

# Inclusion of Trans and Intersex Persons through Legislation and Policy



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# Scope and Implications of the Gender Identity, Gender Expression & Sex Characteristics Act

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MINISTRY FOR SOCIAL DIALOGUE,  
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# Developments (2013)

- *Joanne Cassar v. Malta* (Application No. 36982/11)
- Government addressed this breach of human rights through an out of court settlement and rectified the situation through the *Civil Code (Amendment) Act, 2013* (ACT No. VII of 2013)

# Developments (2014)

- *Constitution of Malta (Amendment) Act, 2014* (ACT No. X of 2004)
- *Procedural Standards in Examining Applications for Refugee Status (Amendment) Regulations, 2014* (L.N. 161 of 2014)
- *Equal Treatment in Employment (Amendment) Regulations, 2014* (L.N. 274 of 2014)

# GIGESC Bill

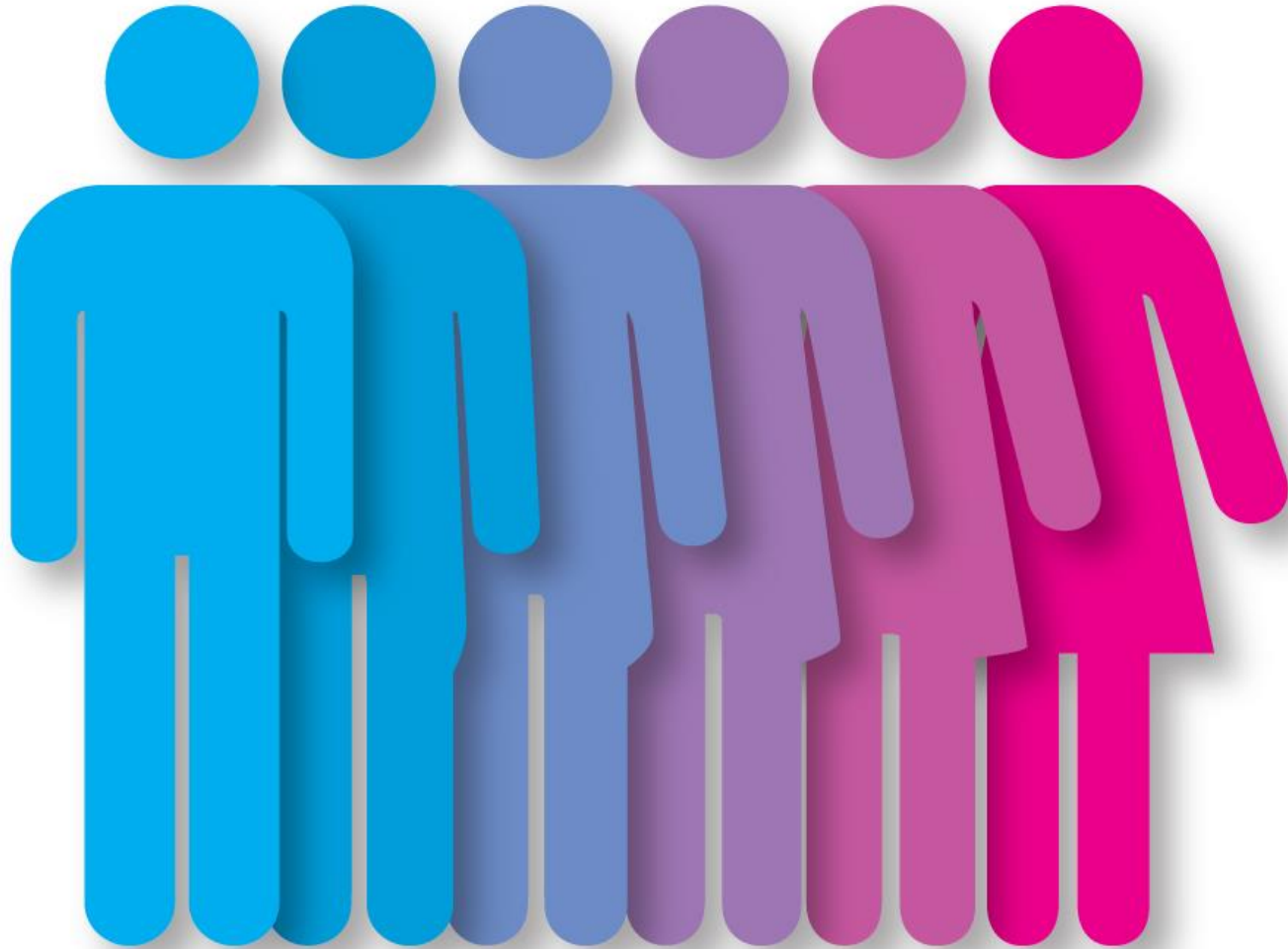
## *Overview*

# Introduction

- Title: *Gender Identity, Gender Expression and Sex Characteristics Act* (Bill 70 of 2014)
- Developed by the LGBTI Consultative Council
- Website: [www.socialdialogue.gov.mt/GIGESC](http://www.socialdialogue.gov.mt/GIGESC)
- 1<sup>st</sup> Reading: 29 October 2014
- 2nd Reading started on: 03 February 2014

Who is it for?

