

AS TABLED IN THE HOUSE OF ASSEMBLY

A BILL

entitled

HUMAN RIGHTS AMENDMENT ACT 2013

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WHEREAS it is expedient to amend the Human Rights Act 1981 to broaden the criteria for protection against discrimination and to bring about greater efficiency in the administration of the Human Rights Act 1981;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

1 This Act, which amends the Human Rights Act 1981 (the "principal Act"), may be cited as the Human Rights Amendment Act 2013.

Amends section 2

2 Section 2 of the principal Act is amended—

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- (a) in subsection (1), in the definition of “tribunal”, by deleting the words “appointed under section 18” and substituting “established under section 17A”;
- (b) in subsection (2)(a)(ii) by inserting next after the word “sex” the words “or sexual orientation”;
- (c) in subsection (2)(a), by deleting subparagraphs (iv) and (v) and substituting the following—

“(iv) of his family status;”

- (d) in subsection (2)(b)(i)—
 - (i) by inserting next after the word “sex” the words “sexual orientation,”;
 - (ii) by inserting next after the word “disability,” the words “family status,”;
- (e) in subsection (2)(b)(ii)—
 - (i) by inserting next after the word “sex” the words “sexual orientation,”;
 - (ii) by inserting next after the word “disability,” the words “family status,”; and
- (f) by inserting next after subsection (3)—

“(4) The right to no less favourable treatment because of sex includes the right to no less favourable treatment because a woman is or may become pregnant.”.

Amends section 4

3 Section 4(1) of the principal Act is amended by inserting next after the word “discriminate” the words “based on age or”.

Amends section 5

4 Section 5 of the principal Act is amended—

- (a) in subsection (1) by inserting next after the words “other person” the words “due to age or”; and
- (b) by inserting next after subsection (4) the following—

“(5) For the purposes of this section, a person shall not be taken to discriminate on the basis of age solely by offering goods, facilities or services to persons over the age of 65 free of charge, at a discount or on more favourable terms than the same goods, facilities or services are offered to persons under that age.”.

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Amends section 6

5 Section 6 of the principal Act is amended in subsection (6), after the words “marital status,”, by deleting the words “likelihood of childbirth” and replacing them with the words “family status”.

Inserts section 6C

6 The principal Act is amended by inserting, next after section 6B, the following—

“Prohibition of harassment in other circumstances

6C (1) No person shall pursue a persistent course of conduct—

(a) which amounts to harassment of another person based upon—

(i) age; or

(ii) any of grounds as set out in section 2(2); and

(b) which the person knows or ought to know amounts to harassment of another person.

(2) For the purpose of subsection (1), the person whose persistent course of conduct is in question ought to know that it amounts to harassment of another person if a reasonable person, in possession of the same information, would think the persistent course of conduct amounted to harassment of the other person.

(3) Subsection (1) does not apply to a persistent course of conduct if the person who pursued it shows that—

(a) it was pursued for the purpose of preventing or detecting crime;

(b) it was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment; or

(c) in the particular circumstances the pursuit of the persistent course of conduct was reasonable.”.

Amends section 7

7 Section 7(3) of the principal Act is amended by—

(a) inserting next after the word “sex” the words “or sexual orientation,”; and

(b) inserting before the words “marital status” the words “, family status or”.

Amends section 8A

8 Section 8A(3) of the principal Act is amended by replacing the full stop at the end of paragraph (b) with the words, “; and” and inserting the following after paragraph (b)—

“(c) the expression “publish or display” includes publishing or displaying by way of recorded telephone discussions, internet, e-mails recorded in print or recorded on the internet, radio,

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television or any other electronic medium or communication device.”.

Inserts section 14J

9 The principal Act is amended by inserting, next after section 14I, the following—

“Mediation

14J (1) The Office of the Human Rights Commission may offer parties mediation or conciliation under this section if, having regard to all of the circumstances of the case, the conciliation or mediation is suitable in such circumstances.

(2) The Office of the Human Rights Commission may authorise any person, deemed fit by the Commission, as mediator in any mediation.

(3) Anything said or admitted during the mediation and any document prepared for the purposes of such mediation—

(a) shall not be admissible in evidence in any subsequent investigation of the complaint that is the subject of the investigation unless the person who said or admitted the thing, or to whom the documents relate, consents to its admission; and

(b) shall not be admissible in evidence against any person in any court or at any inquiry or in any other proceedings,

and no evidence in respect of the mediation may be given against any person.”.

Amends section 16

10 Section 16 of the principal Act is amended, in the headnote, by deleting “Powers of the Executive Officer of the Commission” and substituting “Powers to collect evidence”.

Inserts section 17A

11 The principal Act is amended by inserting, next after section 16, the following—

“Tribunal

17A There is established a Tribunal which, subject to the provisions of this Act, shall be responsible for hearing complaints.”.

Amends section 18

12 Section 18(1C)(d) of the principal Act is amended by deleting the words “Executive Officer” and substituting the word “Commission”.

Repeal and replace section 20(6)

13 Section 20(6) of the principal Act is repealed and replaced with the following—

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“(6) The Tribunal may dismiss a complaint at any stage of the proceedings.”.

Commencement

14 This Act shall come into operation on such day, as the Minister may appoint by notice published in the Gazette.

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EXPLANATORY MEMORANDUM

This Bill seeks to amend the Human Rights Act 1981 (the “principal Act”).

Clause 1 states the citation of the Bill.

Clause 2 amends section 2 of the principal Act by: (1) clarifying the definition of “tribunal”; (2) deleting “lawful wedlock” and replacing with “of his family status”; (3) adding the criteria of “sexual orientation”; (4) clarifying that the right to no less favourable treatment because of sex includes the right to no less favourable treatment because a woman is or may become pregnant.

Clause 3 amends section 4(1) of the principal Act, adding the criteria of age.

Clause 4 amends section 5 of the principal Act, prohibiting discrimination due to age but in relation to the provision of goods, facilities and services. Clause 5 also deems it not to be discriminatory for persons 65 years of age and over to receive free, discounted or more favourable goods, facilities or services than may be offered to persons under the age of 65 years of age.

Clause 5 amends section 6(6) of the principal Act by deleting the words “likelihood of childbirth” and replacing them with the words “family status”.

Clause 6 amends the principal Act by inserting section 6C, thereby adding the prohibition against harassment in other circumstances (i.e. in circumstances other than those dealt with by section 6B and section 9 of the principal Act).

Clause 7 amends section 7(3) of the principal Act, adding the criteria of sexual orientation.

Clause 8 amends section 8A(3) of the principal Act, broadening the expression of “publish or display” to include publication or display by : (1) recorded telephone discussions; (2) internet; (3) e-mails recorded in print or recorded on the internet; (4) radio, (5) television; or (6) any other electronic medium or communication device.

Clause 9 amends the principal Act by adding section 14J, to allow complaints to be settled by way of conciliation or mediation.

Clause 10 amends the section 16 headnote of the principal Act in order to correct an error.

Clause 11 amends the principal Act by adding section 17A, to clarify the establishment of a Tribunal by way of the Act.

Clause 12 amends section 18(1C)(d) of the principal Act by deleting the words “Executive Officer” and replacing them with the word “Commission”.

Clause 13 repeals and replaces section 20(6) of the principal Act, thereby allowing a Tribunal to dismiss a complaint at any stage of proceedings.

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Clause 14 sets out the commencement provision.