



Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013

No. 98, 2013

**An Act to amend the *Sex Discrimination Act 1984*,
and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013

No. 98, 2013

**An Act to amend the *Sex Discrimination Act 1984*,
and for related purposes**

[Assented to 28 June 2013]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Sex Discrimination Amendment
(Sexual Orientation, Gender Identity and Intersex Status) Act 2013*.

*Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act
2013 No. 98, 2013 1*

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	28 June 2013
2. Schedule 1	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	1 August 2013 (see F2013L01435)

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Part 1—Amendment of the Sex Discrimination Act 1984

Sex Discrimination Act 1984

1 Title

Omit “**marital status**”, substitute “**sexual orientation, gender identity, intersex status, marital or relationship status**”.

2 Preamble

Omit “marital status” (wherever occurring), substitute “sexual orientation, gender identity, intersex status, marital or relationship status”.

3 Paragraph 3(b)

Omit “marital status”, substitute “sexual orientation, gender identity, intersex status, marital or relationship status”.

3A Subsection 4(1)

Insert:

Commonwealth-funded aged care means:

- (a) aged care, within the meaning of the *Aged Care Act 1997*:
 - (i) that is provided by an approved provider, within the meaning of that Act; and
 - (ii) in relation to which the approved provider has responsibilities under that Act; or
- (b) care or services in relation to which a grant has been paid under Chapter 5 of the *Aged Care Act 1997*; or
- (c) care or services of a class prescribed by the regulations for the purpose of this paragraph.

4 Subsection 4(1)

Insert:

de facto partner has the meaning given by the *Acts Interpretation Act 1901*.

5 Subsection 4(1) (definition of *de facto spouse*)

Repeal the definition.

6 Subsection 4(1)

Insert:

gender identity means the gender-related identity, appearance or mannerisms or other gender-related characteristics of a person (whether by way of medical intervention or not), with or without regard to the person's designated sex at birth.

7 Subsection 4(1)

Insert:

intersex status means the status of having physical, hormonal or genetic features that are:

- (a) neither wholly female nor wholly male; or
- (b) a combination of female and male; or
- (c) neither female nor male.

8 Subsection 4(1) (definition of *man*)

Repeal the definition.

9 Subsection 4(1)

Insert:

marital or relationship status means a person's status of being any of the following:

- (a) single;
- (b) married;
- (c) married, but living separately and apart from his or her spouse;
- (d) divorced;
- (e) the de facto partner of another person;
- (f) the de facto partner of another person, but living separately and apart from that other person;

- (g) the former de facto partner of another person;
- (h) the surviving spouse or de facto partner of a person who has died.

10 Subsection 4(1) (definition of *marital status*)

Repeal the definition.

11 Subsection 4(1) (paragraph (b) of the definition of *near relative*)

Omit “de facto spouse”, substitute “de facto partner”.

12 Subsection 4(1)

Insert:

sexual orientation means a person’s sexual orientation towards:

- (a) persons of the same sex; or
- (b) persons of a different sex; or
- (c) persons of the same sex and persons of a different sex.

13 Subsection 4(1)

Insert:

surviving spouse or de facto partner of a person who has died means a person who was the person’s spouse or de facto partner immediately before the person died.

14 Subsection 4(1) (definition of *woman*)

Repeal the definition.

15 Subsection 4A(2) (definition of *de facto partner*)

Repeal the definition.

16 Subsection 5(1)

Omit “the opposite sex”, substitute “a different sex”.

17 After section 5

Insert:

5A Discrimination on the ground of sexual orientation

- (1) For the purposes of this Act, a person (the *discriminator*) discriminates against another person (the *aggrieved person*) on the ground of the aggrieved person's sexual orientation if, by reason of:
 - (a) the aggrieved person's sexual orientation; or
 - (b) a characteristic that appertains generally to persons who have the same sexual orientation as the aggrieved person; or
 - (c) a characteristic that is generally imputed to persons who have the same sexual orientation as the aggrieved person;the discriminator treats the aggrieved person less favourably than, in circumstances that are the same or are not materially different, the discriminator treats or would treat a person who has a different sexual orientation.
- (2) For the purposes of this Act, a person (the *discriminator*) discriminates against another person (the *aggrieved person*) on the ground of the aggrieved person's sexual orientation if the discriminator imposes, or proposes to impose, a condition, requirement or practice that has, or is likely to have, the effect of disadvantaging persons who have the same sexual orientation as the aggrieved person.
- (3) This section has effect subject to sections 7B and 7D.

5B Discrimination on the ground of gender identity

- (1) For the purposes of this Act, a person (the *discriminator*) discriminates against another person (the *aggrieved person*) on the ground of the aggrieved person's gender identity if, by reason of:
 - (a) the aggrieved person's gender identity; or
 - (b) a characteristic that appertains generally to persons who have the same gender identity as the aggrieved person; or
 - (c) a characteristic that is generally imputed to persons who have the same gender identity as the aggrieved person;the discriminator treats the aggrieved person less favourably than, in circumstances that are the same or are not materially different, the discriminator treats or would treat a person who has a different gender identity.

