

2010

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Sex and Age Discrimination Legislation
Amendment Bill 2010**

No. , 2010

(Attorney-General)

**A Bill for an Act to amend the law relating to sex
and age discrimination, and for related purposes**

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1 **A Bill for an Act to amend the law relating to sex**
2 **and age discrimination, and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Sex and Age Discrimination*
6 *Legislation Amendment Act 2010*.

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.
12

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.	
2. Schedule 1	The day after this Act receives the Royal Assent.	
3. Schedule 2	A single day to be fixed by Proclamation. However, if any of 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 Note: This table relates only to the provisions of this Act as originally
2 enacted. It will not be amended to deal with any later amendments of
3 this Act.

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

7 **3 Schedule(s)**

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9 repealed as set out in the applicable items in the Schedule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

1
2 **Schedule 1—Amendments relating to sex**
3 **discrimination**

4 **Part 1—Amendment of the Sex Discrimination Act**
5 **1984**

6 **Division 1—Amendments**

7 *Sex Discrimination Act 1984*

8 **1 Title**

9 After “potential pregnancy”, insert “, **breastfeeding**”.

10 **2 Preamble**

11 After “potential pregnancy” (wherever occurring), insert “,
12 breastfeeding or family responsibilities”.

13 **3 Paragraph 3(a)**

14 After “Women”, insert “and to provisions of other relevant international
15 instruments”.

16 **4 Paragraph 3(b)**

17 After “potential pregnancy”, insert “or breastfeeding”.

18 **5 Paragraph 3(ba)**

19 Omit “involving dismissal of employees on the ground of family
20 responsibilities”, substitute “on the ground of family responsibilities in
21 the area of work”.

22 **6 Subsection 4(1)**

23 Insert:

24 *breastfeeding* has a meaning affected by subsections 7AA(3) and
25 (4).

26 **7 Subsection 4(1) (definition of *Convention*)**

27 Repeal the definition.

1 **8 Subsection 4(1)**

2 Insert:

3 *disability* has the same meaning as in the *Disability Discrimination*
4 *Act 1992*.

5 **9 Subsection 4(1)**

6 Insert:

7 *official record of a person's sex* means:

- 8 (a) a record of a person's sex in a register of births, deaths and
9 marriages (however described); or
10 (b) a document (however described), issued under a law of a
11 State or Territory, the purpose of which is to identify or
12 acknowledge a person's sex.

13 **10 Subsection 4(1)**

14 Insert:

15 *relevant international instrument* means:

- 16 (a) the Convention on the Elimination of All Forms of
17 Discrimination Against Women done at New York on
18 18 December 1979 ([1983] ATS 9) (a copy of the English
19 text of which is set out in the Schedule); or
20 (b) the International Covenant on Civil and Political Rights done
21 at New York on 16 December 1966 ([1980] ATS 23); or
22 (c) the International Covenant on Economic, Social and Cultural
23 Rights done at New York on 16 December 1966 ([1976] ATS
24 5); or
25 (d) the Convention on the Rights of the Child done at New York
26 on 20 November 1989 ([1991] ATS 4); or
27 (e) ILO Convention (No. 100) concerning Equal Remuneration
28 for Men and Women Workers for Work of Equal Value done
29 at Geneva on 29 June 1951 ([1975] ATS 45); or
30 (f) ILO Convention (No. 111) concerning Discrimination in
31 respect of Employment and Occupation done at Geneva on
32 25 June 1958 ([1974] ATS 12); or
33 (g) ILO Convention (No. 156) concerning Equal Opportunities
34 and Equal Treatment for Men and Women Workers: Workers

1 with Family Responsibilities done at Geneva on 23 June
2 1981 ([1991] ATS 7); or
3 (h) ILO Convention (No. 158) concerning Termination of
4 Employment at the Initiative of the Employer done at Geneva
5 on 22 June 1982 ([1994] ATS 4).

6 Note: In 2010, the text of a Convention or Covenant in the Australian Treaty
7 Series was accessible through the Australian Treaties Library on the
8 AustLII website (www.austlii.edu.au).

