leonardo Helicopters (Agusta) AB206 Series Helicopters</i>	1
<i>CASA EX05/18 – Implementation of Drug and Alcohol Management Plans Exemption 2018</i>	1
<i>CASA EX152/18 – Powered Weight-Shift-Controlled Aeroplanes and Other Powered Aircraft (Certain Aerial Work Operations) Exemption 2018</i>	1
<i>CASA EX29/19 – Pre-deployment Drug and Alcohol Testing Exemption 2019</i>	1
<i>CASA EX50/18 – Carrying Out and Supervising Maintenance (Ex-armed Forces, Historic and Replicas of Class B Aircraft) Instrument 2018</i>	3
<i>CASA EX54/19 – Civil Aviation Order 48.1 Instrument 2013 (Aerial Application Operations in Aeroplanes) Exemption 2019</i>	1
<i>CASA EX58/18 – Carriage of Passengers on Proficiency Check and Flight Test Flights Instrument 2018</i>	2
<i>CASA EX58/19 – Carriage of Passengers on Proficiency Check and Flight Test Flights Instrument 2019</i>	2
<i>CASA EX79/18 – Logging of Flight Time as a Pilot (Co-pilots on Single-pilot Certificated Aircraft) Exemption 2018</i>	3
<i>CASA EX81/20 – Implementation of Drug and Alcohol Management Plans (Micro-businesses and DAMP Organisations) Exemption 2020</i>	1
<i>Charter of the United Nations Act 1945 Listing (No 1) 2020</i>	1
<i>Charter of the United Nations Act 1945 Listing (No 2) 2020</i>	1



<b>Legislation</b>	<b>Total</b>
<i>Charter of the United Nations Act 1945 Listing (No 2) 2018</i>	1
<i>Charter of the United Nations Act 1945 Listing (No 1) 2019</i>	1
<i>Child Care Subsidy Minister's Amendment (Building on the Child Care Package and Other Measures) Rules 2020</i>	1*
<i>Child Care Subsidy Minister's Amendment Rules (No 1) 2018</i>	3
<i>Child Care Subsidy Minister's Amendment Rules (No 1) 2019</i>	1
<i>Child Support (Assessment) Regulations 2018</i>	2
<i>Child Support (Registration and Collection) Regulations 2018</i>	7
<i>Child Support Reform (New Formula and Other Measures) Regulations 2018</i>	1
<i>Christmas Island Emergency Management Amendment Ordinance 2017 No 2</i>	1
<i>Citizenship (LIN 20/084: Class of Persons Who May Receive a Pledge of Commitment) Instrument 2020</i>	1
<i>Civil Aviation Legislation Amendment (Flight Operations – Consequential Amendments and Transitional Provisions) Regulations 2021</i>	1
<i>Civil Aviation Legislation Amendment (Part 149) Regulations 2018</i>	1
<i>Civil Aviation Order 20.16.1 Amendment Instrument 2018 No 1</i>	1
<i>Civil Aviation Order 40.7 Amendment Instrument 2019 No 1</i>	1
<i>Civil Aviation Order 48.1 Instrument 2019</i>	59*
<i>Civil Aviation Order 826 Amendment Instrument 2020 No 1</i>	5
<i>Civil Aviation Order 95.10 (Exemption from Provisions of the Civil Aviation Regulations 1988 and the Civil Aviation Safety Regulations 1998 – Microlight Aeroplanes) Instrument 2020</i>	1
<i>Civil Aviation Order 95.32 (Exemption from Provisions of the Civil Aviation Regulations 1988 – Weight-Shift-Controlled Aeroplanes and Powered Parachutes) Instrument 2018</i>	1
<i>Civil Aviation Order 95.32 (Exemption from Provisions of the Civil Aviation Regulations 1988 – Weight-Shift-Controlled Aeroplanes and Powered Parachutes) Instrument 2021</i>	1
<i>Civil Aviation Order 95.55 (Exemption from Provisions of the Civil Aviation Regulations 1988 – Certain Ultralight Aeroplanes) Instrument 2021</i>	1
<i>Civil Aviation Order 95.55 (Exemption from the Provisions of the Civil Aviation Regulations 1988 – Certain Ultralight Aeroplanes) Instrument 2018</i>	1
<i>Cockatoo Island Management Plan 2017</i>	5*
<i>Cocos (Keeling) Islands Emergency Management Amendment Ordinance 2017 No 3</i>	1
<i>Competition and Consumer (Consumer Data Right) Rules 2020</i>	2

