



ARGENTINA – SOGI LEGISLATION COUNTRY REPORT
PRODUCED: DECEMBER 2012

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Summary

Discrimination by both state and private actors on grounds of sexual orientation and gender identity is prohibited by statutes at the city level ([City of Rosario Antidiscrimination Ordinance 7946, 2005](#); [Buenos Aires City Constitution](#), 1996).

Argentina's [Military Reform Act](#) permits gay and lesbian individuals to serve in the military, and bans discrimination on the basis of sexual orientation ([Military Reform Act, Law N° 26394](#), 2009).

The age of consent is the same for same-sex and opposite-sex sexual activity ([Argentine Penal Code](#); [Argentine Civil Code Law N° 26.579](#), 2009).

Surgical and hormonal reassignment procedures are covered as part of public and private health insurance, and all persons over 18 years of age are free to undergo gender reassignment as well as revise official documents without any prior approval from a judicial or medical authority ([Gender Identity Law, N° 26.743](#), 2012).

Same-sex couples can enter into civil marriages, and are afforded the same rights and legal recognitions of marriage as opposite-sex couples including, among others, adoption rights and pension benefits. ([Civil Marriage Law N° 26618](#), 2010; [National Administration of Social Security Resolution N° 671](#), 2008; [City of Rosario Ordinance 8004](#), 2006).

Immigrant same-sex spouses of Argentine nationals are eligible for permanent residence and, as foreigners, are guaranteed the same civil rights as Argentine nationals ([Migration Law N° 25.871](#), 2004; [Constitution of the Argentine Nation](#), 1994).

Legal Provisions

ANTI-DISCRIMINATION LAWS

[Buenos Aires City Constitution](#), 1996: Forbids discrimination on the basis of gender and sexual orientation.

“*Section 11* - Every person has identical dignity and all are equal before the law. The right to be different is recognized and guaranteed. No discrimination that tends to segregate people based on or under the pretext of race, ethnicity, gender, sexual orientation, age, religion, ideology, opinion, nationality, physical features, and psychophysical, social and/or economic conditions will be acceptable. The City promotes the removal of any kind of obstacles that, limiting equality and freedom, impede the full development of the person and his/her effective participation in the political, economic or social life of the community.”

Original Spanish:

<http://www.cedom.gov.ar/es/legislacion/institucional/constbsas/index2.html#b1>

[City of Rosario, Antidiscrimination Ordinance 7946](#), 2005: Prohibits discrimination on the basis of gender and/or sexual orientation.

“*Section 1* – Rosario City recognizes and protects the right to be different. Any discrimination tending to segregation under the grounds of race, ethnicity, gender, sexual orientation, gender identity, age, religion, ideology, opinion, nationality, physical characters, psychophysical condition, social, economic or any circumstance implying distinction, exclusion, restriction or damage will not be admitted”.
(Unofficial translation)

Original Spanish:

<http://www.notivida.com.ar/legmunicipal/Rosario%20Ordenanza%207946,%20modifica%206231.html>

[Military Reform Act, Law N° 26394](#), 2009: Permits gays and lesbians to serve in the military, and incorporates broad protections of a person’s dignity, beliefs, and ideas.

ARTICULO 4º.- Prohibiciones. En el ejercicio de las acciones disciplinarias se prohíbe:

1. Utilizar el poder disciplinario para ordenar o fomentar tareas o acciones ajenas a las funciones militares.
2. Sancionar ideas o creencias políticas, religiosas o morales.

3. Afectar la dignidad personal, provocar burlas o humillaciones, socavar deliberadamente la autoestima o debilitar el espíritu de cuerpo y trabajo en equipo.
4. Promover toda forma de discriminación, según lo establecido en las leyes respectivas.
5. Realizar campañas de hostigamiento personal o grupal o promover el odio y el resentimiento entre grupos o unidades.

“Section 4 – Prohibitions. In the exercise of disciplinary actions the following is prohibited:

1. To use the disciplinary power to direct or encourage tasks or activities unrelated to military functions.
2. To punish religious, moral, and/or political beliefs or ideas.
3. To affect a person’s dignity, cause ridicule or humiliation, deliberately undermine a person’s self-esteem or weaken the spirit of body and teamwork.
4. To promote all forms of discrimination, as set out in the relevant laws.
5. To engage in campaigns personal or group harrassment or promote hatred and resentment between groups or units.”

(Unofficial translation)

Original Spanish:

<http://biblioteca.afip.gov.ar/afipres/LEY C 26394 A004 V000.pdf>

LEGAL RECOGNITION OF SAME-SEX RELATIONSHIPS

Civil Marriage, Law N° 26618, 2010: Modifies the *Argentine Civil Code* to provide equal rights and legal recognition of marriage to same-sex couples

“Article 172 – It is indispensable for the existence of marriage the full and free consent expressed personally by both parties to the competent authority to celebrate.

