

2002

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Discrimination Amendment Bill 2002 (No 2)

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(Attorney-General)

Discrimination Amendment Bill 2002 (No 2)

A Bill for

An Act to amend the *Discrimination Act 1991*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 **1 Name of Act**

2 This Act is the *Discrimination Amendment Act 2002 (No 2)*.

3 **2 Commencement**

4 This Act commences on the day after its notification day.

5 *Note* The naming and commencement provisions automatically commence on
6 the notification day (see Legislation Act, s 75 (1)).

7 **3 Act amended**

8 This Act amends the *Discrimination Act 1991*.

9 **4 Interpretation for Act**
10 **Section 4 (1), definition of *de facto spouse***

11 *omit*

12 **5 Section 4 (1), new definitions**

13 *insert*

14 *domestic partner*, of a person, means a person who lives with the
15 person in a domestic partnership, and includes a spouse.

16 *domestic partnership* means the relationship between 2 people,
17 whether of a different or the same sex, living together as a couple on
18 a genuine domestic basis.

19 **6 Section 4 (1), definition of *impairment***

20 *substitute*

21 *impairment*—see section 5AA (Meaning of *impairment*).

22 **7 Section 4 (1), definitions of *marital status* and *near***
23 ***relative***

24 *omit*

1 **8 Section 4 (1), new definition of *relationship status***

2 *insert*

3 *relationship status* means the status or condition of being—

- 4 (a) single; or
- 5 (b) married; or
- 6 (c) married but living separately and apart from one's spouse; or
- 7 (d) divorced; or
- 8 (e) widowed; or
- 9 (f) the domestic partner (other than the spouse) of someone else.

10 **9 Section 4 (1), definition of *relative***

11 *substitute*

12 *relative*, of a person, means—

- 13 (a) a person who is related to the person by blood, marriage,
14 affinity or adoption; or
- 15 (b) a domestic partner of the person or of a person mentioned in
16 paragraph (a).

17 **10 New section 5AA**

18 *after section 5, insert*

19 **5AA Meaning of *impairment***

20 (1) In this Act:

21 *impairment* means—

- 22 (a) total or partial loss of a bodily function; or
- 23 (b) total or partial loss of a part of the body; or
- 24 (c) malfunction of a part of the body; or

- 1 (d) malformation or disfigurement of a part of the body; or
2 (e) the presence in the body of organisms that cause or are capable
3 of causing disease; or
4 (f) an illness or condition which impairs a person's thought
5 processes, perception of reality, emotions or judgment or
6 which results in disturbed behaviour; or
7 (g) an intellectual disability or developmental delay.
8 (2) Except in section 49 (Work related discrimination) and section 50
9 (Discrimination by qualifying bodies etc), *impairment* includes an
10 impairment—
11 (a) that the person has, or is thought to have (whether or not the
12 person in fact has the impairment); or
13 (b) that the person had in the past, or is thought to have had in the
14 past (whether or not the person in fact had the impairment); or
15 (c) that the person will have in the future, or is thought will have
16 in the future (whether or not the person in fact will have the
17 impairment).

18 **11 Grounds**
19 **Section 7 (1) (d)**

20 *substitute*

- 21 (d) relationship status;

22 **12 Section 7 (1)**

23 *renumber paragraphs when Act next republished under Legislation*
24 *Act 2001*

1 **13 Domestic accommodation etc**
2 **Section 26**

3 *omit*

4 Nothing in section 21 renders

5 *substitute*

6 (1) Section 21 does not make

7 **14 New section 26 (2)**

8 *insert*

9 (2) In this section:

10 *near relative*, of a person, means—

11 (a) a parent, child, grandparent, grandchild, brother or sister of the
12 person; or

13 (b) a domestic partner of the person or of a person mentioned in
14 paragraph (a).

15 **15 Division 4.2 heading**

16 *substitute*

17 **Division 4.2 Exceptions about sex, relationship**
18 **status, pregnancy or breastfeeding**

19 **16 Section 35**

20 *substitute*

21 **35 Employment of couple**

22 Part 3 does not make unlawful discrimination against a person on
23 the grounds of relationship status in relation to a job that is
24 1 of 2 jobs to be held by a couple in a domestic partnership.

1 **17 Accommodation provided for employees, contract**
2 **workers or students**
3 **Section 39 (1)**

4 *omit everything before paragraph (a), substitute*

- 5 (1) Part 3, in its application in relation to discrimination on the ground
6 of sex, relationship status, pregnancy or breastfeeding, does not
7 make it unlawful for an employer or principal who provides
8 accommodation to employees or contract workers to provide
9 accommodation of different standards to different employees or
10 contract workers if—

11 **18 Work related discrimination**
12 **Section 49 (1)**

13 *substitute*

- 14 (1) Section 10 (1) (b) or (2) (c), section 12 (1) (b) or (2) (c),
15 section 13 (b) or section 14 (1) (a), (2) (a) or (3) (b) do not make
16 unlawful discrimination by a person (the *first person*) against
17 someone else (the *second person*) on the ground of impairment if
18 the first person believes on reasonable grounds that, because of an
19 impairment—

- 20 (a) the second person is, or would be, unable to carry out work that
21 is essential to the position concerned; or
- 22 (b) the second person requires, or would require, to carry out the
23 work, services or facilities that would not be required by a
24 person who does not have the impairment and providing the
25 services or facilities would impose unjustifiable hardship on
26 the first person.

1 **19 New section 49 (3)**

2 *insert*

3 (3) In this section:

4 *impairment*, of a person, includes an impairment that the person
5 has.

6 *Note* *Impairment* is defined for the Act in s 5AA (1).

7 **20 Discrimination by qualifying bodies etc**
8 **Section 50**

9 *omit*

10 Nothing in section 16 renders

11 *substitute*

12 (1) Section 16 does not make

13 **21 New section 50 (2)**

14 *insert*

15 (2) In this section:

16 *impairment*, of a person, includes an impairment that the person
17 has.

18 *Note* *Impairment* is defined for the Act in s 5AA (1).

19 **22 Section 85**

20 *substitute*

21 **85 Conciliated agreements**

22 (1) If a complaint has been resolved by conciliation, the commissioner
23 must help the parties make a written record (the *agreement*) of the
24 agreement they have reached.

25 (2) Each party must sign the agreement.

- 1 (3) The commissioner must—
2 (a) give each party a copy of the agreement; and
3 (b) tell the parties that the commissioner will not take any further
4 action about the complaint to which the agreement relates; and
5 (c) give the agreement to the tribunal.
6 (4) The agreement is enforceable as if it were an order of the tribunal.
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Endnote

Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.