9 **11 Subsection 4A(1)**

10 Omit “an employee”, substitute “a person”.

11 **12 Subsection 4A(1)**

12 Omit “the employee” (wherever occurring), substitute “the person”.

13 **13 Subsection 4A(2) (definition of *dependent child*)**

14 Omit “the employee”, substitute “the person”.

15 **14 Subsection 4A(2) (definition of *immediate family member*)**

16 Omit “the employee” (wherever occurring), substitute “the person”.

17 **15 Subsection 5(1A)**

18 Repeal the subsection.

19 **16 Subsection 7(2)**

20 Omit “also”.

21 **17 After section 7**

22 Insert:

23 **7AA Discrimination on the ground of breastfeeding**

24 (1) For the purposes of this Act, a person (the *discriminator*)
25 discriminates against a woman (the *aggrieved woman*) on the
26 ground of the aggrieved woman’s breastfeeding if, by reason of:
27 (a) the aggrieved woman’s breastfeeding; or
28 (b) a characteristic that appertains generally to women who are
29 breastfeeding; or
30 (c) a characteristic that is generally imputed to women who are
31 breastfeeding;

1 the discriminator treats the aggrieved woman less favourably than,
2 in circumstances that are the same or are not materially different,
3 the discriminator treats or would treat someone who is not
4 breastfeeding.

5 (2) For the purposes of this Act, a person (the *discriminator*)
6 discriminates against a woman (the *aggrieved woman*) on the
7 ground of the aggrieved woman's breastfeeding if the discriminator
8 imposes, or proposes to impose, a condition, requirement or
9 practice that has, or is likely to have, the effect of disadvantaging
10 women who are breastfeeding.

11 (3) To avoid doubt, a reference in this Act to *breastfeeding* includes
12 the act of expressing milk.

13 (4) To avoid doubt, a reference in this Act to *breastfeeding* includes:
14 (a) an act of breastfeeding; and
15 (b) breastfeeding over a period of time.

16 (5) This section has effect subject to sections 7B and 7D.

17 **18 Section 7A**

18 Repeal the section, substitute:

19 **7A Discrimination on the ground of family responsibilities**

20 (1) For the purposes of this Act, a person (the *discriminator*)
21 discriminates against another person (the *aggrieved person*) on the
22 ground of the aggrieved person's family responsibilities if, by
23 reason of:

- 24 (a) the family responsibilities of the aggrieved person; or
25 (b) a characteristic that appertains generally to persons with
26 family responsibilities; or
27 (c) a characteristic that is generally imputed to persons with
28 family responsibilities;

29 the discriminator treats the aggrieved person less favourably than,
30 in circumstances that are the same or not materially different, the
31 discriminator treats or would treat a person without family
32 responsibilities.

33 (2) For the purposes of this Act, a person (the *discriminator*)
34 discriminates against another person (the *aggrieved person*) on the

1 ground of the aggrieved person's family responsibilities if the
2 discriminator imposes, or proposes to impose, a condition,
3 requirement or practice that has, or is likely to have, the effect of
4 disadvantaging persons with family responsibilities.

5 (3) This section has effect subject to sections 7B and 7D.

6 **19 Subsection 7B(1)**

7 Omit "or 7(2)", substitute ", 7(2), 7AA(2) or 7A(2)".

8 **20 At the end of subsection 7D(1)**

9 Add:

10 ; or (e) women who are breastfeeding and people who are not
11 breastfeeding; or

12 (f) people with family responsibilities and people without family
13 responsibilities.

14 **21 Subsection 7D(2)**

15 Omit "or 7", substitute ", 7, 7AA or 7A".

16 **22 Section 8**

17 Omit "or 7(1) or section 7A", substitute ", 7(1), 7AA(1) or 7A(1)".

18 **23 Subsection 9(9)**

19 After "done by" (wherever occurring), insert "or in relation to".

20 **24 Subsections 9(10) and (10A)**

21 Repeal the subsections, substitute:

22 (10) The prescribed provisions of Part II, and the prescribed provisions
23 of Division 3 of Part II, have effect to the extent that the provisions
24 give effect to a relevant international instrument.

25 **25 Subsection 9(11)**

26 After "or by", insert "or in relation to".

27 **26 Subsection 9(12)**

28 After "done, by", insert "or in relation to".

29 **27 Subsection 9(13)**

1 After “or by”, insert “or in relation to”.

2 **28 Subsection 9(14)**

3 After “done, by”, insert “or in relation to”.

4 **29 At the end of section 9**

5 Add:

6 (21) The prescribed provisions of Division 3 of Part II have effect in
7 relation to acts done using a postal, telegraphic, telephonic or other
8 like service (within the meaning of paragraph 51(v) of the
9 Constitution).

10 **30 Subsection 10(1)**

11 Omit “or (10A)”.

12 **31 Subsection 10(2)**

13 Omit “or discrimination on the ground of pregnancy or potential
14 pregnancy”, substitute “, discrimination on the ground of pregnancy or
15 potential pregnancy, discrimination on the ground of breastfeeding or
16 discrimination on the ground of family responsibilities”.