<b>Legislation</b>	<b>Total</b>
<i>Consumer Goods (Quad Bikes) Safety Standard 2019</i>	2
<i>Contingence Aids Payment Scheme 2020</i>	8
<i>Contingence Aids Payment Scheme Amendment (Merits Review) Instrument 2020</i>	2
<i>Copyright Regulations 2017</i>	5
<i>Coral Sea Marine Park Management Plan 2018</i>	2
<i>Corporations (Coronavirus Economic Response) Determination (No 1) 2020</i>	1
<i>Corporations (Coronavirus Economic Response) Determination (No 3) 2020</i>	1
<i>Corporations (Relevant Providers Degrees, Qualifications and Courses Standard) Determination 2020</i>	2
<i>Corporations (Work and Training Professional Year Standard) Determination 2018</i>	8*
<i>Corporations Amendment (Corporate Insolvency Reforms) Regulations 2020</i>	1
<i>Court Martial and Defence Force Magistrate Rules 2020</i>	6
<i>Crimes Legislation Amendment (International Crime Cooperation and Other Measures) Regulations 2018</i>	3
<i>Crimes Regulations 2019</i>	8
<i>Currency (Australian Coins) Amendment (2019 Royal Australian Mint No 6) Determination 2019</i>	1*
<i>Currency (Australian Coins) Amendment (2019 Royal Australian Mint No 7) Determination 2019</i>	1
<i>Currency (Australian Coins) Amendment (2020 Royal Australian Mint No 1) Determination 2020</i>	4
<i>Currency (Australian Coins) Amendment (2020 Royal Australian Mint No 2) Determination 2020</i>	4
<i>Currency (Australian Coins) Amendment (2020 Royal Australian Mint No 4) Determination 2020</i>	3
<i>Currency (Australian Coins) Amendment (2020 Royal Australian Mint No 5) Determination 2020</i>	2
<i>Currency (Australian Coins) Amendment (2020 Royal Australian Mint No 6) Determination 2020</i>	1
<i>Currency (Australian Coins) Amendment (2021 Royal Australian Mint No 3) Determination 2021</i>	1
<i>Currency (Australian Coins) Determination 2019</i>	17*
<i>Currency (Perth Mint) Determination (No 5) 2018</i>	1
<i>Currency (Royal Australian Mint) Determination (No 2) 2018</i>	3
<i>Currency (Royal Australian Mint) Determination (No 2) 2019</i>	13*
<i>Currency (Royal Australian Mint) Determination (No 3) 2018</i>	6
<i>Currency (Royal Australian Mint) Determination (No 5) 2018</i>	1
<i>Currency (Royal Australian Mint) Determination (No 6) 2018</i>	2

<b>Legislation</b>	<b>Total</b>
<i>Currency (Royal Australian Mint) Determination (No 8) 2018</i>	20
<i>Customs (Prohibited Exports) Amendment (Defence and Strategic Goods) Regulations 2018</i>	3
<i>Customs By-Law No 1300942</i>	1
<i>Customs By-Law No 1700571</i>	4
<i>Customs Legislation Amendment (2019 Measures No 1) Regulations 2019</i>	26***
<i>Customs Tariff Amendment (Comprehensive and Progressive Agreement for Trans Pacific Partnership Implementation) Regulations 2018</i>	1
<i>Customs Tariff Amendment (Peru-Australia Free Trade Agreement Implementation) Regulations 2019</i>	1
<i>Data-Matching Program (Assistance and Tax) Rules 2021</i>	2
<i>Defence (Conditions of Service) Determination 2020 No 29</i>	1
<i>Defence (Inquiry) Regulations 2018</i>	17*
<i>Defence (Public Areas) By Laws 2018</i>	1
<i>Defence Amendment (Defence Aviation Areas) Regulations 2018</i>	1
<i>Defence Determination, Conditions of Service (Deputy Chief of Staff to the United Nations Truce Supervision Organization) Determination 2019</i>	2
<i>Defence Determination, Conditions of Service Amendment (Flexible Service Determination) Determination 2018 (No 15)</i>	2*
<i>Defence Determination, Conditions of Service Amendment Determination 2021 (No 7)</i>	1*
<i>Defence Determination, Force Commander, Multinational Forces and Observers – Supporting Benefits Amendment Determination 2019 (No 1)</i>	3
<i>Defence Force Discipline (Consequences of Punishment) Rules 2018</i>	2
<i>Defence Force Discipline Regulations 2018</i>	2
<i>Defence Service Homes (Hardship) Guidelines 2018</i>	6
<i>Determination 2017/22: Remuneration and Allowances for Judicial and Related Offices</i>	2
<i>Determination 2017/23: Members of Parliament</i>	2
<i>Determination 2018/02: Remuneration and Allowances for Holders of Public Office</i>	3
<i>Determination 2018/05: Remuneration and Allowances for Holders of Public Office</i>	1
<i>Determination 2018/07: Principal Executive Office - Classification Structure and Terms and Conditions</i>	1
<i>Disability Care Load Assessment (Child) Determination 2020</i>	5

