

Human Rights Legislation (Transitional) Regulations 2000

2000 No. 301

EXPLANATORY STATEMENT

STATUTORY RULES 2000 No. 301

ISSUED BY THE AUTHORITY OF THE ATTORNEY-GENERAL

Human Rights Legislation Amendment Act (No. 1) 1999

Human Rights Legislation (Transitional) Regulations 2000

The *Human Rights Legislation Amendment Act (No. 1) 1999* (the Act) amended, among other Acts, the *Human Rights and Equal Opportunity Commission Act 1986* (HREOCA). The Act changes the way complaints are dealt with because the Human Rights and Equal Opportunity Commission (the Commission) does not have the constitutional power to determine disputes. The Act transfers that function to the Federal Court of Australia and the Federal Magistrates Court.

The Act also contains transitional provisions which detail the manner in which complaints lodged with the Commission before the commencement date of the Act should be treated where various circumstances exist.

Sub-section 21(2) of the Act provides for the Governor-General, to make regulations in relation to matters of a transitional or saving nature arising out of the enactment of the Act.

The purpose of the regulations is set out the manner in which complaints lodged with the Commission before the commencement date of the Act should be treated in particular circumstances that are not dealt with by the Act.

The regulations deal with the situation where a decision of the Commission has been the subject of an application under the *Administrative Decisions (Judicial Review) Act 1977* (the ADJR Act) and an order is made under the ADJR Act by the Federal Court of Australia or the Federal Magistrates Court to refer the matter back to the Commission for further consideration. The regulations deem the President to have terminated, as if under section 46PH of HREOCA, such a decision made by the Commission. The regulations apply only to complaints referred back to the Commission by a Court after commencement of the regulations.

By treating complaints as if they were terminated under section 46PH of HREOCA, the regulations activate section 46P0 of HREOCA with respect to such complaints. Section 46P0 provides the mechanism by which a person may make an application to the Federal Court of Australia or the Federal Magistrates Court alleging unlawful discrimination by one or more of the respondents to the terminated complaint.

As the Commission cannot make enforceable decisions, the regulations allow the complaint to be deemed terminated so as to permit the complainant to make a fresh application in the Federal Court of Australia or the Federal Magistrates Court and obtain an enforceable decision. The regulations enable parties to obtain an enforceable decision in the most efficient way possible.

The transitional provision made by the regulations is consistent with other transitional provisions in the Act.

Details of the regulations are contained in the attachment.

The regulations commence on gazettal.

Attachment

Human Rights Legislation (Transitional) Regulations 2000

Regulation 1 provides the name of the regulations.

Regulation 2 provides that the regulations commence on gazettal.

Regulation 3 provides definitions.

Sub-regulation 4(1) specifies the complaints affected by the regulations. The regulations apply where the Commission has made a decision in relation to a specified complaint which has then been the subject of an application under the ADJR Act and, on or after commencement of the regulations, the Federal Court of Australia or the Federal Magistrates Court makes an order under the ADJR Act referring the matter back to the Commission for further consideration.

The effect of sub-regulation 4(2) is that, following commencement of these regulations, the President of the Commission will be taken to have terminated such a complaint under section 46PH of HREOCA on the date the order is made.

Sub-regulations 4(3), 4(4) and 4(5) make provision for the issue of notifications with respect to terminations under regulation 4.