

Employment & Safety Alert

Federal Parliament makes sexuality/ gender identity discrimination unlawful

25 June 2013

Late last night, the *Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill 2013* was passed by the Senate. This amendment will broaden the grounds on which discrimination is prohibited under the *Sex Discrimination Act 1984* (Cth) (**SDA**).

Currently, the SDA prohibits discrimination on the grounds of:

- sex;
- marital status;
- pregnancy/potential pregnancy;
- breastfeeding; and
- family responsibilities,

in areas of activity including work, the provision of goods and services, and education.

The SDA also prohibits sexual harassment.

The Amendment Act expands the SDA's current provisions so that it will also prohibit discrimination on the grounds of sexual orientation, gender identity and intersex status.

The Amendment Act also:

- clarifies the distinction in the SDA between intersex status and gender identity, and recognises that being 'intersex' is a biological characteristic rather than an identity;
- amends the existing ground of 'marital status' in the SDA to 'marital or relationship status' to protect same-sex de facto couples from discrimination; and
- amends the *Fair Work Act 2009* to substitute 'sexual orientation' wherever the term 'sexual preference' appears - for example in the definition of 'discriminatory terms' in awards and enterprise agreements and in the adverse action provisions.

The Amendment Act provisions will take effect on a day yet to be proclaimed, but most likely within approximately the next six months.

We note that the Amendment Act will make the protection under the SDA broader than under most state discrimination laws. For example, in NSW the *Anti-Discrimination Act 1977* prohibits sex-related discrimination on the grounds of sex, transgender, marital or domestic status and homosexuality.

We are also expecting the Senate to pass the *Fair Work Amendment Bill 2013* to amend the *Fair Work Act 2009* sometime this week (Parliament's last sitting week). We will send you an Alert about this legislative development if/when it occurs.

For further information, please [click here](#) to contact our national Employment & Safety team.

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