<b>Legislation</b>	<b>Total</b>
<i>Discovery Program Grant Guidelines (2019 Edition)</i>	4
<i>Education Services for Overseas Students Regulations 2019</i>	2
<i>Environment Protection and Biodiversity Conservation (Jabiru Town Plan) Approval 2019</i>	1
<i>Export Control (Meat and Meat Products) Amendment (Trade Descriptions for Sheep) Order 2019</i>	2
<i>Export Control (Meat and Meat Products) Rules 2021</i>	22
<i>Export Control (Poultry Meat and Poultry Meat Products) Rules 2021</i>	1
<i>Export Control (Rabbit and Ratite Meat and Rabbit and Ratite Meat Products) Rules 2021</i>	1
<i>Export Control (Tariff Rate Quotas) Order 2019</i>	2
<i>Export Control (Wild Game Meat and Wild Game Meat Products) Rules 2021</i>	1
<i>Export Market Development Grants (Approved Bodies) Guidelines 2018</i>	1
<i>Export Market Development Grants (Approved Joint Ventures) Guidelines 2018</i>	1
<i>Fair Work Amendment (Christmas Island and Cocos (Keeling) Islands) Regulations 2018</i>	1
<i>Fair Work Amendment (Protecting Vulnerable Workers) Regulations 2017</i>	1
<i>Family Assistance (Immunisation and Vaccination) (Education) Determination 2018</i>	1
<i>Family Assistance (Immunisation Principles and Vaccination Schedules) (DSS) Determination 2018</i>	1
<i>Family Assistance (Public Interest Certificate Guidelines) (Education) Determination 2018</i>	3
<i>Family Law Amendment (2018 Measures No 1) Rules 2018</i>	1
<i>Family Law Legislation Amendment (Miscellaneous Measures) Regulations 2019</i>	1
<i>Film Certification Advisory Board Rules 2018</i>	2
<i>Financial Sector (Collection of Data) (Reporting Standard) Determination (No 36) 2018</i>	2
<i>Financial Sector (Collection of Data) (Reporting Standard) Determination (No 17) 2019</i>	1**
<i>Financial Sector (Collection of Data) (Reporting Standard) Determination (No 5) 2020</i>	1
<i>Financial Sector (Collection of Data) (Reporting Standard) Determination (No 12) 2021</i>	7
<i>Financial Sector (Collection of Data) (Reporting Standard) Determination (No 2) 2021</i>	3
<i>Food Standards (Proposal P1050 – Pregnancy Warning Labels on Alcoholic Beverages) Variation</i>	3
<i>General Insurance Supervisory Levy Imposition Determination 2018</i>	1
<i>General Insurance Supervisory Levy Imposition Determination 2019</i>	1
<i>Governor-General Superannuation Age Factors (Division 293 Tax Law) Determination 2019 No 1</i>	2

<b>Legislation</b>	<b>Total</b>
<i>Grant Guidelines for the Discovery Program (2018)</i>	12
<i>Grant Guidelines for the Discovery Program (2018) (Amended)</i>	6
<i>Grant Guidelines for the Linkage Program (2018) Linkage Infrastructure, Equipment and Facilities</i>	1
<i>Grant Guidelines for the Linkage Program (2018) Linkage Projects for Funding Applied for in 2019</i>	1
<i>Grant Guidelines for the Linkage Program (2019) Special Research Initiative in Excellence in Antarctic Science</i>	1
<i>Greenhouse and Energy Minimum Standards (Fees for GEMS Regulator Services) Instrument 2019</i>	1
<i>Health Insurance (Accredited Pathology Laboratories – Approval) Amendment Instrument (No 1) 2018</i>	1
<i>Health Insurance (Accredited Pathology Laboratories – Approval) Amendment Instrument (No 2) 2018</i>	2*
<i>Health Insurance (Diagnostic Imaging Services Table) Regulations (No 1) 2020</i>	1
<i>Health Insurance (Diagnostic Imaging Services Table) Regulations (No 2) 2020</i>	1
<i>Health Insurance (Diagnostic Imaging Services Table) Regulations 2018</i>	5
<i>Health Insurance (Diagnostic Imaging Services Table) Regulations 2019</i>	2
<i>Health Insurance (General Medical Services Table) Regulations (No 1) 2020</i>	17
<i>Health Insurance (General Medical Services Table) Regulations (No 2) 2020</i>	16
<i>Health Insurance (General Medical Services Table) Regulations 2018</i>	287*
<i>Health Insurance (General Medical Services Table) Regulations 2019</i>	16
<i>Health Insurance (General Medical Services Table) Regulations 2021</i>	18
<i>Health Insurance (Pathology Services Table) Regulations 2018</i>	4
<i>Health Insurance (Pathology Services Table) Regulations 2019</i>	1
<i>Health Insurance (Pathology Services Table) Regulations 2020</i>	1
<i>Health Insurance (Pathology Services) Regulations 2018</i>	2
<i>Health Insurance (Prudential Standard) Determination No 1 2018</i>	3
<i>Health Insurance (Prudential Standard) Determination No 1 2019</i>	3
<i>Health Insurance (Section 19AB Exemptions Guidelines) Determination 2019</i>	2
<i>Health Insurance (Section 3C – Allied Health Services) Amendment Determination 2019</i>	2