Marriage will have the same requirements and effects regardless of whether the parties are the same or different sex.

The act that is neither one of these requirements will not produce civil effects although the parties had acted in good faith, except as provided in the following article.”

Original Spanish:

<http://www.infoleg.gov.ar/infolegInternet/anexos/165000-169999/169608/norma.htm>

Unofficial translation:

<http://www.gaylawnet.com/laws/legislation/Civil Marriage AR.pdf>

PROVISION OF BENEFITS

National Administration of Social Security Resolution Nº 671, 2008: Grants same sex couples the right to claim their deceased partner's pension at the federal level.

"Section 1 - Declares same sex partners as included in the provisions of Article 53 of Law 24241 as relatives with right to pension due to the death of the retired person, of the beneficiary of the disability retirement, or of the active employee contributing to the Public Social Security System or the Individual Retirement Account, certifying the right to receive the public social security component."
(Unofficial translation)

Original Spanish:

<http://www.cha.org.ar/articulo.php?art=333&cat=8>

City of Rosario, Ordinance 8004, 2006: Recognizes the right of those who "had lived openly in marriage-like fashion for a minimum of 5 (five) years prior to the death of a city state employee, regardless of their sexual orientation or gender identity" to pension benefits as widows/widowers.

Original Spanish:

<http://www.rosario.gov.ar/normativa/verArchivo?tipo=pdf&id=44599>

LAWS GOVERNING SAME-SEX SEXUAL ACTIVITY

Argentine Penal Code: Codifies criminal law relating to sexual offences in gender- and gender orientation-neutral terms, and sets the minimum age of consent at 13 regardless of gender and/or sexual orientation.

"Section 119 – He(she) shall be punished with detention or imprisonment from six months to four years, who sexually abuses a person of either sex, when said person was under thirteen years of age."
(Unofficial translation)

Original Spanish: http://www.infojus.gov.ar/pdf/codigos/grt_codigo_penal.pdf

Argentine Civil Code, Law 26.579, 2009: Establishes the legal age for marriage in gender- and orientation-neutral terms.

Section 126 – "are minors people who have not reached the age of eighteen (18)."

Original Spanish:

<http://infoleg.mecon.gov.ar/infolegInternet/anexos/160000-164999/161874/norma.htm>

Note: The criminal law concerning sexual offences sets a minimum age of consent at 13 but imposes certain restrictions on sexual activity for adolescents between 13 and 16 years of age. Under criminal law, everyone under 18 is considered a child.

ADOPTION AND PARENTING LAWS

Civil Marriage Law N° 26.618, 2010: Permits joint adoption by married same-sex partners by granting them the same rights and legal recognitions of marriage as those of opposite-sex couples.

Section 2 – [...] “Marriage will have the same requirements and effects regardless of whether the parties are the same or different sex.”

Section 42 – “All references to the institution of marriage established in our legal system will be understood to apply to marriages between two people of the same sex as well as two people of different sex. Members of families from a marriage of two people of the same sex, as well as those of a marriage by two people of different sex will have the same rights and obligations. No regulation of the Argentine legal system shall be interpreted or applied in a way that may limit, restrict, exclude or suppress the exercise or enjoyment of the same rights and obligations to marriages formed by two people of the same sex as well as the one formed by two people of different sex.”

Original Spanish:

http://www.infojus.gov.ar/index.php?kk_seccion=documento®istro=LEYNAC&docid=LEY%2520C%2520026618%25202010%252007%252015

Unofficial English translation:

http://www.gaylawnet.com/laws/legislation/Civil_Marriage_AR.pdf

Argentine Civil Code, Adoption Act N° 24.779, 1997: Permits adoption by single “persons” in gender- and orientation-neutral terms.

“Section 315 – An Adopter may be any person who meets the requirements of this code irrespective of their marital status, having to prove irrefutably and indubitable permanent residence in the country for at least five years prior to the request for custody.

Who may not adopt:

- A) anyone who is not over thirty years of age, unless spouses who have more than three years of marriage or can certify that they are unable to have children.
- B) the ancestors to their descendants.
- C) a brother to his siblings or half-siblings.”

(Unofficial translation)

Original Spanish: <http://www.catedras.fsoc.uba.ar/elias/ln24779.htm>

GENDER CHANGE RECOGNITION LAWS

Gender Identity Law Nº 26.743, 2012: Allows individuals to change their name and sex on official documents without the need of approval from legislative or medical officials.

“Section 1 – Right to gender identity. All persons have the right,

- a) To the recognition of their gender identity;
- b) To the free development of their person according to their gender identity;
- c) To be treated according to their gender identity and, particularly, to be identified in that way in the documents proving their identity in terms of the first name/s, image and sex recorded there.”

