Employment Rights Legal Service

29 November 2024

Review Panel
Department of Employment and Workplace Relations
GPO Box 9828
Canberra ACT 2601

Dear Review Panel,

Review of the Secure Jobs, Better Pay Act

The Employment Rights Legal Service thanks the Review Panel and the Department of Employment and Workplace Relations for the opportunity to provide a submission on the review of the operation of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* ('**Secure Jobs, Better Pay Act'**) and the amendments made by Part 16A of Schedule 1 of the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* ('**the Review**').

Acknowledgement

We wish to pay our deepest respect to Aboriginal and Torres Strait Islander Peoples as the traditional custodians of the lands and waters on which we work and live, and acknowledge that their sovereignty has never been ceded. We acknowledge the wisdom and strength of Aboriginal and Torres Strait Islander people. We are committed to fostering a culture of sharing knowledge and showing solidarity to support self-determination for Aboriginal and Torres Strait Islander peoples.

The Employment Rights Legal Service

The Employment Rights Legal Service ('**ERLS**') is a joint initiative of the Inner City Legal Centre, Kingsford Legal Centre and Redfern Legal Centre, providing clients across New South Wales with free employment law advice and representation. ERLS aims to address and remove the systematic barriers that prevent access to justice and allow for the exploitation of workers across the state.

Secure Jobs, Better Pay Act

The Secure Jobs, Better Pay Act was the first in a series of reforms to the *Fair Work Act 2009* (Cth) ('**Fair Work Act**'), which received royal assent on 6 December 2022. It has led to amendments in bargaining, job security, gender equality, compliance and enforcement, workplace conditions and protections, and workplace relations institutions.

We understand that the Review is intended to:

- consider whether the operation of the amendments are appropriate and effective;
- identify any unintended consequences of the amendments; and
- consider whether further amendments to the Fair Work Act, or any other legislation, are necessary to improve the operation of the amendments or rectify any unintended consequences that are identified.

In general, we have been strongly supportive of the amendments and their effect in improving the Australian industrial relations framework. Owing to the limited time available to provide these submissions and the ways in which ERLS assists disadvantaged workers, we are only able to comment upon the following specific amendments in the Secure Jobs, Better Pay Act:

1. Limiting the use of fixed-term contracts;
2. Prohibiting pay secrecy clauses;
3. Strengthening the right to request flexible working arrangements and an extension of unpaid parental leave;
4. Amending the Fair Work Act small claims process;
5. Prohibiting job advertisements that would breach the Fair Work Act;
6. Prohibiting sexual harassment in the Fair Work Act; and
7. Strengthening protections against discrimination in the Fair Work Act.

Limiting the use of fixed-term contracts

ERLS supports the new limitation around the use of fixed-term contracts for the same role beyond two years, subject to exceptions. This reform is significant in terms of increasing job security overall across the Australian workforce, especially where insecurity and impermanency in employment directly and specifically affects marginalised parts of the workforce, including women and migrant workers.

We have observed an increased understanding of rights and entitlements amongst the Australian workforce as a result of the new limitation, which has led to an increased demand of our services. We attribute this to employers being required, also as part of the amendments, to provide to relevant employees a Fixed Term Contract Information Statement, which has made more people curious to understand if the new limitation may affect their own employment.

Delay in operation

While ERLS remains supportive of the new limitation, our experience is the delay in the operation of this amendment until 6 December 2023 allowed employers enough

time to issue and renew fixed-term contracts in advance of the limitation coming into effect — thereby avoiding the limitation entirely.

This cohort of the Australian workforce has been left without recourse and the delayed commencement appears to have worked against the positive reforms that were intended by the new limitation. It has left affected workers in a state of uncertainty until their contracts will next be renewed, which may be quite some time away. Only then are they able to understand if the new limitation will apply to them and their employment.

While the anti-avoidance provision in section 333H of the Fair Work Act ought to mitigate against the risk of employers deliberately circumventing the new limitation, as they also did not become operative until 6 December 2023, they have done little to address this issue.

Case Study

Our service assisted Jennifer* in July 2024, who had been employed on rolling, fixed-term contracts since 2015 and had been verbally informed by her employer that her most recent contract, which operated from early December 2023 and due to end in July 2024, would not be renewed.