<b>Legislation</b>	<b>Total</b>
<i>Health Insurance (Section 3C – Midwife and Nurse Practitioner) Amendment Determination 2019</i>	1
<i>Health Insurance (Section 3C Cleft Lip and Cleft Palate Services) Determination 2020</i>	5
<i>Health Insurance (Section 3C General Medical – Expansion of GP and Allied Health Mental Health Services) Amendment (Care Recipient in a Residential Aged Care Facility) Determination 2020</i>	1
<i>Health Insurance (Section 3C General Medical Services - Optometric Services) Determination 2020</i>	2
<i>Health Insurance (Section 3C General Medical Services – Cryopreservation of Semen) Determination 2018</i>	1
<i>Health Insurance (Section 3C General Medical Services – GP and Allied Health COVID-19 Services) Amendment (Consequential) Determination 2020</i>	5
<i>Health Insurance (Section 3C General Medical Services – GP and Allied Health COVID-19 Services) Amendment Determination No 2 2020</i>	1
<i>Health Insurance (Section 3C General Medical Services – GP and Allied Health COVID-19 Services) Amendment Determination No 1 2020</i>	1
<i>Health Insurance (Section 3C General Medical Services – GP and Allied Health COVID-19 Services) Determination 2020</i>	15
<i>Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Amendment (Medicare Indexation) Determination 2020</i>	1
<i>Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Amendment Determination 2019</i>	1
<i>Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Determination 2018</i>	2
<i>Health Insurance (Section 3C General Medical Services – COVID-19 Services) Determination 2020</i>	38
<i>Health Insurance (Section 3C Midwife and Nurse Practitioner Services) Determination 2020</i>	4
<i>Health Insurance Legislation Amendment (2018 Measures No 2) Regulations 2018</i>	1
<i>Health Insurance Legislation Amendment (2020 Measures No 2) Regulations 2020</i>	2
<i>Hearing Services Program (Voucher) Instrument 2019</i>	8
<i>Heritage Management Plan – Cape Byron Lighthouse</i>	3
<i>Heritage Management Plan – Macquarie Lightstation</i>	3*
<i>Heritage Management Plan 2020 – Montague Island Lighthouse</i>	3*
<i>Heritage Management Plan 2020 – Reserve Bank of Australia</i>	9*
<i>High Court Amendment (Constitutional Writs and Other Matters) Rules 2018</i>	1

<b>Legislation</b>	<b>Total</b>
<i>High Court Amendment (Electronic Filing and Other Matters) Rules 2019</i>	9*
<i>High Court of Australia (Building and Precincts – Regulating the Conduct of Persons) Directions 2021</i>	1
<i>Home Affairs Legislation Amendment (2020 Measures No 1) Regulations 2020</i>	1
<i>Home Affairs Legislation Amendment (2020 Measures No 2) Regulations 2020</i>	2
<i>Home Affairs Legislation Amendment (2021 Measures No 1) Regulations 2021</i>	2
<i>Indigenous Student Assistance Grants Amendment Guidelines 2018</i>	2
<i>Industry Research and Development (Boosting Female Founders Initiative Program) Instrument 2020</i>	4
<i>Instrument Making the National Recovery Plan for the Macquarie Perch (Macquaria australasica)</i>	6
<i>Insurance (Prudential Standard) Determination No 1 2018</i>	1
<i>Insurance (Prudential Standard) Determination No 3 2019</i>	1
<i>Insurance Contracts Regulations 2017</i>	13
<i>Insurance, Life Insurance and Health Insurance (Prudential Standard) Determination 2018 No 1</i>	1
<i>International Transfer of Prisoners (United Arab Emirates) Regulations 2019</i>	7
<i>Judges' Pensions Amendment Regulations 2018</i>	1
<i>Legal Services Amendment (Multi-use List) Direction 2018</i>	1
<i>Legislation (Deferral of Sunsetting – Domicile Regulations) Certificate 2018</i>	1*
<i>Linkage Program: ARC Centres of Excellence Commencing 2020</i>	1
<i>List of Specimens Taken to be Suitable for Live Import Amendment 2018 No 1</i>	1
<i>Location Offset Rules 2018</i>	2
<i>Macquarie Lightstation Heritage Management Plan 2020</i>	2
<i>Making of the National Library of Australia Conservation Management Plan 2018</i>	9*
<i>Marine Order 43 (Cargo and Cargo Handling – Livestock) 2018</i>	2
<i>Marine Order 504 (Certificates of Operation and Operation Requirements – National Law) 2018</i>	1*
<i>Marine Order 76 (Health – Medical Fitness) 2017</i>	1
<i>Migration (IMMI 18/013: Classes of Persons for Student (Temporary) (Class TU) Visa) Instrument 2018</i>	2
<i>Migration (LIN 19/215: Sponsorship Applications and Nominations for Subclass 407, 457, 482 and 494 Visas) Instrument 2019</i>	1