- (2) For the purposes of this Act, a person (the *discriminator*) discriminates against another person (the *aggrieved person*) on the ground of the aggrieved person's gender identity if the discriminator imposes, or proposes to impose, a condition, requirement or practice that has, or is likely to have, the effect of disadvantaging persons who have the same gender identity as the aggrieved person.
- (3) This section has effect subject to sections 7B and 7D.

5C Discrimination on the ground of intersex status

- (1) For the purposes of this Act, a person (the *discriminator*) discriminates against another person (the *aggrieved person*) on the ground of the aggrieved person's intersex status if, by reason of:
- (a) the aggrieved person's intersex status; or
 - (b) a characteristic that appertains generally to persons of intersex status; or
 - (c) a characteristic that is generally imputed to persons of intersex status;
- the discriminator treats the aggrieved person less favourably than, in circumstances that are the same or are not materially different, the discriminator treats or would treat a person who is not of intersex status.
- (2) For the purposes of this Act, a person (the *discriminator*) discriminates against another person (the *aggrieved person*) on the ground of the aggrieved person's intersex status if the discriminator imposes, or proposes to impose, a condition, requirement or practice that has, or is likely to have, the effect of disadvantaging persons of intersex status.
- (3) This section has effect subject to sections 7B and 7D.

18 Section 6 (heading)

Omit "marital status", substitute "marital or relationship status".

19 Subsections 6(1) and (2)

Omit "marital status" (wherever occurring), substitute "marital or relationship status".

20 Subsection 7B(1)

After “5(2),” insert “5A(2), 5B(2), 5C(2),”.

21 Subsection 7B(1)

Omit “or section 7A”.

22 Paragraph 7D(1)(b)

Repeal the paragraph, substitute:

- (aa) people who have different sexual orientations; or
- (ab) people who have different gender identities; or
- (ac) people who are of intersex status and people who are not; or
- (b) people who have different marital or relationship statuses; or

23 Subsection 7D(2)

After “5,” insert “5A, 5B, 5C,”.

24 Section 8

After “5(1),” insert “5A(1), 5B(1), 5C(1),”.

25 Subsection 10(2)

Omit “discrimination on the ground of marital status”, substitute “discrimination on the ground of sexual orientation, discrimination on the ground of gender identity, discrimination on the ground of intersex status, discrimination on the ground of marital or relationship status”.

26 Subsection 11(2)

Omit “discrimination on the ground of marital status”, substitute “discrimination on the ground of sexual orientation, discrimination on the ground of gender identity, discrimination on the ground of intersex status, discrimination on the ground of marital or relationship status”.

27 Subsections 14(1) and (2)

Omit “marital status”, substitute “sexual orientation, gender identity, intersex status, marital or relationship status”.

28 Subsection 14(4)

Omit “or marital status”, substitute “, sexual orientation or marital or relationship status”.

29 Subsections 15(1) and (2)

Omit “marital status”, substitute “sexual orientation, gender identity, intersex status, marital or relationship status”.

30 Section 16

Omit “marital status”, substitute “sexual orientation, gender identity, intersex status, marital or relationship status”.

31 Subsections 17(1), (2) and (3)

Omit “marital status”, substitute “sexual orientation, gender identity, intersex status, marital or relationship status”.

32 Section 18

Omit “marital status”, substitute “sexual orientation, gender identity, intersex status, marital or relationship status”.

33 Subsections 19(1) and (2)

Omit “marital status”, substitute “sexual orientation, gender identity, intersex status, marital or relationship status”.

34 Section 20

Omit “marital status”, substitute “sexual orientation, gender identity, intersex status, marital or relationship status”.

35 Subsections 21(1) and (2)

Omit “marital status”, substitute “sexual orientation, gender identity, intersex status, marital or relationship status”.

36 Paragraphs 21(3)(a) and (b)

Omit “the opposite sex to”, substitute “a different sex from”.

37 Subsection 22(1)

Omit “marital status”, substitute “sexual orientation, gender identity, intersex status, marital or relationship status”.

38 Subsections 23(1) and (2)

Omit “marital status”, substitute “sexual orientation, gender identity, intersex status, marital or relationship status”.

39 Paragraph 23(3)(c)

Omit “a particular marital status or particular marital statuses”, substitute “one or more particular marital or relationship statuses”.

39A After subsection 23(3)

Insert:

(3A) Paragraph (3)(b) does not apply to accommodation provided by a religious body in connection with the provision, by the body, of Commonwealth-funded aged care.

40 Subsection 24(1)

Omit “marital status”, substitute “sexual orientation, gender identity, intersex status, marital or relationship status”.

41 Subsections 25(1) and (2)

Omit “marital status”, substitute “sexual orientation, gender identity, intersex status, marital or relationship status”.

42 Subsection 25(3)

Omit “the opposite sex”, substitute “a different sex”.