Given that Jennifer's contract had come into operation from prior to the limitation and associated amendments around fixed-term contracts coming into effect, we were unable to provide certainty as to whether the limitation would apply in her circumstances, and whether she had any additional recourse through the limitation to combat the potential end of her employment in July 2024.

* name changed for confidentiality

Dispute mechanism

Section 333L of the Fair Work Act provides for the relevant dispute mechanism in relation to this new limitation, whereby a party can refer a dispute about the operation of the limitation to the Fair Work Commission ('**FWC**'). The FWC may deal with the dispute by way of mediation or conciliation, or by giving a recommendation or an opinion. Only where both parties consent to arbitration is the FWC able to make a final and binding decision as to the dispute. Where parties do not agree to arbitration, the matter can be taken to a Federal Court.

This ultimately limits the recourse available to workers who are disputing the legitimacy of their fixed-term contract, as well as the limitation itself. In practice, we are conscious that employers and respondents rarely agree to arbitration by consent. This means a

worker is left with no other option other than to take their matter to a Federal Court, either the Federal Circuit and Family Court of Australia ('**FCFCOA**') or the Federal Court of Australia ('**FCA**'). This is an arduous and time-consuming process for a worker who is capable of advocating for themselves, and even more so for migrant and other workers experiencing disadvantage. We know from experience that many disadvantaged workers find this process intimidating and confusing and therefore they decide not to initiate proceedings. In order for the dispute mechanism to be used effectively, and for the limitation to act with purpose, workers should have access to arbitration at the FWC at their request, rather than leaving the choice in the hands of their employer.

Prohibiting pay secrecy clauses

The prohibition on pay secrecy clauses is appropriate and necessary, especially with the intention of ending pay disparity for Australian workers. It ensures employees can freely discuss their pay and conditions in the workplace.

In our experience, workers are reluctant to have discussions in the workplace about their pay and conditions, fearing they may be seen as 'causing trouble', or they may be disciplined by their employer. This culture of fear and secrecy only serves to widen disparities amongst the workforce, which affects marginalised groups to a greater extent.

This new prohibition has acted to address some of the fear that persists among workers, and the knowledge that a pay secrecy clause in a worker's employment contract has no effect is of comfort to the clients that we advise. It assists that this ability for workers to disclose or not disclose, or to ask another worker about their remuneration and the terms and conditions of their employment constitutes a workplace right for the purposes of the general protections provisions. These new provisions around prohibiting pay secrecy in the workplace provide workers with a level of agency and safety that has not existed prior to these rules coming into effect.

Unfortunately, given that the prohibition only applies to contract clauses and disputes involving pay secrecy entered into or occurring *after* the prohibition comes into effect, workers with contracts that came into operation prior to the prohibition are not protected unless their contract is varied or they enter into a new contract following the introduction of the prohibition. This is largely out of their control, so it is likely that workers employed prior to the prohibition are left without recourse and will not be protected in the manner envisaged by the prohibition.

Strengthening the right to request flexible working arrangements and an extension of unpaid parental leave

The Secure Jobs, Better Pay Act introduced two sets of changes related to flexible work and parental leave. The changes create clearer obligations for employers when considering requests for flexible work arrangements and requests for extensions of a period of unpaid parental leave. Employers must genuinely try to reach agreement with employees who make such requests. If employers reject a request or fail to respond within 21 days, employees now have the ability to apply to the FWC for dispute resolution including conciliation. Crucially, the amendments also provide for arbitration and orders by the FWC if a resolution cannot otherwise be reached.

Prior to these changes, employees with 12 months of service had the right to request flexible work arrangements and/or extensions of unpaid parental leave. The lack of enforceability of such a request reduced the effectiveness of these provisions in the Fair Work Act.

In our view, the requirement to have 12 months of service before employees are eligible for these sorts of requests is unrealistic and is not in line with employer's obligations under discrimination laws. Workers are just as likely to need flexibility and parental leave in the first year of employment as at any other time, and in our experience, employers and employees have these conversations before the 12-month mark when they arise. There is no reason that the Fair Work Act processes for these requests should not be extended to all employees.

For many ERLS clients, before the Secure Jobs, Better Pay Act, the only avenue for redress of an unfair rejection of a flexible work request was to make a discrimination complaint.[1] However, not all clients who have had a flexible work request rejected are covered by discrimination law, and making a discrimination complaint can be a lengthy process. For many clients who wanted to continue in their employment, this was not a realistic option. It is beneficial to workers and employers to have a dispute resolution pathway at the FWC.