<b>Legislation</b>	<b>Total</b>
<i>Migration (LIN 20/099: Classes of Persons for Student (Temporary) (Class TU) Visa Applications) Instrument 2020</i>	2
<i>Migration (LIN 20/158: Class of Persons for Student (Temporary) (Class TU) Visa Applications) Instrument 2020</i>	2
<i>Migration (LIN 20/166: Australian Values Statement for Public Interest Criterion 4019) Instrument 2020</i>	1
<i>Migration Amendment (New Skilled Regional Visas) Regulations 2019</i>	1
<i>Migration Amendment (Pacific Labour Scheme) Regulations 2018</i>	1
<i>Migration Amendment (Temporary Graduate Visas) Regulations 2020</i>	1
<i>Migration Amendment (Temporary Sponsored Parent Visa and Other Measures) Regulations 2019</i>	1
<i>Migration Legislation Amendment (Temporary Skill Shortage Visa and Complementary Reforms) Regulations 2018</i>	4*
<i>Military Rehabilitation and Compensation (Catastrophic Injury or Disease) Determination 2018 No MRCC66</i>	1
<i>Military Rehabilitation and Compensation (Family Support) Instrument (No 2) 2018 No MRCC 69</i>	1
<i>Military Rehabilitation and Compensation (Family Support) Instrument 2018</i>	3
<i>Military Rehabilitation and Compensation (Full-Time Study) Instrument 2018 No MRCC 77</i>	1
<i>Moderate to Severe Traumatic Brain Injury (Balance of Probabilities) 2018 No 95</i>	1
<i>Moderate to Severe Traumatic Brain Injury (Reasonable Hypothesis) 2018 No 94</i>	1
<i>Narcotic Drugs Amendment (Cannabis) Regulations 2018</i>	6
<i>National Disability Insurance Scheme (Complaints Management and Resolution) Rules 2018</i>	6
<i>National Disability Insurance Scheme (Facilitating the Preparation of Participants' Plans – Western Australia) Amendment Rules 2018</i>	1
<i>National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018</i>	2
<i>National Disability Insurance Scheme (Practice Standards – Worker Screening) Rules 2018</i>	2
<i>National Greenhouse and Energy Reporting (Auditor Registration) Instrument 2018</i>	14
<i>National Greenhouse and Energy Reporting (Auditor Registration) Instrument 2019</i>	9
<i>National Health (Chemotherapy Prescribing) Special Arrangement 2020</i>	2
<i>National Health (Continued Dispensing – Emergency Measures) Determination 2020</i>	1
<i>National Health (Efficient Funding of Chemotherapy) Amendment (COVID-19 Simplified Prescribing) Special Arrangement 2020</i>	1

<b>Legislation</b>	<b>Total</b>
<i>National Health (Electronic National Residential Medication Chart Trial) Special Arrangement 2018</i>	2
<i>National Health (Highly Specialised Drugs Program) Special Arrangement 2021</i>	1
<i>National Health (Highly Specialised Drugs Program) Special Arrangement Amendment Instrument 2018 No 4</i>	2
<i>National Health (Highly Specialised Drugs Program) Special Arrangement Amendment Instrument 2018 No 8</i>	1
<i>National Health (Highly Specialised Drugs Program) Special Arrangement Amendment Instrument 2020 No 7</i>	1
<i>National Health (Immunisation Program – Designated Vaccines) Amendment Determination (No 1) 2019</i>	1
<i>National Health (Immunisation Program – Designated Vaccines) Amendment Determination (No 2) 2019</i>	1
<i>National Health (Immunisation Program – Designated Vaccines) Variation Determination (No 5) 2018</i>	1
<i>National Health (Immunisation Program – Designated Vaccines) Amendment Determination (No 3) 2019</i>	1
<i>National Health (Listing of Pharmaceutical Benefits) Amendment Instrument 2018 No 6</i>	2
<i>National Health (Listing of Pharmaceutical Benefits) Amendment Instrument 2018 No 7</i>	1*
<i>National Health (Listing of Pharmaceutical Benefits) Amendment Instrument 2019 No 1</i>	1
<i>National Health (Listing of Pharmaceutical Benefits) Amendment Instrument 2019 No 8</i>	2
<i>National Health (Listing of Pharmaceutical Benefits) Amendment Instrument 2019 No 9</i>	2
<i>National Health (Listing of Pharmaceutical Benefits) Amendment Instrument 2020 No 12</i>	2
<i>National Health (Listing of Pharmaceutical Benefits) Amendment Instrument 2020 No 3</i>	2
<i>National Health (Listing of Pharmaceutical Benefits) Amendment Instrument 2020 No 4</i>	4
<i>National Health (Listing of Pharmaceutical Benefits) Amendment Instrument 2020 No 6</i>	1
<i>National Health (Listing of Pharmaceutical Benefits) Amendment Instrument 2021 No 5</i>	3
<i>National Health (Privacy) Rules 2018</i>	1
<i>National Security Information (Criminal and Civil Proceedings) Amendment Regulations 2017</i>	6
<i>Native Title Legislation Amendment (2021 Measures No 1) Regulations 2021</i>	1
<i>Norfolk Island Applied Laws Amendment (Local Government Elections) Ordinance 2020</i>	1
<i>Norfolk Island Continued Laws Amendment (Community Title) Ordinance 2018</i>	2*

