

# **AGE DISCRIMINATION REGULATIONS 2020**

## **EXPLANATORY STATEMENT**

Issued by the authority of the Attorney-General

### **PURPOSE AND OPERATION OF THE INSTRUMENT**

The *Age Discrimination Regulations 2020* (the Regulations) are made under the *Age Discrimination Act 2004* and relate to amendments of that Act by the *Statute Update (Regulations References) Act 2020*.

The Regulations prescribe particular regulations and provisions of regulations under the *Airports Act 2006* and the *Defence Act 2003* for the purposes of establishing exemptions from the Age Discrimination Act.

This is necessary due to amendments made to the Age Discrimination Act by the Statute Update (Regulations References) Act, which replace references to specific regulations with more generic references that will remain accurate over time.

Most of the amendments simply replace a reference to specific regulations with a general reference to those regulations by reference to the Act the regulations are made under. For example, a reference in table item 11 of Schedule 1 to the Age Discrimination Act to the “*Australian Hearing Services Regulations 1992*” is replaced with a reference to “Regulations made under the *Australian Hearing Services Act 1991*”.

However, in two cases, references to specific regulations are instead replaced with provisions stating that the relevant regulations would be prescribed or that provisions of regulations made under a specified Act would be prescribed by regulations. Item 8 in Schedule 1 to the Age Discrimination Act mentions prescribed regulations made under the Airports Act. Item 3AA of Schedule 2 to the Age Discrimination Act mentions prescribed provisions of regulations made under the Defence Act.

The Regulations alter the text of the law. However, they are not intended to alter the interpretation of the law. This is because the prescribed regulations equate to those originally covered by the reference in the Age Discrimination Act prior to amendment by the Statute Update (Regulation References) Act.

### **CONSULTATION**

Before the Regulations were made, the Attorney-General considered the general obligation to consult imposed by section 17 of the Legislation Act.

The Attorney-General is responsible for administering the Age Discrimination Act, the enabling legislation under which the regulations are made. The Attorney-General is therefore the rule-maker for the Regulations for the purposes of section 6 of the Legislation Act.

There was extensive consultation in relation to the Regulations within the Attorney-General’s Department. The Department of Defence and the Department of Infrastructure, Transport, Regional Development and Communications were also consulted. As the Regulations only

make small technical changes to the text of the law and do not affect the interpretation of the law, it was not considered necessary to consult further outside of those Departments.

The Regulations were drafted by the Office of Parliamentary Counsel.

## **REGULATION IMPACT STATEMENT**

Regulations that are made for the purposes of Statute Update Bills are machinery of government instruments, and are therefore not subject to the regulatory impact assessment requirements set out by the Office of Best Practice Regulation (OBPR). The OBPR reference for this standing exemption is 25784.

## **OTHER DETAILS**

Details on the provisions of the Regulations are set out in Attachment A.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence at the same time as the Statute Update (Regulation References) Act commences.

The Regulations, the Age Discrimination Act and the Statute Update (Regulation References) Act are available on the Federal Register of Legislation at [www.legislation.gov.au](http://www.legislation.gov.au).

## STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

*Age Discrimination Regulations 2020*

The *Age Discrimination Regulations 2020* (the Regulations) are 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

The Regulations prescribe particular regulations and provisions of regulations as exemptions from the *Age Discrimination Act 2004*.

This is necessary due to amendments made to the Age Discrimination Act by the *Statute Update (Regulations References) Act 2020*, which replace references to specific regulations with more generic references that will remain accurate over time.

Most of the amendments simply replace a reference to specific regulations with a general reference to those regulations by reference to the Act the regulations are made under. For example, a reference in table item 11 of Schedule 1 to the Age Discrimination Act to the “*Australian Hearing Services Regulations 1992*” is replaced with a reference to “Regulations made under the *Australian Hearing Services Act 1991*”.

However, in two cases, references to specific regulations are instead replaced with provisions stating that the relevant regulations would be prescribed or that provisions of regulations made under a specified Act would be prescribed by regulations. Item 8 in Schedule 1 to the Age Discrimination Act mentions prescribed regulations made under the *Airports Act 2006*. Item 3AA of Schedule 2 to the Age Discrimination Act mentions prescribed provisions of regulations made under the *Defence Act 2003*.