17 **32 Subsection 11(2)**

18 Omit “or discrimination on the ground of pregnancy or potential
19 pregnancy”, substitute “, discrimination on the ground of pregnancy or
20 potential pregnancy, discrimination on the ground of breastfeeding or
21 discrimination on the ground of family responsibilities”.

22 **33 Subsection 11(3)**

23 Omit “the Convention”, substitute “a relevant international instrument”.

24 Note: The heading to section 11 is altered by omitting “**Convention**” and substituting
25 “**relevant international instruments**”.

26 **34 Paragraph 11(4)(a)**

27 Omit “the Convention”, substitute “a relevant international instrument”.

28 **35 Paragraph 11(5)(a)**

29 Omit “the Convention”, substitute “a relevant international instrument”.

30 **36 Section 11A**

1 Repeal the section.

2 **37 Subsections 14(1) and (2)**

3 After “potential pregnancy”, insert “, breastfeeding or family
4 responsibilities”.

5 **38 Subsection 14(3A)**

6 Repeal the subsection.

7 **39 Subsections 15(1) and (2)**

8 After “potential pregnancy”, insert “, breastfeeding or family
9 responsibilities”.

10 **40 Section 16**

11 After “potential pregnancy”, insert “, breastfeeding or family
12 responsibilities”.

13 **41 Subsections 17(1), (2) and (3)**

14 After “potential pregnancy”, insert “, breastfeeding or family
15 responsibilities”.

16 **42 Section 18**

17 After “potential pregnancy”, insert “, breastfeeding or family
18 responsibilities”.

19 **43 Subsections 19(1) and (2)**

20 After “potential pregnancy”, insert “, breastfeeding or family
21 responsibilities”.

22 **44 Section 20**

23 After “potential pregnancy”, insert “, breastfeeding or family
24 responsibilities”.

25 **45 Subsections 21(1) and (2)**

26 After “potential pregnancy”, insert “, or breastfeeding”.

27 **46 Subsection 22(1)**

28 After “potential pregnancy”, insert “, or breastfeeding”.

1 **47 Subsections 23(1) and (2)**

2 After “potential pregnancy”, insert “, or breastfeeding”.

3 **48 Subsection 24(1)**

4 After “potential pregnancy”, insert “, or breastfeeding”.

5 **49 Subsections 25(1) and (2)**

6 After “potential pregnancy”, insert “, or breastfeeding”.

7 **50 Subsection 26(1)**

8 After “potential pregnancy,”, insert “or breastfeeding.”.

9 **51 Paragraph 27(1)(b)**

10 After “potential pregnancy”, insert “, breastfeeding or family
11 responsibilities”.

12 **52 After subparagraph 27(1)(c)(iii)**

13 Insert:

- 14 or (iv) who are not breastfeeding; or
15 (v) without family responsibilities;

16 **53 Subsection 28A(1)**

17 After “anticipated”, insert “the possibility”.

18 **54 After subsection 28A(1)**

19 Insert:

- 20 (1A) For the purposes of subsection (1), the circumstances to be taken
21 into account include, but are not limited to, the following:
22 (a) the sex, age, marital status, sexual preference, religious
23 belief, race, colour, or national or ethnic origin, of the person
24 harassed;
25 (b) the relationship between the person harassed and the person
26 who made the advance or request or who engaged in the
27 conduct;
28 (c) any disability of the person harassed;
29 (d) any other relevant circumstance.

30 **55 Subsection 28B(6)**

1 After “workplace of”, insert “either or”.

2 **56 Paragraph 28F(2)(a)**

3 Omit “an adult”, substitute “a”.

4 **57 After subsection 28F(2)**

5 Insert:

6 (2A) It is unlawful for a person (the *first person*) who is a member of
7 the staff of an educational institution (the *first educational*
8 *institution*) to sexually harass a person who is a student at another
9 educational institution if the sexual harassment occurs in
10 connection with the first person being a member of staff of the first
11 educational institution.

12 (2B) It is unlawful for a person (the *first person*) who is an adult student
13 at an educational institution (the *first educational institution*) to
14 sexually harass:

15 (a) a person who is a student at another educational institution;
16 or

17 (b) a member of the staff of another educational institution;
18 if the sexual harassment occurs in connection with the first person
19 being a student at the first educational institution.