<b>Legislation</b>	<b>Total</b>
<i>Norfolk Island Continued Laws Amendment (Coronavirus Economic Response Measures) Rules 2020</i>	2
<i>Norfolk Island Continued Laws Amendment (Registration of Births, Deaths and Marriages) Ordinance 2020</i>	4
<i>Norfolk Island Continued Laws Amendment (Statutory Appointments and Other Matters) Ordinance 2018</i>	2
<i>Norfolk Island Legislation Amendment (Criminal Justice Measures) Ordinance 2019</i>	1
<i>Norfolk Island Legislation Amendment (Fees and Other Matters) Ordinance 2019</i>	1
<i>Norfolk Island Legislation Amendment (Protecting Vulnerable People) Ordinance 2018</i>	2*
<i>North Marine Parks Network Management Plan 2018</i>	2
<i>North-west Marine Parks Network Management Plan 2018</i>	2
<i>Notice of Requirement for Parents with a Child Support Assessment to Lodge a Return for the Income Year Ended 30 June 2019</i>	1
<i>Other Grants Guidelines (Education) Amendment (No 1) 2018</i>	1
<i>Ozone Protection and Synthetic Greenhouse Gas Management (Non-grandfathered Quota – 2020-2021) Determination 2019</i>	1
<i>Ozone Protection and Synthetic Greenhouse Gas Management Amendment (Methyl Bromide, Fire Protection and Other Measures) Regulations 2018</i>	2*
<i>Parliamentary Business Resources (Former Prime Ministers) Amendment Determination 2018</i>	4
<i>Parliamentary Business Resources (Former Prime Ministers) Amendment Determination 2019</i>	4
<i>Parliamentary Business Resources (Former Prime Ministers) Determination 2017</i>	15
<i>Part 101 (Unmanned Aircraft and Rockets) Manual of Standards 2019</i>	46*
<i>Part 101 Manual of Standards (Miscellaneous Amendments) Instrument 2020 No 1</i>	1
<i>Part 121 (Australian Air Transport Operations – Larger Aeroplanes) Manual of Standards 2020</i>	7
<i>Part 133 (Australian Air Transport Operations – Rotorcraft) Manual of Standards 2020</i>	3
<i>Part 135 (Australian Air Transport Operations – Smaller Aeroplanes) Manual of Standards 2020</i>	3
<i>Part 139 (Aerodromes) Manual of Standards 2019</i>	4
<i>Part 149 (Approved Self-administering Aviation Organisations) Manual of Standards 2018</i>	1
<i>Part 61 Manual of Standards Amendment Instrument 2018 (No 1)</i>	1*
<i>Part 91 (General Operating and Flight Rules) Manual of Standards 2020</i>	1
<i>PAYG Withholding Variation to the Rate of Withholding for Superannuation Income Stream Beneficiaries Who Turn 60 during the Financial Year</i>	3*

<b>Legislation</b>	<b>Total</b>
<i>PAYG Withholding Variation: Performing Artists 2018</i>	1
<i>PDV Offset Rules 2018</i>	2
<i>Poisons Standard (No 2) June 2020</i>	10
<i>Poisons Standard (No 3) June 2020</i>	10
<i>Poisons Standard December 2019</i>	10
<i>Poisons Standard February 2018</i>	10
<i>Poisons Standard February 2019</i>	10
<i>Poisons Standard February 2020</i>	10
<i>Poisons Standard February 2021</i>	10
<i>Poisons Standard July 2020</i>	10
<i>Poisons Standard June 2018</i>	10
<i>Poisons Standard June 2019</i>	7
<i>Poisons Standard June 2020</i>	10
<i>Poisons Standard June 2021</i>	9
<i>Poisons Standard March 2018</i>	10
<i>Poisons Standard October 2018</i>	10
<i>Poisons Standard October 2019</i>	10
<i>Poisons Standard October 2020</i>	10
<i>Principal Executive Office – Classification Structure and Terms and Conditions – Determination 2019</i>	1
<i>Privacy (Credit Reporting) Code 2014 (Version 2.1)</i>	2
<i>Privacy (Credit Reporting) Code 2014 (Version 2)</i>	1
<i>Privacy (Market and Social Research) Code 2021</i>	1
<i>Private Health Insurance (Health Insurance Business) Rules 2018</i>	1
<i>Private Health Insurance (Prostheses) Amendment Rules (No 1) 2021</i>	7
<i>Private Health Insurance (Prostheses) Amendment Rules (No 2) 2018</i>	1
<i>Private Health Insurance (Prostheses) Rules (No 1) 2020</i>	8
<i>Private Health Insurance (Prostheses) Rules (No 1) 2021</i>	8
<i>Private Health Insurance (Prostheses) Rules (No 2) 2019</i>	2

<b>Legislation</b>	<b>Total</b>
<i>Private Health Insurance (Prostheses) Rules (No 2) 2020</i>	2
<i>Private Health Insurance (Prostheses) Rules (No 2) 2021</i>	8
<i>Private Health Insurance (Prostheses) Rules (No 3) 2019</i>	8
<i>Private Health Insurance (Prostheses) Rules (No 4) 2019</i>	8
<i>Private Health Insurance (Prostheses) Rules (No 1) 2018</i>	3
<i>Private Health Insurance (Prostheses) Rules (No 2) 2018</i>	2
<i>Private Health Insurance (Prostheses) Rules (No 1) 2019</i>	8
<i>Private Health Insurance (Reforms) Amendment Rules (No 2) 2018</i>	1
<i>Private Health Insurance (Reforms) Amendment Rules 2018</i>	2
<i>Private Health Insurance Legislation Amendment (No 2) Rules 2019</i>	1
<i>Private Health Insurance Legislation Amendment Rules (No 1) 2021</i>	1
<i>Private Health Insurance Legislation Amendment Rules (No 3) 2020</i>	1
<i>Private Health Insurance Legislation Amendment Rules (No 4) 2021</i>	1
<i>Private Health Insurance Legislation Amendment Rules (No 7) 2020</i>	1
<i>Producer Offset Rules 2018</i>	3
<i>Radiocommunications (Australian Federal Police – Visiting Dignitary) Exemption Determination 2018</i>	1
<i>Recycling and Waste Reduction (Export – Waste Glass) Rules 2020</i>	1
<i>Registration of Deaths Abroad Regulations 2018</i>	2
<i>Remuneration Tribunal (Members of Parliament) Determination 2018</i>	2
<i>Remuneration Tribunal (Members of Parliament) Determination 2019</i>	2
<i>Remuneration Tribunal (Members of Parliament) Determination 2020</i>	2
<i>Remuneration Tribunal (Members of Parliament) Determination 2021</i>	2
<i>Remuneration Tribunal (Members of Parliament) Determination (No 2) 2019</i>	2
<i>Remuneration Tribunal (Remuneration and Allowances for Holders of Full-Time Public Office) Determination 2018</i>	10*
<i>Remuneration Tribunal (Remuneration and Allowances for Holders of Full-Time Public Office) Determination 2019</i>	12
<i>Remuneration Tribunal (Remuneration and Allowances for Holders of Full-Time Public Office) Determination 2020</i>	12