Case Study

Jeremy* is an Aboriginal worker living in regional NSW. He experienced a period of poor mental health and was caring for a school aged child. He reached a point where he did not feel able to work full time and was very worried about telling his boss. He considered resigning from his employment.

[1] Complaints about discrimination in employment in NSW can generally be made to the Australian Human Rights Commission, Anti-Discrimination NSW or the Fair Work Commission.

Before resigning Jeremy came to ERLS for advice. We talked him through how to make a flexible work request to ask to temporarily reduce his hours to four days a week. ERLS assisted Jeremy to prepare a written request and advised him about his employer's obligations to consider the request and respond within 21 days. We also told Jeremy about his options to pursue the matter at the FWC if his employer did not comply with its obligations and/or rejected the request. Jeremy decided to try this path instead of leaving his job.

From a practitioner perspective, the right to request flexible working arrangements is more effective now that there is a clear pathway to resolution at the FWC.

* name changed for confidentiality

In our view, the changes to flexible work and parental leave introduced by the SJBP Act are operating effectively.

Recommendation

- *To further strengthen the Fair Work Act's provisions regarding requests for flexible work and parental leave, the requirement to have 12 months of service before making a request for flexible work arrangements or unpaid parental leave should be removed from the Fair Work Act.*

Amending the small claims process in the Fair Work Act

The Secure Jobs, Better Pay Act introduced two major changes to the small claims process under the Fair Work Act, namely an increase to the cap on the amount that constitutes a 'small claim' from $20,000 to $100,000, and allowing the court to award filing fees as costs to successful applicants. ERLS had previously called for these changes and we welcome the amendments.

However, we do not believe the reforms go far enough to address the problems facing workers experiencing disadvantage who need to access the court process to recover unpaid wages and entitlements. Even with these changes, the small claims process is too complicated for the majority of the workforce to navigate without assistance, especially for migrant workers who have English as a second language and workers on temporary visas.

The small claims process is overwhelming and confusing for many workers, given the complexity even in establishing a claim and navigating the court process itself, let alone the time-consuming nature of seeing a claim through to its conclusion. The

2021-2022 Federal Circuit Court and Family Court of Australia Annual Report estimates that there was an increase from 137 small claims applications filed in 2021-2022 to 217 small claims applications filed in 2023-2024.[2] The estimated median time between filing and judgment in the general division is still 14.1 months, a figure which is not specific to the Fair Work Division.[3]

It appears from these statistics that while the increase to the cap and possibility of recovering filing fees have helped in providing relief to a small number of individuals, it has also created a larger demand that continues to result in lengthy proceedings. For migrant workers specifically, this can be a significant barrier to initiating a small claims proceeding, given the short nature of their employment, and the likelihood that their visa may not extend to the end of the court process.

Recommendations

In line with our submission to the Department of Workplace Relations' review of the Fair Work Act's small claims procedure in 2023, ERLS continues to recommend:

- *The FWC's jurisdiction should be expanded in order to handle underpayment and wage theft matters. This would streamline the multiple claims a worker can have through a single process, especially given the frequency with which workers tend to have underpayment issues in conjunction with a general protections or unfair dismissal matter.*

Case Study

We advised Charlotte*, an international student working as a cleaner in aged care facilities. She was engaged as a contractor, but it was apparent from her communication with the business that she was an employee, significantly underpaid under the *Cleaning Services Award 2020*. She had also been assaulted by a resident at an aged care facilities where she was cleaning. When she raised this with the business, they did not respond to her concerns, and instead removed her from the WhatsApp group she had been using to communicate regarding her work.

While it was clear that Charlotte had been sham contracted, underpaid, and had experienced adverse action, she was reluctant to escalate the matter either to the

[2] Federal Circuit and Family Court of Australia, *Annual Report 2023-24* (2024) 132.
[3] Ibid, 122.

FWC or the FCFCOA, given her status as an international student on a visa, currently being employed and anxious about meeting her living costs.