20 **58 Section 28G**

21 Omit “It”, substitute “(1) It”.

22 Note: The heading to section 28G is altered by omitting “**Provision of goods**” and substituting
23 “**Goods**”.

24 **59 At the end of section 28G**

25 Add:

26 (2) It is unlawful for a person to sexually harass another person in the
27 course of seeking, or receiving, goods, services or facilities from
28 that other person.

29 **60 Section 31**

30 Omit “or childbirth”, substitute “, childbirth or breastfeeding”.

31 Note: The heading to section 31 is altered by omitting “**or childbirth**” and substituting “,
32 **childbirth or breastfeeding**”

1 **61 Section 39**

2 Omit “or pregnancy”, substitute “, pregnancy, breastfeeding or family
3 responsibilities”.

4 **62 After subsection 40(4)**

5 Insert:

6 (5) Nothing in Division 2 renders it unlawful to refuse to make, issue
7 or alter an official record of a person’s sex if a law of a State or
8 Territory requires the refusal because the person is married.

9 **63 Paragraph 41A(1)(a)**

10 Omit “or marital status”, substitute “, marital status or family
11 responsibilities”.

12 **64 Subparagraph 41A(1)(b)(iii)**

13 Omit “or marital status”, substitute “, marital status or family
14 responsibilities”.

15 **65 Subsection 41A(2)**

16 Repeal the subsection, substitute:

17 (2) For the purposes of this section:

18 (a) discrimination on the ground of a person’s sex is taken to be
19 indirect if paragraph 5(1)(b) or (c) or subsection 5(2) applies
20 to the discrimination; and

21 (b) discrimination on the ground of a person’s marital status is
22 taken to be indirect if paragraph 6(1)(b) or (c) or subsection
23 6(2) applies to the discrimination; and

24 (c) discrimination on the ground of a person’s family
25 responsibilities is taken to be indirect if paragraph 7A(1)(b)
26 or (c) or subsection 7A(2) applies to the discrimination.

27 **66 Paragraph 41B(3)(a)**

28 Omit “or marital status”, substitute “, marital status or family
29 responsibilities”.

30 **67 Subparagraph 41B(4)(b)(i)**

31 Omit “or marital status”, substitute “, marital status or family
32 responsibilities”.

1 **68 Paragraphs 48(1)(g), (ga) and (gb)**

2 After “potential pregnancy”, insert “, breastfeeding or family
3 responsibilities”.

4 **Division 2—Application of amendments**

5 **69 Application of amendments**

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

1

2 **Part 2—Consequential amendment**

3 ***Equal Opportunity for Women in the Workplace Act 1999***

4 **70 Subsection 3(1) (definition of *discrimination*)**

5 Omit “or 7”, substitute “, 7, 7AA or 7A”.

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Schedule 2—Amendments relating to age discrimination

Part 1—Amendment of the Age Discrimination Act 2004

Age Discrimination Act 2004

1 Section 4

After:

- Functions are given to the Commission (see Part 6).

insert:

- The Age Discrimination Commissioner is established (see Part 6A).

2 Section 5

Insert:

Commissioner means the Age Discrimination Commissioner appointed under section 53A.

3 After Part 6

Insert:

Part 6A—Age Discrimination Commissioner

53A Age Discrimination Commissioner

- (1) There is to be an Age Discrimination Commissioner, who is to be appointed by the Governor-General by written instrument.

Note: The Age Discrimination Commissioner is eligible for reappointment: see the *Acts Interpretation Act 1901*.

- 1 (2) A person may only be appointed as the Age Discrimination
2 Commissioner if the Minister is satisfied that the person has
3 appropriate qualifications, knowledge or experience.

4 **53B Terms and conditions of appointment**

- 5 (1) The Commissioner holds office for the period specified in the
6 instrument of appointment. The period must not exceed 7 years.
- 7 (2) The Commissioner holds office on a full-time basis.
- 8 (3) The Commissioner holds office on the terms and conditions (if
9 any), in relation to matters not covered by this Act, that are
10 determined by the Governor-General.

11 **53C Remuneration of Commissioner**

- 12 (1) The Commissioner is to be paid the remuneration that is
13 determined by the Remuneration Tribunal. If no determination of
14 that remuneration by the Tribunal is in operation, the
15 Commissioner is to be paid the remuneration that is prescribed by
16 the regulations.
- 17 (2) The Commissioner is to be paid the allowances that are prescribed
18 by the regulations.
- 19 (3) This section has effect subject to the *Remuneration Tribunal Act*
20 *1973*.