<b>Legislation</b>	<b>Total</b>
<i>Remuneration Tribunal (Remuneration and Allowances for Holders of Full-Time Public Office) Determination 2021</i>	5
<i>Remuneration Tribunal (Remuneration and Allowances for Holders of Part-Time Public Office) Determination 2018</i>	2
<i>Remuneration Tribunal (Remuneration and Allowances for Holders of Part-Time Public Office) Determination 2020</i>	4
<i>Remuneration Tribunal (Remuneration and Allowances for Holders of Part-Time Public Office) Determination 2021</i>	3
<i>Remuneration Tribunal Amendment Determination (No 1) 2019</i>	1
<i>Remuneration Tribunal Amendment Determination (No 2) 2019</i>	1
<i>Remuneration Tribunal Amendment Determination (No 2) 2021</i>	1
<i>Remuneration Tribunal Amendment Determination (No 3) 2019</i>	1
<i>Remuneration Tribunal Amendment Determination (No 6) 2019</i>	2
<i>Remuneration Tribunal Amendment Determination (No 6) 2020</i>	1
<i>Road Vehicle Standards (Information on the Register of Approved Vehicles) Determination 2021</i>	2
<i>Road Vehicle Standards Amendment (2020 Measures No 1) Rules 2020</i>	1
<i>Road Vehicle Standards Rules 2019</i>	17*
<i>Safety, Rehabilitation and Compensation (Defence-related Claims) (Catastrophic Injury) Rules 2018 No MRCC65</i>	1
<i>Safety, Rehabilitation and Compensation (Defence-related Claims) (Full Time Study) Instrument 2018 No MRCC 76</i>	1
<i>Seacare Authority Code of Practice Approval 2018 – Health and Safety in Shipboard Work, Including Offshore Support Vessels</i>	8*
<i>Shipping Registration (International Registration – Minimum Wages and Compensation) Determination 2018</i>	2
<i>Social Security (Administration) (Exempt Welfare Payment Recipients – Principal Carers of a Child) (Indications of Financial Vulnerability) Principles 2020</i>	2
<i>Social Security (Administration) (Trial – Declinable Transactions and Welfare Restricted Bank Account) Determination 2018</i>	1
<i>Social Security (Administration) (Trial of Cashless Welfare Arrangements) (Declinable Transactions and Welfare Restricted Bank Account) Determination 2019</i>	2
<i>Social Security (Administration) (Trial of Cashless Welfare Arrangements) Determination 2018</i>	1
<i>Social Security (Assurances of Support) Determination 2018</i>	4*



<b>Legislation</b>	<b>Total</b>
<i>Social Security (Class of Visas – Qualifying Residence Exemption – Refugee) Declaration 2018</i>	1
<i>Social Security (Coronavirus Economic Response – 2020 Measures No 11) Determination 2020</i>	1
<i>Social Security (Pension Bonus Scheme – Non-accruing Members) Declaration 2018</i>	4
<i>Social Security (Pension Loans Scheme – Age Component Amount) Determination 2019</i>	2
<i>Social Security (Special Circumstances Exemption to Youth Allowance Activity Test Guidelines) Instrument 2019</i>	2
<i>South-West Marine Parks Network Management Plan 2018</i>	2
<i>Statement of Principles Concerning Gastro-Oesophageal Reflux Disease (Balance of Probabilities) (No 62) 2021</i>	1
<i>Statement of Principles Concerning Gastro-Oesophageal Reflux Disease (Reasonable Hypothesis) (No 61) 2021</i>	1
<i>Statement of Principles Concerning Varicocele (Balance of Probabilities) (No 80) 2019</i>	1
<i>Statement of Principles Concerning Varicocele (Reasonable Hypothesis) (No 79) 2019</i>	1
<i>Student Assistance Regulations 2021</i>	9
<i>Summary Authority Rules 2019</i>	6
<i>Superannuation (Prudential Standard) Determination No 1 of 2018</i>	3
<i>Superannuation Amendment (PSS Trust Deed) Instrument 2018</i>	12*
<i>Superannuation Amendment (PSS Trust Deed) Instrument 2019</i>	1
<i>Superannuation Guarantee (Administration) Regulations 2018</i>	1
<i>Taxation Administration Act Withholding Schedules 2018</i>	19*
<i>Taxation Administration Act Withholding Schedules 2019</i>	24*
<i>Taxation Administration Act Withholding Schedules 2020</i>	31*
<i>Taxation Administration Act Withholding Schedules 2021</i>	34*
<i>Taxation Administration Act Withholding Schedules No 2 2020</i>	33*
<i>Taxation Administration Amendment (Updating the List of Exchange of Information Countries) Regulations 2018</i>	1
<i>Telecommunications (Carrier Licence Conditions – Telstra Corporation Limited) Declaration 2019</i>	3
<i>Telecommunications (Interception and Access) Regulations 2017</i>	24
<i>Temperate East Marine Parks Network Management Plan 2018</i>	1
<i>Therapeutic Goods (Medicines – Authorised Supply) Rules 2020</i>	1
<i>Therapeutic Goods (Permissible Indications) Determination (No 1) 2021</i>	6