* name changed for confidentiality

- *Workers should be allowed to seek penalties from employers and respondents in small claims proceedings, with the aim of deterring repeated and future underpayments or wage theft and compelling them to pay workers correctly going forwards.*

- *Electronic 'service' of documents should be allowed in small claims proceedings, or in the alternative, increased funding to the FCFCOA and FCA to provide assistance to vulnerable workers to serve their claims and prepare affidavits of service.*

- *Given the concern amongst workers on temporary visas that they may no longer be in Australia by the time their claims come before the Court, small claims proceedings should be held virtually if requested by a worker.*

Case Study

We advised Mitchell* who worked as a chef for a restaurant on a 408 visa, for a period of nine months. He was underpaid for his classification under the *Restaurant Industry Award 2020*, as well as penalty rates for working weekends or public holidays, and as he was living on-site, his employer attempted to deduct rent from his pay when there was a downturn in business.

Mitchell had already returned to his home country of Fiji before he could seek advice. Despite the clear underpayment, ultimately, he opted to not pursue the matter further given the impracticality of him being overseas, the unlikelihood of him returning to Australia in the near future, and the lack of certainty as to whether he would be able to appear in court proceedings virtually.

* name changed for confidentiality

- *There should be an increased focus on cultural safety, as migrant workers with limited English language skills often report to ERLS that they find the court process confusing and struggling to understand. This includes not only their claim, but the*

procedure involved, the role of decision-makers and what it means to settle their claim. All Court, FWC and Fair Work Ombudsman staff should be regularly trained in cultural safety and best practice use of interpreters.

Case Study

While not in a small claims proceeding, we assisted a worker, David*, who made an application for a stop bullying order in the Fair Work Commission. David attended a conference with a Fair Work Commissioner and an interpreter.

Ultimately, by the end of the conference, he felt as though a settlement was imposed on him, and that he was not being heard properly, even with the interpreter available. Given his concerns that he had not voluntarily agreed to the settlement and he had limited capacity to advocate for himself, we contacted the Fair Work Commission on his behalf, indicating David's vulnerabilities, our concerns that he had not properly understood the process or what he was agreeing to. We asked the Commissioner to pay careful consideration to David's vulnerabilities and his capacity to engage and understand the proceedings in the next conference that was scheduled.

* name changed for confidentiality

- *The Fair Entitlements Guarantee Act 2012 (Cth) should be amended so that all workers, regardless of their visa status, are able to access the Fair Entitlements Guarantee in the case of an employer's insolvency.*

Case Study

We advised and assisted a group of employees who were employed as waitstaff and kitchen hands for a restaurant that went into administration, and later, liquidation, in 2024. The majority of these employees were on temporary visas, which made the Fair Entitlements Guarantee inaccessible to them. As such, their only form of recourse of recovering their entitlements, which included redundancy pay, annual leave and unpaid shifts, was to go through the liquidation process or use the accessorial liability provisions in section 550 of the Fair Work Act to commence proceedings in the FCFCOA against those involved in contraventions.

Given our clients' limited English-speaking proficiency and their need for interpreters, commencing court proceedings is a difficult option, and the practical

effect of liquidation means that these employees are unlikely to recover the full or even majority of what they are owed.

- *There should be additional funding for the Fair Work Ombudsman and community legal centres to assist workers in calculating underpayment claims, and for community legal centres in particular to be able to deliver community legal education to vulnerable workers.*

Prohibiting job advertisements that would breach the Fair Work Act

The Secure Jobs, Better Pay Act introduced new employer obligations in relation to advertised rates of pay, including by the insertion of section 536AA in the Fair Work Act. ERLS continues to strongly support the policy intent behind these new obligations.

However, we are concerned that section 536AA does not go far enough to protect workers experiencing disadvantage, particularly migrant workers, and workers with limited English skills. In particular, section 536AA may currently inadvertently encourage employers to advertise employment in 'closed' environments (for example, private social media groups and message boards, e.g. WhatsApp) in order to evade detection, or to decline to advertise any specific rate of pay. In our experience delivering advice and casework to affected workers, young people, migrant workers, and other cohorts who are already vulnerable to workplace exploitation may be more likely to seek and find work through closed environments and are likely to lack awareness of industrial instruments that would guarantee them minimum rates of pay and entitlements.

In our experience, many small business employers have limited awareness of industrial laws. We are concerned that section 536AA(3) may encourage or enable a culture of indifference or apathy towards education and awareness of laws relating to employment conditions and entitlements.