“Section 2 – Definition. Gender identity is understood as the internal and individual way in which gender is perceived by persons, that can correspond or not to the gender assigned at birth, including the personal experience of the body. This can involve modifying bodily appearance or functions through pharmacological, surgical or other means, provided it is freely chosen. It also includes other expressions of gender such as dress, ways of speaking and gestures.”

“Section 3 – Exercise. All persons can request that the recorded sex be amended, along with the changes in first name and image, whenever they do not agree with the self-perceived gender identity.”

“Section 4 – Requirements. All persons requesting that their recorded sex be amended and their first name and images changed invoking the current law, must comply with the following requirements:

1. Prove that they have reached the minimum age of eighteen (18) years, with the exception established in Article 5 of the current law.
2. To submit to the National Bureau of Vital Statistics or their corresponding district offices, a request stating that they fall under the protection of the current law and requesting the amendment of their birth certificate in the records and a new national identity card, with the same number as the original one.
3. To provide the new first name with which they want to be registered.

In no case will it be needed to prove that a surgical procedure for total or partial genital reassignment, hormonal therapies or any other psychological or medical treatment has taken place.”

Original Spanish:

http://www.infojus.gov.ar/index.php?kk_seccion=documento®istro=LEYNAC&docid=LEY%2520C%2520026743%25202012%252005%252009

Unofficial translation:

<http://globaltransaction.files.wordpress.com/2012/05/argentina-gender-identity-law.pdf>

Gender Identity Law Nº 26.743, Article 11: Guarantees the legal right to physically alter one's sex without having to go to court for a judge's approval.

"Section 11 – Right to free personal development. All persons older than eighteen (18) years, according to Article 1 of the current law and with the aim of ensuring the holistic enjoyment of their health, will be able to access total and partial surgical interventions and/or comprehensive hormonal treatments to adjust their bodies, including their genitalia, to their self-perceived gender identity, without requiring any judicial or administrative authorization."

Original Spanish:

http://www.infojus.gov.ar/index.php?kk_seccion=documento®istro=LEYNAC&docid=LEY%2520C%2520026743%25202012%252005%252009

English translation:

<http://globaltransaction.files.wordpress.com/2012/05/argentina-gender-identity-law.pdf>

Gender Identity Law Nº 26.743, Nº 26.743: Guarantees the coverage of sex-change surgery and hormonal therapy as part of public and private health insurance plans.

"Section 11 – Right to free personal development. All persons older than eighteen (18) years, according to Article 1 of the current law and with the aim of ensuring the holistic enjoyment of their health, will be able to access total and partial surgical interventions and/or comprehensive hormonal treatments to adjust their bodies, including their genitalia, to their self-perceived gender identity [...]

Public health officials, be they from the state, private or trade union-run health insurance systems, must guarantee in an ongoing way the rights recognized by this law. All medical procedures contemplated in this article are included in the Compulsory Medical Plan (that is, they are not subjected to additional costs for those having private or trade union-run insurance plans), or in whatever system replaces it, as decided by the enforcing authority."

Original Spanish:

http://www.infojus.gov.ar/index.php?kk_seccion=documento®istro=LEYNAC&docid=LEY%2520C%2520026743%25202012%252005%252009

Unofficial translation:

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IMMIGRATION LAW

Civil Marriage, Law Nº 26618, 2010: Grants same-sex spouses the same rights and legal recognitions of marriage as those of opposite-sex couples.

“Section 42 – All references to the institution of marriage established in our legal system will be understood to apply to marriages between two people of the same sex as well as two people of different sex. Members of families from a marriage of two people of the same sex, as well as those of a marriage by two people of different sex will have the same rights and obligations. No regulation of the Argentine legal system shall be interpreted or applied in a way that may limit, restrict, exclude or suppress the exercise or enjoyment of the same rights and obligations to marriages formed by two people of the same sex as well as the one formed by two people of different sex.”

Original Spanish:

<http://www.infoleg.gov.ar/infolegInternet/anexos/165000-169999/169608/norma.htm>

Unofficial English translation:

http://www.gaylawnet.com/laws/legislation/Civil_Marriage_AR.pdf

Migration Law Nº 25.871, 2004: Allows the spouse of an Argentine citizen or permanent resident to obtain permanent resident status without any distinction on the basis of gender identity or sexual orientation.

“Section 10 – The state will guarantee the right of family reunification of the migrants with their parents, spouse, minor single children or adult children with different capacities.”

Section 22 – It will be considered as a permanent resident every foreigner that, with the purpose of residing permanently in the country, can obtain from the –Dirección Nacional de Migraciones (National Immigration Bureau) an admission of that kind. Moreover, it shall be considered as a permanent resident the immigrant child, spouse or parent of an Argentine citizen, naturalized or by option.”

Original Spanish: <http://www.gema.com.ar/ley25871.html>