<b>Legislation</b>	<b>Total</b>
<i>Therapeutic Goods (Permissible Indications) Determination (No 2) 2019</i>	6
<i>Therapeutic Goods (Permissible Indications) Determination (No 1) 2019</i>	6
<i>Therapeutic Goods (Permissible Indications) Determination (No 1) 2018</i>	4
<i>Therapeutic Goods (Standard for Blood and Blood Components) (TGO 102) Order 2019</i>	2
<i>Therapeutic Goods (Standard for Faecal Microbiota Transplant Products) (TGO 105) Order 2020</i>	2
<i>Therapeutic Goods Legislation Amendment (2018 Measures No 1) Regulations 2018</i>	6*
<i>Therapeutic Goods Legislation Amendment (2020 Measures No 1) Regulations 2020</i>	1
<i>Threat Abatement Plan for Disease in Natural Ecosystems Caused by <i>Phytophthora cinnamomi</i> (2018)</i>	1
<i>Torres Strait Fisheries (Pearl Shell) Management Instrument 2020</i>	1
<i>Torres Strait Fisheries (Tropical Rock Lobster) Management Instrument 2018</i>	6
<i>Torres Strait Fisheries Amendment (Tropical Rock Lobster) Management Instrument 2018</i>	3
<i>Transport Security Legislation Amendment (2019 Measures No 1) Regulations 2019</i>	1
<i>Treasury Laws Amendment (Release of Superannuation on Compassionate Grounds) Regulations (No 2) 2020</i>	2
<i>Treasury Laws Amendment (Release of Superannuation on Compassionate Grounds) Regulations 2020</i>	2
<i>Treatment Benefits (Special Access) (Claims, Applications and Lodgements Procedures) Determination 2019 No S25</i>	1
<i>Treatment Benefits (Special Access) Rules 2019</i>	6
<i>User Rights Amendment (Charter of Aged Care Rights) Principles 2019</i>	2
<i>Vehicle Standard (Australian Design Rule 23/03 – Passenger Car Tyres) 2018</i>	2
<i>Vehicle Standard (Australian Design Rule 4/06 – Seatbelts) 2018</i>	10
<i>Vehicle Standard (Australian Design Rule 5/06 – Anchorages for Seatbelts) 2018</i>	4
<i>Vehicle Standard (Australian Design Rule 90/00 – Steering System) 2018</i>	2
<i>Vehicle Standard (Australian Design Rule 91/00 – Rear Underrun Impact Protection) 2018</i>	6
<i>Vehicle Standard (Australian Design Rule 92/00 – External Projections) 2018</i>	2
<i>Vehicle Standard (Australian Design Rule 93/00 – Forward Field of View) 2018</i>	3
<i>Vehicle Standard (Australian Design Rule 94/00 – Audible Warning) 2018</i>	4
<i>Vehicle Standard (Australian Design Rule 95/00 – Installation of Tyres) 2018</i>	2
<i>Vehicle Standard (Australian Design Rule 96/00 – Commercial Vehicle Tyres) 2018</i>	2

<b>Legislation</b>	<b>Total</b>
<i>Veterans' Entitlements (Expanded Access to Non-liability Health Care for Mental Health Treatment) Amendment Determination (No 2) 2018</i>	1
<i>Veterans' Entitlements (Pension Bonus Scheme – Non-accruing Members) Declaration 2018</i>	4
<i>Veterans' Entitlements (Statements of Principles – Category 1B Stressor) Amendment Determination 2018</i>	1
<i>Veterans' Entitlements (Veteran Payment) Instrument 2018</i>	14
<i>Veterans' Entitlements (Annual General Practitioner Health Assessment for First Five Years Post-discharge) Determination 2019</i>	7
<i>Veterans' Entitlements (Anti-malarial Medications Health Assessment) Determination 2019</i>	2
<i>Veterans' Entitlements (Veteran Suicide Prevention Pilot) Determination 2018</i>	2
<i>Wine Australia Regulations 2018</i>	15
<i>Work Health and Safety Exemption (Construction Induction Training – ASC AWD Shipbuilder Pty Ltd and Overseas Technical Specialists) 2019</i>	1
<i>Vehicle Standard (Australian Design Rule 61/02 – Vehicle Marking) 2005 Amendment</i>	1
<i>Private Health Insurance (Prostheses) Rules (No 3) 2020</i>	8
<b>Total</b>	<b>2450</b>

\* This legislation contained multiple different gendered terms within the same provision.

\*\* One provision mistakenly includes 'he' instead of 'the'.

\*\*\* Two provisions replace an erroneous 'he' with 'the'.