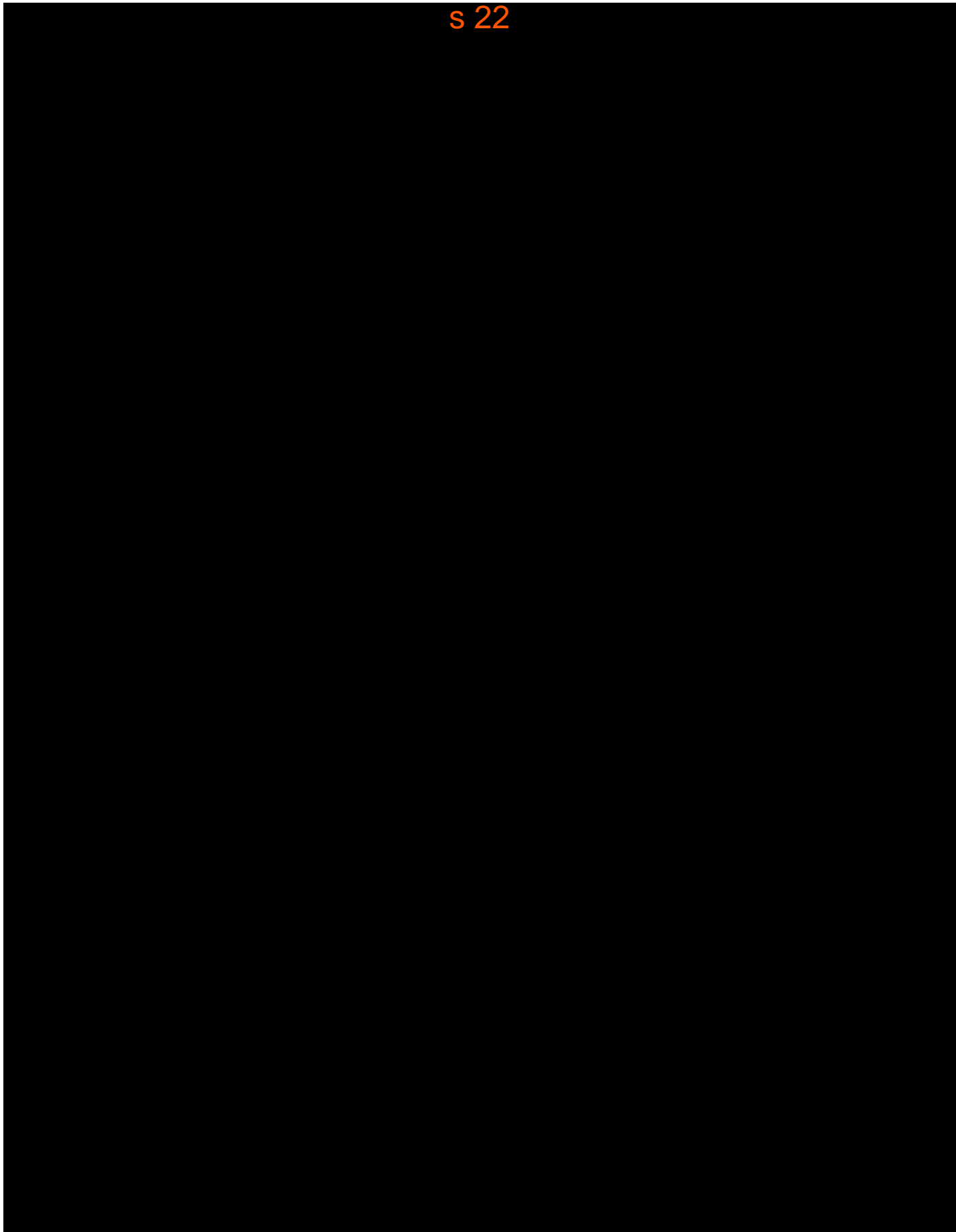


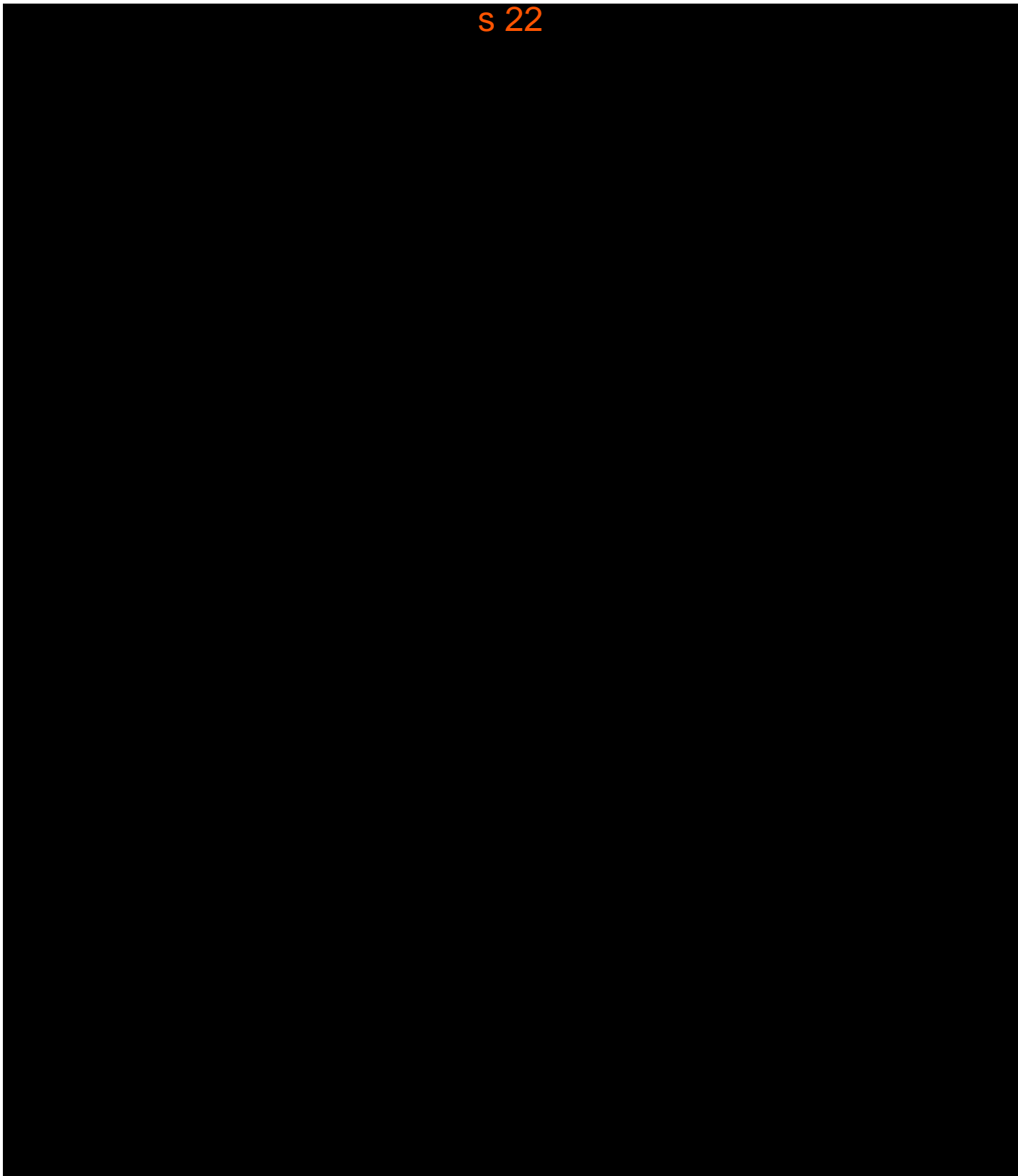
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Definition of 'woman'**Key Messages/Talking Points:**

- Understanding nuance in sex and gender is critical for ensuring the health and wellbeing of all Australians.
- For most women, their gender as a woman aligns with being assigned to the female sex at birth (cisgendered women). However, this is not the case for everyone. For other women, such as trans women, their sex assigned at birth does not match their gender identity as a woman.
- The Sex Discrimination Act does not define the terms 'man', 'woman' or 'sex'. The definitions of 'man' and 'woman' were removed from the SDA in 2013 so that they would not be given a meaning that was limited to a biological understanding of sex. As a result, each of these concepts are interpreted according to their ordinary meaning.
- In every State and Territory, there are legislative provisions that allow a person to change the record of their sex on their birth certificate. People who have changed their sex on their birth certificate are, legally, a person of that sex.
- The SDA prohibits discrimination on the ground of sex. A cisgender woman can rely on this ground if she is discriminated against because she is a woman. A trans woman, who has taken the steps necessary to change her sex to female on her birth certificate, can rely on this ground if she is discriminated against because she is a woman.
- Since 2013, the SDA also prohibits discrimination on the ground of gender identity. This recognises that some people will have a gender identity that is different from their sex, and also recognises that there is a broad range of ways in which people express their gender identity. Some people do not identify as either a man or a woman. When the 2013 changes were introduced, the EM noted that 'it is often the discord between a person's gender presentation and their identity which is the cause of the discrimination'. The Federal Court will soon hear a case about gender identity discrimination which will provide more guidance on how this provision is to be interpreted.
- Finally, the SDA also provides that it is not discrimination on the ground of sex to take special measures for the purpose of achieving substantive equality between men and women. Similarly, it is not discrimination on the ground of gender identity to take special measure for the purpose of achieving substantive equality between people who have different gender identities. In some cases, it is necessary for groups to be treated differently in order to achieve substantive equality. Again, we expect that the Federal Court will have more to say about this later this year.

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