The Regulations would prescribe particular regulations and provisions of regulations under the Airports Act and the Defence Act for the purposes of establishing exemptions from the Age Discrimination Act.

The Regulations alter the text of the law. However, they are not intended to alter the interpretation of the law. This is because the prescribed regulations equate to those originally covered by the reference in the Age Discrimination Act prior to amendment by the Statute Update (Regulation References) Act.

### Human rights implications

The Regulations do not engage any human rights issues as they make minor technical improvements to legislation. They make either no change or only minor changes to the substance of the law.

## **Conclusion**

The Regulations are 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, as they do not engage any of the applicable rights or freedoms or alter any human rights safeguards currently in place.

## **Details of the *Age Discrimination Regulations 2020***

### **Part 1—Preliminary**

#### Section 1—Name

This section provides for the name of the Regulations to be the *Age Discrimination Regulations 2020*.

#### Section 2—Commencement

This section provides for the whole of the Regulations to commence at the same time as the *Statute Update (Regulation References) Act 2020*.

#### Section 3—Authority

This section provides that the Regulations are made under the *Age Discrimination Act 2004*.

#### Section 4—Definitions

This section provides that in the Regulations, *Act* means the Age Discrimination Act. That definition is relied on in subsections 5(1) and (2) of the Regulations.

### **Part 2—Exemptions**

Section 39 of the Age Discrimination Act provides an exemption for acts that would otherwise be unlawful age discrimination under that Act. Subsection 39(1) provides an exemption for anything done by a person in direct compliance with another Act, regulation, or any other instrument mentioned in Schedule 1 to the Age Discrimination Act. Subsection 39(1A) provides an exemption for anything done by a person in direct compliance with a provision of an Act, regulation, or other instrument if the provision is mentioned in Schedule 2 to the Age Discrimination Act.

#### Section 5—Exemptions

##### Subsection 5(1)

Item 5 of Schedule 1 to the Statute Update (Regulation References) Act amends item 8 of the table in Schedule 1 to the Age Discrimination Act to repeal that item (which refers to the *Airports (Control of On-Airport Activities) Regulations 1997* (Airports Regulations)) and replace it with an item referring to prescribed regulations made under the *Airports Act 1996*.

Subsection 5(1) of the Regulations provides that, for the purposes of item 8 of the table in Schedule 1 to the Age Discrimination Act, the Airports Regulations are prescribed.

This is necessary to ensure that anything done by a person in direct compliance with the Airports Regulations will continue to not be unlawful age discrimination.

The prescribed regulations under the Airports Act refer to the same regulations as the current specified regulations in item 8 of the table in Schedule 1 to the Age Discrimination Act.

#### Subsection 5(2)

Item 7 of the Statute Update (Regulations References) Act repeals item 24 of the table in Schedule 1 to the Age Discrimination Act to omit a specific reference to the *Defence (Personnel) Regulations 2002* (Personnel Regulations), which have been repealed. A technical correction to the law is required to deal with the repeal.

The Personnel Regulations covered many matters. The provisions that were relevant to the exemption from the Age Discrimination Act are now covered by sections 23 and 88 of the *Defence Regulation 2016*.

So, item 9 of the Statute Update (Regulations References) Act includes a general reference to prescribed provisions of regulations made under the *Defence Act 1903* in a new table item 3AA of the table in Schedule 2 to the Age Discrimination Act to ensure that sections 23 and 88 of the Defence Regulation may be prescribed.

Subsection 5(2) of the Regulations provides that, for the purposes of item 3AA of the table in Schedule 2 to the Age Discrimination Act, sections 23 and 88 of the Defence Regulation are prescribed.

This is necessary to ensure that anything done by a person in direct compliance with these provisions of the Defence Regulation will continue to not be unlawful age discrimination.

The prescribed provisions are intended to more precisely equate to those that, in practice, were originally covered by the references in the Age Discrimination Act prior to amendment by the Statute Update (Regulation References) Act.