

1992

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

DISABILITY DISCRIMINATION BILL 1992

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments to be Moved on Behalf of the Government

(Circulated by authority of the Minister for Health, Housing and Community
Services, the Honourable Brian Howe MP and the Attorney-General the Honourable
Michael Duffy MP)

DISABILITY DISCRIMINATION BILL 1992

Outline of Amendments

This Bill was introduced on 26 May 1992 and allowed to lie in the Parliament to allow for interested parties to make further comment. As a result of that comment the Government has agreed to make certain amendments to the Bill.

1. There will be an amendment to replace the terms "relatives and associates" in the Bill with a single term dealing with associates only. This will result in the majority of the amendments proposed.
2. There will be a number of amendments to Clause 4 relating to definitions, the majority of which flow on from the decision to only use the term associates in the Bill. Associate will now be defined.
3. Clause 8 will be amended to make it clear that carers are included within the terms of that section.
4. There will be an addition to Clause 27 to make it clear that clubs which are either restricted to people with disabilities or have different categories of membership depending on disability can continue to operate.
5. An educational institution is to be added to the definition of service provider for the purposes of who can produce an Action Plan under Clause 59.
6. Clause 79 is to be amended to require the Commission to be satisfied that a person who notifies the Commission that they do not want a complaint to continue does so understanding the effect of the notification and not under duress.
7. Clause 90 is to be amended to make it clear that representative complaints can be brought on behalf of groups of people with disabilities by people who are not members of that group.
8. Clause 132 will be amended to provide that the Governor-General is to take account of any comments that are made to the Minister responsible for this bill by relevant State and Territory Ministers relating to which laws should be prescribed under clause 47 as being able to continue to discriminate after the three year deadline set out in clause 47.
9. There will be a number of other minor and technical amendments.

Financial Impact Statement

These amendments are not expected to add significantly to the cost of implementing the legislation nor on possible costs to Government agencies.

Notes on Clauses

Clause 4 - Interpretation

"associate"

- (1) In this clause a new definition is added entitled "associates". This word is defined to include a broad range of people who may have an association with a person who has a disability. It includes spouse, relative, carer, a person living with another on a genuine domestic basis and others. The definition is not intended to be exhaustive but simply to show those relationships which are definitely included within it.

"de facto spouse"

- (2) The definition of de facto spouse has now been omitted.

"relative"

- (3) The definition of relative will now be amended so that it now includes only a person who is related by blood, marriage, affinity or adoption. Affinity is primarily included in the definition to deal with extended family type relationships such as those which exist in Aboriginal and Torres Strait Islander cultures.

"services"

- (4) The definition of services will be amended to include superannuation as well as insurance.

Clause 8 - Disability discrimination interpreters, readers and assistants

- (5)-(6) This clause presently talks about people who are interpreters, readers and other assistants and it has been pointed out that this may not be broad enough to include carers who provide general assistance to people with disabilities. The term carers is now added to this clause.

Clauses 15 to 23

- (7)-(21) These amendments are necessary to replace the existing references to relatives which are contained in the Bill. Relatives is now part of the definition of associates.

Clause 23 - Access to premises

- (22) In addition to the removal of the words "relatives or" from this clause as set out in amendment 20 the word inaccessible is misspelt and that is now corrected.

Clauses 24 to 27

- (23)-(28) These amendments are required for the same reason as for those to clauses 15 to 23 above.

Clause 27 - Clubs and incorporated associations

- (29) Clause 27 is amended by including an additional paragraph (4) which is designed to make it clear that the provision of this Bill will not render it unlawful for clubs to restrict membership or categories of membership to people with disabilities or particular disabilities.

This provision is similar in intent to that contained in s25 of the *Sex Discrimination Act 1984*.

Clause 28 - Sport

- (30) There are two amendments to this clause. The first, (30), is required for the same reason as (7)-(21) above.
- (31) The second amendment is necessary to keep the wording of the provision internally consistent as a disability or a particular disability are used earlier in this paragraph.

Clause 29 - Administration of Commonwealth laws and programs

- (32) see (7)-(21) above.

Clause 30 - Requests for information

- (33) This amendment is intended to make it clear that the provisions of the Part are to be taken as a whole when deciding what is unlawful under the provisions of the Part. The present wording may have given the impression that the provisions of Divisions 1 and 2 were not to be read subject to the exemptions contained in Division 5.

Clauses 36, 38 and 40

- (34)-(36) These amendments are required for the same reason as amendments (6) to (20) above.

Clause 59 - Interpretation

- (37) It was intended that "service provider" should include an educational institution. This term was inadvertently overlooked during the drafting process and is now inserted into the Bill.

Clause 71 - Inquiries by Commissioner

- (38)-(43) There are a number of minor technical amendments to this clause to correct certain grammatical inconsistencies.

Clause 74 - Directions to persons to attend compulsory conference

- (44)-(46) These amendments are designed to make it clear that when the Commissioner decides that a person would be likely to provide relevant information then the Commissioner has a discretion as to whether or not that person should be called to attend a compulsory conference. The present provision does not make this clear.

Clause 79 - Inquiries into complaints

- (47) Clause 79 obliges the Commission either to not hold an inquiry or to discontinue an inquiry into a complaint where the person aggrieved indicates that they do not want the inquiry to proceed. It is proposed to add that the Commission, before it decides to discontinue dealing with a complaint, must be satisfied that the person who does notify that they do not wish the complaint to proceed understands the effect of the notice and was not put under any pressure to withdraw the complaint.

Clause 90 - Matters to be considered in determination of representative complaints

- (48) The clause as presently worded does not allow for the bringing of complaints on behalf of a group of people with disabilities by a person who is not a member of that group. This is in contrast to the provisions relating to complaints under clause 69. These amendments make it clear that complaints can be made on behalf of a group by a person outside the group.

Clause 100 - Commission may dismiss trivial etc. complaints

- (49) This clause has been redrafted to correct some grammatical errors. There is no change to the effect of the clause.

Clause 101 - President may dismiss trivial etc. complaint referred under subsection 71(5)

- (50)-(51) This clause has also been redrafted for similar reasons to those relating to clause 100. Again there is no change to the effect of the provision.

There is also an amendment to make clear that a complaint is to be regarded as stale when 12 months has elapsed between the act complained of and the time of making a complaint.

Clause 119 - Termination of appointment

- (52) The word "or" is missing from paragraph 119(2)(b) and is inserted by this amendment.

Clause 132 - Regulations

- (53) This provision will require the Minister responsible for this bill to take account of any comments that may be made by relevant State or Territory Ministers relating to which laws should be prescribed for the purposes of

clause 47. This clause provides that certain laws will be able to continue to discriminate after the time limit of 3 years from the commencement of the clause. It is clear that this provision could have considerable impact on State and Territory legislation and it is only appropriate that suitable consultation take place on what States and Territory laws are to be prescribed.



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