

EXPLANATORY STATEMENT

Select Legislative Instrument 2013 No. 196

Issued by Authority of the Attorney-General

Australian Human Rights Commission Act 1986

Australian Human Rights Commission Regulations 1989

*Australian Human Rights Commissioner Amendment (Grounds of
Discrimination) Regulation 2013*

Section 50 of the *Australian Human Rights Commission Act 1986* (the Australian Human Rights Commission Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Act.

Regulation 4 of the *Australian Human Rights Commission Regulations 1989* (the Australian Human Rights Commission Regulations) extends the meaning of discrimination in the Australian Human Rights Commission Act by prescribing additional grounds of discrimination.

The Regulation amends the Australian Human Rights Commission Regulations to:

- replace the term ‘sexual preference’ in Regulation 4(a)(ix) with ‘sexual orientation’, and
- replace the term ‘marital status’ in Regulations 3 and 4(a)(v) with ‘marital or relationship status’.

This regulation has been prepared to coincide with the commencement of the substantive provisions of the Amending Act. Those provisions will commence on 1 August 2013 by proclamation. The regulation provides for the commencement of each section as follows:

- Sections 1 to 4 and other sections not elsewhere covered by the table commence the day after the regulation is registered.
- The amendments in Schedule 1 commence on the later of:
 - the day after the regulation is registered; or
 - the day on which Schedule 1 to the Amending Act commences.

However, the provisions do not commence at all if the Amending Act has not commenced.

Details of the regulation are set out in the [Attachment](#).

Consultation

Introducing new protections that included the terminology ‘sexual orientation’ and ‘marital or relationship status’ formed part of the exposure draft of the Human Rights and Anti-Discrimination Bill 2012 which was released in November 2012 and referred to the Senate Legal and Constitutional Affairs Legislation Committee. The Senate Committee conducted public hearings in January 2013 and reported in February 2013.

This terminology was also included in the Amending Act which was also the subject of inquiry by the Senate Legal and Constitutional Affairs Legislation Committee. The Committee handed down its report in June 2013.

The regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Australian Human Rights Commission Amendment (Grounds of Discrimination) Regulation 2013

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The Legislative Instrument updates terminology in the *Australian Human Rights Commission Regulations 1989* (the Australian Human Rights Commission Regulations) to be consistent with changes in terminology in the *Sex Discrimination Act 1984* (the Sex Discrimination Act), made by the *Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013* (the Amending Act).

Regulation 4 of the Australian Human Rights Commission Regulations extends the meaning of discrimination in the *Australian Human Rights Commission Act 1986* (the Australian Human Rights Commission Act) by prescribing additional grounds of discrimination (including ‘sexual preference’ and ‘marital status’). This definition of discrimination is relevant to the Commission’s functions relating to equal opportunity in employment in Division 4 of Part II of the Australian Human Rights Commission Act. These functions include conducting inquiries, examining enactments and conciliating matters brought by individuals relating to employment discrimination. Complaints brought under these provisions may be conciliated by the Commission but cannot proceed to court.

The Amending Act extends the ground of ‘marital status’ in the Sex Discrimination Act to ‘marital or relationship status’ to provide protection from discrimination for same-sex de facto couples. ‘Marital status’ in the Australian Human Rights Commission Regulations derives its meaning from the Sex Discrimination Act. As the Amending Act amends this definition to ‘marital or relationship status’, the Legislative Instrument replaces the term ‘marital status’ with ‘marital or relationship status’ in regulations 3 (the definition regulation) and 4(a)(v).

The Amending Act also updates terminology in other Commonwealth Acts from ‘sexual preference’ to ‘sexual orientation’. The term ‘sexual orientation’ replaces ‘sexual preference’ because ‘sexual orientation’ is the broad, inclusive term that is generally accepted in the Australian community. The Legislative Instrument also updates the terminology in Regulation 4(a)(ix) from ‘sexual preference’ to ‘sexual orientation’.

The validity of existing, unresolved complaints relating to sexual preference or marital status will be preserved by new subregulation 5(b).

Human rights implications

The amendments in the Legislative Instrument are minor amendments to ensure consistent terms are used in both the Australian Human Rights Regulations and the Sex Discrimination Act. To the extent that the changes in terminology have the effect of broadening the scope of the definition of discrimination in the Australian Human Rights Commission Act to more

clearly protect those in same-sex relationships, the regulations promote the right to equality and non-discrimination in the International Covenant on Civil and Political Rights (Articles 2 and 26) and the Convention on the Elimination of All Forms of Discrimination Against Women (Article 2).

Conclusion

The Regulation is compatible with human rights as it updates terminology consistently with changes made to the Sex Discrimination Act to more clearly protect those in same-sex relationships and therefore promotes the right to equality and non-discrimination.

ATTACHMENT

Details of the *Australian Human Rights Commission Amendment (Grounds of Discrimination) Regulation 2013*

Section 1 — Name of regulation

This section provides that the name of the regulation is the *Australian Human Rights Commission Amendment (Grounds of Discrimination) Regulation 2013*.

Section 2 — Commencement

This section provides for the commencement of each section as follows:

- Sections 1 to 4 and other sections not elsewhere covered by the table commence the day after the regulation is registered
- The amendments in Schedule 1 commence on the later of:
 - the day after the regulation is registered; or
 - the day on which Schedule 1 to the *Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013* (the Amending Act) commences.

However, the provisions do not commence at all if the Amending Act has not commenced.

Section 3 — Authority

This section specifies that the regulation is made under the *Australian Human Rights Commission Act 1986*.

Section 4 – Schedule(s)

This section specifies that each instrument that is specified in the Schedule to this regulation is amended or repealed as set out in the applicable items in the Schedule, and any other item in the Schedule to this regulation has effect according to its terms.

Schedule 1 — Amendments

Item 1 — new definition of *marital or relationship status*

This item inserts a new definition of ‘marital or relationship status’ into regulation 3, referring to the definition inserted into the *Sex Discrimination Act 1984* (the Sex Discrimination Act) by the Amending Act. ‘Marital status’ in the Australian Human Rights Commission Regulations derives its meaning from the Sex Discrimination Act.

Item 2 — old definition of *marital status* repealed

This item repeals the existing definition of ‘marital status’ in regulation 3.

Items 3 and 4 — update of terminology

Item 3 replaces the term ‘marital status’ in Regulation 4(a)(v) with ‘marital or relationship status’, consistent with the Amending Act.

Item 4 replaces the term ‘sexual preference’ in Regulation 4(a)(ix) with ‘sexual orientation’, consistent with the Amending Act.

This definition of discrimination is relevant to the Commission’s functions relating to equal opportunity in employment in Division 4 of Part II of the Australian Human Rights Commission Act. These functions include conducting inquiries, examining enactments and conciliating matters brought by individuals relating to employment discrimination.

Item 5 — Application of amendments

This item is a transitional and savings provision that specifies that complaints can be brought:

- in relation to sexual preference or marital status if all of the conduct complained of occurred before commencement of the amendment, and
- in relation to sexual orientation or marital or relationship status if any part of the conduct complained of occurred after commencement of the amendment.

The validity of existing, unresolved, complaints relating to sexual preference or marital status discrimination is preserved.