Case Study

A recent client of ERLS, Marcus*, moved to Australia intending to send money to family members in his home country. With limited English and few formal qualifications, Marcus turned to a community WhatsApp group chat to find work. Eoin* posted a message in the WhatsApp group chat stating that he was seeking

experienced labourers in Marcus's city who had a 'white card' and a car. Marcus reached out to Eoin privately to express his interest, and Eoin offered to pay him a flat rate of $30 per hour.

After Marcus began working for Eoin, Eoin told Marcus he would only be able to pay him $20 per hour. When Marcus declined to accept this lower rate, Eoin refused to pay him for the work he had already done. After repeated unsuccessful attempts to contact Eoin for his unpaid wages, Marcus reached out to ERLS for help.

ERLS advised Marcus that both the $30 and $20 per hour rates fell below the minimum hourly rate he was entitled to under the relevant modern award. Before coming to ERLS, Marcus was not aware there was a modern award which set his rates of pay and further was not aware that the private job advertisement was in breach of the Fair Work Act. In fact, Marcus was not aware that his agreement to be paid below the relevant minimum rate was unenforceable. ERLS is assisting Marcus to recover the stolen wages.

We note that if Eoin had paid Marcus incorrect wages (rather than failing to pay him at all), Marcus would not have sought assistance and might never have become aware that his employer was underpaying him.

* name changed for confidentiality

Recommendations

- *Section 536AA be amended to include:*
    1. *a requirement that employers must include in any employment advertisement:*
        a. *the specific rate/s of pay; or*
        b. *the applicable industrial instrument which sets the minimum rate/s of pay (e.g. the relevant modern award, or enterprise agreement);*
    2. *a definition of 'advertisement', with reference to private messages or posts on private platforms; and*
    3. *a definition of 'reasonable excuse'.*

Prohibiting sexual harassment in the Fair Work Act

The Secure Jobs, Better Pay Act introduced stronger protection and recourse for people who experience sexual harassment at work. ERLS supports the introduction of changes that further implement Australia's obligations under international human rights treaties such as the Convention on the Elimination of Discrimination Against Women. Importantly, these changes also implement Recommendation 28 of the Respect@Work Report.[4]

Some of the key changes are:

- A prohibition on sexual harassment in connection with work, which is a civil remedy provision and applies broadly to workers, persons seeking to become workers and persons conducting a business or undertaking (section 527D);
- Vicarious liability provisions establishing that an employer will be liable for the acts of its employees unless it has taken all reasonable steps to prevent those acts (section 527E);
- Introduction of a new application to the FWC to deal with a sexual harassment complaint where the sexual harassment occurred on or after 6 March 2023 (section 527F). This is in addition to the existing process for a stop sexual harassment order (section 527J).

Case Study

Merry* came to our service after being sexually harassed by a senior person in her workplace at an after-work function. She hoped that her employer would have clear and safe reporting pathways, but unfortunately this was not the case. She felt unsupported and isolated at work.

We assisted Merry to make a sexual harassment complaint to the Fair Work Commission. She was keen to have the matter dealt with as quickly as possible. Merry's application was reviewed promptly by the Commission and settled just over 6 weeks after lodgement. Merry was happy with the result and relieved to have the matter over so that she could focus on the future.

* name changed for confidentiality

ERLS has experience supporting workers through the new "deal with" sexual harassment application process at the FWC. In our view this new application is more

[4] Australian Human Rights Commission, *Respect@Work: Sexual Harassment National Inquiry Report* (2020).

appealing to workers than the “stop sexual harassment” option. Unfortunately, many workers who seek our advice have been fired or have resigned following sexual harassment. This means the “stop sexual harassment” option is not available as there is no ongoing connection with the workplace and therefore no ongoing risk of sexual harassment occurring to that individual worker.

The new “deal with” sexual harassment application process at the FWC provides workers with a fast and efficient complaint option. The key advantage of this process over the main other options (in NSW, an Australian Human Rights Commission (‘**AHRC**’) or Anti-Discrimination NSW complaint) is the speed of the process — conciliations are generally listed within 4-6 weeks at the FWC, compared with 3-12 months in other jurisdictions.

