

1996

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**SEX DISCRIMINATION AMENDMENT BILL 1996**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Attorney-General,  
the Honourable Daryl Williams AM QC MP)



## SEX DISCRIMINATION AMENDMENT BILL 1996

### OUTLINE

This Bill will amend the *Sex Discrimination Act 1984* (SD Act) in order to implement the outcomes of the statutory review by the Attorney-General of the permanent exemptions in s40(2) and 40(3) of the SD Act as required by s40A of the SD Act. The Attorney-General's review was completed on 31 May 1996 and the review report was tabled in Parliament on 26 June 1996.

The Bill :

- narrows the existing exemptions in subsection 40(2) of the SD Act for anything done by a person in direct compliance with specified taxation legislation in force as at 1 August 1984, to an exemption by reference to marital status discrimination;
- narrows the existing exemption in paragraph (j) of subsection 40(2) for anything done by a person in direct compliance with the *Social Services Act 1980* of Norfolk Island, to provide for an exemption by reference to sex discrimination in relation to eligibility for age pension and to provide for an exemption by reference to marital status discrimination in relation to differential rates of benefits payable and different income thresholds;
- implements a phase out of the existing exemption in paragraph (b) of subsection 40(2) relating to the operation of certain definitions in the *National Health Act 1953* ; and

removes the existing exemption in subsection 40(3) for marital status discrimination arising where a person does anything in direct compliance with any regulations, rules, by-laws, determinations or directions made under the *Gift Duty Assessment Act 1941*.

The amendments to be implemented by the Bill are consistent with Government policy which is that, where possible, all Federal legislation should be consistent with the objectives of the SD Act, and that where exemptions to the SD Act are necessary, they should be limited.

### FINANCIAL IMPACT STATEMENT

These amendments will have a minimal financial impact, if any.

## NOTES ON CLAUSES

### Clause 1 - Short Title

1. Provides for the Act to be cited as the *Sex Discrimination Amendment Act 1996*.

### Clause 2 - Commencement

2. Provides that the Act shall come into operation on the day on which it receives the Royal Assent.

### Clause 3 - Schedule(s)

3. Provides that an Act which is specified in a Schedule is amended or repealed as set out in that Schedule.

## SCHEDULE 1 - AMENDMENT OF THE SEX DISCRIMINATION ACT 1984

### Item 1 - Paragraphs 40(2)(a), (c), (d), (e), (f), (i) and (j)

1.1 Paragraphs (a), (c), (d), (f) and (i) of the SD Act currently provide an exemption from the operation of the SD Act by reference to anything done by a person in direct compliance with the *Gift Duty Assessment Act 1941*, the *Income Tax Assessment Act 1936*, the *International Tax Agreements Act 1953*, the *Sales Tax (Exemptions and Classifications) Act 1935* and the *Taxation (Unpaid Company Tax) Assessment Act 1982* in force on 1 August 1984. The exemption currently covers discrimination on the basis of sex, marital status, pregnancy and potential pregnancy, in the circumstances described.

1.2 This item repeals these paragraphs. However, Item 2 proposes insertion of a new Subsection 40(2A) which will continue the exemption for specified taxation legislation but only in relation to marital status discrimination.

1.3 Paragraph (e) of subsection 40(2) currently provides an exemption for anything done by a person in direct compliance with the *Papua New Guinea (Members of the Forces Benefits) Act 1957*, in force on 1 August 1984. This item removes that exemption.

1.4 Paragraph ((j) of subsection 40(2) of the SD Act currently provides for an exemption from the operation of the SD Act for anything done by a person in direct compliance with the *Social Services Act 1980* of Norfolk Island (the Norfolk Island Act), as in force on 1 August 1984. The exemption is referable to discrimination on the ground of sex, marital status, pregnancy and potential pregnancy. This item removes that exemption. A limited exemption will be inserted by new Subsection 40 (2B), as provided by Item 2.

### Item 2 - After Subsection 40(2)

2.1 This Item inserts three new Subsections in Section 40 of the SDA.

2.2 New Subsection 40(2A) will provide a continued exemption from the SD Act for anything done in direct compliance with the following taxation legislation (as in force on 1 August 1984) in relation to discrimination on the ground of marital status only - the *Gift Duty Assessment Act 1941*; the *Income Tax Assessment Act 1936*; the *International Tax Agreements Act 1953*; the *Sales Tax (Exemptions and Classifications) Act 1935*; and the *Taxation (Unpaid Company Tax) Assessment Act 1982*.

2.3 New Subsection 40(2B) will have the effect of providing a continuing exemption for the *Social Services Act 1980* of Norfolk Island, as in force on 1 August 1984, but only in relation to anything done by a person in direct compliance with either paragraph 16(1)(a) of the *Norfolk Island Social Services Act 1980* in relation to discrimination on the ground of sex, or with item 1 or 2 of the Schedule to that Act in relation to discrimination on the ground of marital status. Paragraph 16(1)(a) of the Norfolk Island Act provides for differential access to age pension for men and women. Items 1 and 2 of the Schedule to the Norfolk Island Act provide for different rates of benefit payable and different income thresholds applicable, on the basis of marital status.

2.4 Paragraph (b) of subsection 40(2) provides for an exemption from the SD Act for anything done by a person in direct compliance with the operation of the definition of "pensioner" or the definition of "concessional beneficiary" in the *National Health Act 1953*. New Subsection 40(2C) will have the effect of phasing out this exemption on 1 January 2014, consistent with the phasing out of differential access to age pension under the federal social security regime.

### **Item 3 - Subsection 40(3)**

3.1 Subsection 40(3) of the SD Act currently provides for an exemption for marital status discrimination where a person acts in direct compliance with any regulations, rules, by-laws, determinations or directions made under the *Gift Duty Assessment Act 1941*, the *Income Tax Assessment Act 1936* or the *Sales Tax (Exemptions and Classifications) Act 1953*.

3.2 Item 3 provides that the exemption for the *Gift Duty Assessment Act 1941* in subsection 40(3) of the SD Act be omitted.