43 Subsection 26(1)

Omit “marital status”, substitute “sexual orientation, gender identity, intersex status, marital or relationship status”.

44 Paragraph 27(1)(b)

Omit “marital status”, substitute “sexual orientation, gender identity, intersex status, marital or relationship status”.

45 Subparagraphs 27(1)(c)(i) and (ii)

Repeal the subparagraphs, substitute:

- (i) of a different sex; or
- (ia) who have a different sexual orientation; or
- (ib) who have a different gender identity; or
- (ic) who are not of intersex status; or
- (ii) who have a different marital or relationship status; or

46 Paragraph 28A(1A)(a)

Omit “marital status, sexual preference”, substitute “sexual orientation, gender identity, intersex status, marital or relationship status”.

47 Subsections 30(1) and (2)

Omit “the opposite sex to” (wherever occurring), substitute “a different sex from”.

48 Subsection 35(2)

Omit “marital status”, substitute “marital or relationship status”.

49 Paragraph 35(2)(b)

After “spouse”, insert “or de facto partner”.

49A Section 37

Before “Nothing”, insert “(1)”.

49B At the end of section 37

Add:

- (2) Paragraph (1)(d) does not apply to an act or practice of a body established for religious purposes if:
- (a) the act or practice is connected with the provision, by the body, of Commonwealth-funded aged care; and
 - (b) the act or practice is not connected with the employment of persons to provide that aged care.

50 Subsections 38(1), (2) and (3)

Omit “marital status”, substitute “sexual orientation, gender identity, marital or relationship status”.

51 Section 39

Omit “marital status”, substitute “sexual orientation, gender identity, intersex status, marital or relationship status”.

52 After subsection 40(2)

Insert:

(2A) Nothing in Division 1 or 2, as applying by reference to section 5A, 5B, 5C or 6, affects anything done by a person in direct compliance with the *Marriage Act 1961*.

(2B) Nothing in Division 1 or 2, as applying by reference to section 5A, 5B or 5C, affects anything done by a person in direct compliance with a law of the Commonwealth, or of a State or Territory, that is prescribed by the regulations for the purpose of this subsection.

53 Subsection 41A(1)

Omit “marital status” (wherever occurring), substitute “marital or relationship status”.

54 Subparagraph 41A(1)(b)(ii)

Omit “no spouse (whether legal or de facto)”, substitute “no spouse or de facto partner”.

55 Paragraph 41A(2)(b)

Omit “marital status”, substitute “marital or relationship status”.

56 Paragraph 41A(2)(b)

Omit “discrimination; and”, substitute “discrimination.”.

57 Paragraph 41A(2)(c)

Repeal the paragraph.

58 Subsections 41B(3) and (4)

Omit “marital status”, substitute “marital or relationship status”.

59 Subsection 42(1)

Omit “exclude persons of one sex”, substitute “discriminate on the ground of sex, gender identity or intersex status by excluding persons”.

60 After section 43

Insert:

43A Requests for information and keeping of records: not allowing for identifying as being neither male nor female

- (1) The making of a request for information is not unlawful under Division 1 or 2 merely because the request does not allow for a person to identify as being neither male nor female.
- (2) Nothing in Division 1 or 2 makes it unlawful to make or keep records in a way that does not provide for a person to be identified as being neither male nor female.

61 Paragraphs 48(1)(g), (ga) and (gb)

Omit “marital status”, substitute “sexual orientation, gender identity, intersex status, marital or relationship status”.

Part 2—Amendments of other Acts

Division 1—Amendments of references to marital status

Migration Act 1958

62 Section 507 (heading)

Omit “**Marital status**”, substitute “**Marital or relationship status**”.

63 Subsection 507(2)

Omit “marital status”, substitute “marital or relationship status”.

Division 2—Amendments of references to sexual preference

Broadcasting Services Act 1992

63A Paragraph 123(3)(e)

Omit “sexual preference”, substitute “sexual orientation”.

63B Paragraph 28(3)(e) of Schedule 6

Omit “sexual preference”, substitute “sexual orientation”.

Fair Work Act 2009

63C Subsection 153(1)

Omit “sexual preference”, substitute “sexual orientation”.

63D Subsection 195(1)

Omit “sexual preference”, substitute “sexual orientation”.

63E Subsection 351(1)

Omit “sexual preference”, substitute “sexual orientation”.

63F Paragraph 578(c)

Omit “sexual preference”, substitute “sexual orientation”.

63G Paragraph 772(1)(f)

Omit “sexual preference”, substitute “sexual orientation”.

Fair Work (Registered Organisations) Act 2009

63H Paragraph 142(1)(d)

Omit “sexual preference”, substitute “sexual orientation”.

Part 3—Application of amendments

64 Application of amendments

The amendments of the *Sex Discrimination Act 1984* made by this Schedule apply in relation to acts or omissions occurring after the commencement of this Schedule.

[*Minister's second reading speech made in—
House of Representatives on 21 March 2013
Senate on 17 June 2013*]

(90/13)

16 *Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013* No. 98, 2013