# Everyone



# Key provisions (1)

- Introduces a right to gender identity for all persons
- Regulates the procedure for change of legal gender for minors and adults alike
- Bans any requirements for medical interventions, psychological tests, etc
- Recognises foreign decisions regarding gender identity by a competent court or responsible authority



## Key provisions (2)

- Allows for amendments of gendered characteristics on all official documents (e.g. ID card / passport) or certificates
- Provides for the privacy of the person whose gender has been rectified on official documents
- Introduces a positive obligation on government entities to ensure that their services meet the objectives of this Act

# Key provisions (3)

- Provides parents with the possibility to postpone the entry of a gender marker on their children's birth certificate until they reach the age of 14
- Introduces a right to bodily integrity and physical autonomy for all persons
- Makes non-medically necessary treatment on the sex characteristics of a person without informed consent unlawful

# Key provisions (4)

- Provides for psychosocial counselling, support and medical interventions related to sex and/or gender
- Provides for a revision of the protocol regulating sex assignment treatment and/or surgical interventions on the sex characteristics of a person

# Key provisions (5)

- Introduces 'gender expression' and 'sex characteristics' within the list of grounds for aggravated circumstances under the *Criminal Code*
- Introduces 'gender expression' and 'sex characteristics' within the scope of the *Equality for Men and Women Act*

# Public Consultation

# Public consultation

## GENDER IDENTITY, GENDER EXPRESSION & SEX CHARACTERISTICS ACT



MINISTRY FOR SOCIAL DIALOGUE,  
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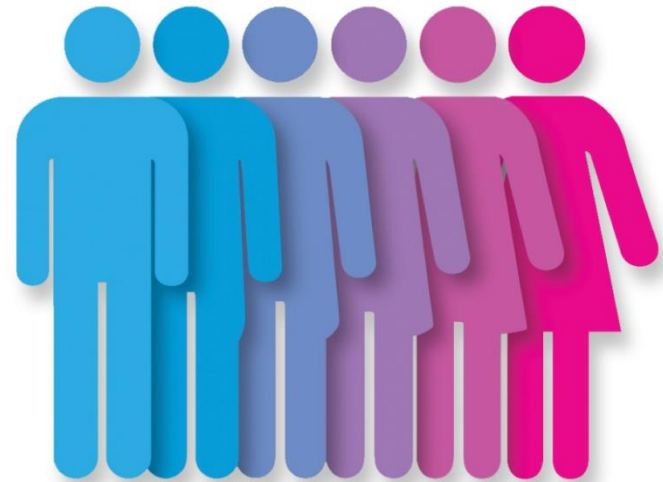
### Public Consultation

29 October - 30 November 2014

 [www.msdc.gov.mt/GIGESC](http://www.msdc.gov.mt/GIGESC)

 [integration@gov.mt](mailto:integration@gov.mt)

 [#GIGESC](https://twitter.com/GIGESC)



# Key outcomes

- 25 submissions received
- Various suggestions for improvement. e.g.:
  - Recognition of refugees
  - 'X' marker on passport / ID card
- Welcomed by various international actors in the field

# Focus on Select Provisions



# Definitions

"gender expression" refers to each person's manifestation of their gender identity, and, or the one that is perceived by others;

"gender identity" refers to each person's internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance and, or functions by medical, surgical or other means) and other expressions of gender, including name, dress, speech and mannerisms;

"sex characteristics" refers to the chromosomal, gonadal and anatomical features of a person, which include primary characteristics such as reproductive organs and genitalia and, or in chromosomal structures and hormones; and secondary characteristics such as muscle mass, hair distribution, breasts and, or stature.

# Right to gender identity

3. (1) All persons being citizens of Malta or habitually resident in Malta have the right to -
- (a) the recognition of their gender identity;
  - (b) the free development of their person according to their gender identity;
  - (c) be treated according to their gender identity and, particularly, to be identified in that way in the documents providing their identity therein; and
  - (d) bodily integrity and physical autonomy.

# Anti-discrimination & equality

**14.** (1) Every norm, regulation or procedure shall respect the right to gender identity. No norm or regulation or procedure may limit, restrict, or annul the exercise of the right to gender identity, and all norms must always be interpreted and enforced in a manner that favours access to this right.

(2) The public service has the duty to ensure that unlawful sexual orientation, gender identity, gender expression and sex characteristics' discrimination and harassment are eliminated, whilst its services must promote equality of opportunity to all, irrespective of sexual orientation, gender identity, gender expression and sex characteristics.

(3) The provisions of this Act shall apply to all public sector and public service departments, agencies and all competent authorities that maintain personal records and, or collect gender information. Such forms, records and, or information shall be assessed and modified to reflect the new standards established by this Act within a maximum of three years from the day of entry into force of this Act.

# Right to bodily integrity

**15. (1)** It shall be not be lawful for medical practitioners or other professionals to conduct any sex assignment treatment and, or surgical intervention on the sex characteristics of a minor which treatment and, or intervention can be deferred until the person to be treated can provide informed consent.

Thank You