21 **53D Leave of absence**

- 22 (1) The Commissioner has the recreation leave entitlements that are
23 determined by the Remuneration Tribunal.
- 24 (2) The Minister may grant the Commissioner leave of absence, other
25 than recreation leave, on the terms and conditions as to
26 remuneration or otherwise that the Minister determines.

27 **53E Outside employment**

28 The Commissioner must not engage in paid employment outside
29 the duties of his or her office without the Minister's approval.

1 **53F Resignation**

- 2 (1) The Commissioner may resign his or her appointment by giving
3 the Governor-General a written resignation.
- 4 (2) The resignation takes effect on the day it is received by the
5 Governor-General or, if a later day is specified in the resignation,
6 on that later day.

7 **53G Termination of appointment**

- 8 (1) The Governor-General may terminate the appointment of the
9 Commissioner for misbehaviour or physical or mental incapacity.
- 10 (2) The Governor-General must terminate the appointment of the
11 Commissioner if:
- 12 (a) the Commissioner:
- 13 (i) becomes bankrupt; or
14 (ii) applies to take the benefit of any law for the relief of
15 bankrupt or insolvent debtors; or
16 (iii) compounds with his or her creditors; or
17 (iv) makes an assignment of his or her remuneration for the
18 benefit of his or her creditors; or
- 19 (b) the Commissioner is absent, except on leave of absence, for
20 14 consecutive days or for 28 days in any 12 months; or
21 (c) the Commissioner engages, except with the Minister's
22 approval, in paid employment outside the duties of his or her
23 office (see section 53E).

24 **53H Acting Commissioner**

- 25 (1) The Minister may, by written instrument, appoint a person to act as
26 Commissioner:
- 27 (a) during a vacancy in the office of Commissioner (whether or
28 not an appointment has previously been made to the office);
29 or
30 (b) during any period, or during all periods, when the
31 Commissioner:
- 32 (i) is absent from duty or from Australia; or
33 (ii) is, for any reason, unable to perform the functions of the
34 office.

- 1 (2) Anything done by or in relation to a person purporting to act under
2 an appointment is not invalid merely because:
3 (a) the occasion for the appointment had not arisen; or
4 (b) there was a defect or irregularity in connection with the
5 appointment; or
6 (c) the appointment had ceased to have effect; or
7 (d) the occasion to act had not arisen or had ceased.

8 Note: See sections 20 and 33A of the *Acts Interpretation Act 1901*.

9 **4 Paragraph 55(a)**

10 Repeal the paragraph, substitute:

- 11 (a) the Commissioner or another member of the Commission; or

12 **5 Subsection 58(1)**

13 Omit “a member of the Commission” (wherever occurring), substitute
14 “the Commissioner or another member of the Commission,”.

15 **6 Subsection 60(6) (paragraph (a) of the definition of *person***
16 ***bound by this section because of office, employment or***
17 ***authorisation*)**

18 Repeal the paragraph, substitute:

- 19 (a) the Commissioner or another member of the Commission; or

1

2 **Part 2—Consequential amendments**

3 **Division 1—Amendments**

4 *Australian Human Rights Commission Act 1986*

5 **7 Subsection 3(1)**

6 Insert:

7 *Age Discrimination Commissioner* means the Age Discrimination
8 Commissioner appointed under the *Age Discrimination Act 2004*.

9 **8 Paragraph 8(1)(d)**

10 Repeal the paragraph, substitute:

- 11 (d) the Sex Discrimination Commissioner; and
12 (e) the Age Discrimination Commissioner; and

13 **9 Subsection 8(7)**

14 After “Sex Discrimination Commissioner”, insert “, Age Discrimination
15 Commissioner”.

16 **10 At the end of subsection 46PV(3)**

17 Add:
18 ; and (f) the Age Discrimination Commissioner.

19 *Fair Work Act 2009*

20 **11 Section 12**

21 Insert:

22 *Age Discrimination Commissioner* means the Age Discrimination
23 Commissioner appointed under the *Age Discrimination Act 2004*.

24 **12 Paragraph 161(2)(a)**

25 Omit “the Australian Human Rights Commission”, substitute “the Age
26 Discrimination Commissioner”.

1 **13 Paragraph 218(2)(a)**

2 Omit “the Australian Human Rights Commission”, substitute “the Age
3 Discrimination Commissioner”.

4 **Division 2—Application of amendments**

5 **14 Amendment made by item 10**

6 The amendment made by item 10 applies in relation to proceedings:

7 (a) that commence on or after the commencement of that item;
8 or

9 (b) that commenced before the commencement of that item, and
10 that had not been completed by that commencement.