We also welcome the aspects of the new sexual harassment complaint process that align with existing processes under anti-discrimination laws. For example, the time limit of 24 months aligns with the time limit for making a sexual harassment complaint to the AHRC.

One area in which the complaint processes are not aligned is victimisation. Victimisation of a worker after they have made a complaint about sexual harassment is unfortunately common. In the FWC, a worker who experienced sexual harassment and victimisation would have to make two complaints — a sexual harassment “deal with” application and a general protections application. This leads to several issues, including:

- If the victimisation involves dismissal from employment, the time limit for a general protections application about this aspect of the matter is 21 days. This is too short a period of time to make an application within, particularly for people experiencing trauma caused by sexual harassment at work;
- In our experience, the FWC has been responsive to complainants in this position and have made adjustments to combine the sexual harassment and general protections complaints for the conciliation process. However, it is not clear in the legislation or the FWC’s website that this will happen; and
- If the matter is not resolved by agreement, the complainant faces needing to pursue two separate processes — one to resolve the sexual harassment dispute in the FWC, and another general protections claim which must be taken to court. Again, the decision about going to court must occur within a short 14-day time frame following the issue of a certificate by the FWC.

In the *Sex Discrimination Act 1984* (Cth), victimisation is protected and can be included as part of the same complaint as the sexual harassment itself. This means that

complainants in the AHRC process have only one complaint to make and one process to follow.

There are other benefits of making a complaint to one of the pre-existing anti-discrimination complaint options, including:

- Increased experience of working in trauma-informed ways. For example, conciliations at the AHRC are usually longer than FWC conciliations (half a day compared to 90 minutes) and involve more intensive preparation for conciliation conferences by conciliators including private discussions with the parties;
- Broader provisions regarding sexual harassment. For example, section 28M of the *Sex Discrimination Act 1984* (Cth) prohibits hostile workplace environments on the ground of sex, which captures harmful, discriminatory conduct that would not be covered by Part 3-6A of the Fair Work Act.

It is crucial that workers experiencing sexual harassment have a real choice in choosing the sexual harassment complaint option that works best for them.

Recommendations

- *The Government should amend the 21-day time limit for making a dismissal complaint, bearing in mind that for many workers including those experiencing sexual harassment this time frame is unrealistically short;*
- *The FWC should provide more guidance and clarity about the process for making concurrent sexual harassment and general protections complaints, and simplify this process as much as possible;*
- *The Commonwealth Government should adequately fund the AHRC to continue its work in handling sexual harassment complaints in a trauma-informed, timely way, so that workers have a genuine and fair opportunity to choose the best jurisdiction for their complaint.*

Strengthening protections against discrimination in the Fair Work Act

ERLS supports the strengthening of discrimination protections in the Secure Jobs, Better Pay Act, such as the amendments to section 351(1) of the Fair Work Act, which expand the categories of protected attributes to intersex status, gender identity and breastfeeding.

These amendments increased the consistency between the Fair Work Act and the *Sex Discrimination Act 1984* (Cth),[5] which ERLS considers an important step towards the goal of a consolidated and comprehensive discrimination law framework in Australia.

However, we note that section 351(2)(a) of the Fair Work Act operates as a significant restriction on the protections afforded to workers by section 351(1). That is, section 351(1) does not apply to action that is not unlawful under any anti-discrimination law in force in the place where the action is taken. This renders any section 351(1) protection in the Fair Work Act meaningless if the same protection is not available in the applicable State laws.

For this reason, the protections against discrimination on the basis of gender identity and intersex status will not be provided to workers in NSW. While the *Anti-Discrimination Act 1977* (NSW) does protect against sex discrimination, the Act does not protect people from discrimination on the basis of their gender identity if they are non-binary or gender diverse, or on the basis of their intersex status.

Recommendation

- *Section 351(2) should be repealed in its entirety or be amended to confine its operation to statutory exemptions or defences at the state level.*

Please let us know if you have any questions about this submission. You can reach the Employment Rights Legal Service at coordinator@erls.org.au.

Yours sincerely,

Yuvashri Harish
Coordinator
EMPLOYMENT RIGHTS LEGAL SERVICE

[5] These attributes were already protected by section 14 of the *Sex Discrimination Act 1984* (Cth). Gender identity and intersex status were included in the Sex Discrimination Act by the *Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013* (Cth).