

2000

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

DISCRIMINATION AMENDMENT BILL 2000

EXPLANATORY MEMORANDUM

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ATTORNEY-GENERAL**

DISCRIMINATION AMENDMENT BILL 2000

BACKGROUND

The *Discrimination Act 1991* ("the Act) prohibits various types of discrimination based on, for example, race, sex, religion, impairment, marital status, pregnancy and status as parent or carer. It is also unlawful to discriminate on the basis of age. The Act aims to remove such types of discrimination from the workplace, educational areas, in the provision of goods, services, facilities and accommodation, club activities and in relation to access to premises, subject only to specified exemptions in the Act.

The Discrimination Amendment Bill 2000 amends the Act to allow credit providers to take a person's age into account as part of the process of assessing an application for credit. A number of factors are taken into account when assessing a person's credit risk, such as income, assets, credit history, employment and residential stability. Age is simply another of these factors and does not alone determine grounds for rejection of credit applications.

This amendment will only allow age to be used as a relevant factor where there is objective evidence based on statistical or actuarial data, or other data which is reasonable to rely on, that a person's age puts him or her in a higher or lower risk category than other persons. The discrimination must also be reasonable. Further, the Discrimination Tribunal and the Discrimination Commissioner can require the credit provider to provide the sources of the data and any other factors relied on.

REVENUE/COST IMPLICATIONS

There are no revenue or cost implications.

DETAILS OF THE DISCRIMINATION AMENDMENT BILL 2000

Clauses 1, 2 and 3 are formal provisions. They refer to the name of the Bill, its commencement and the Act being amended by it. Clauses 1 and 2 will commence on the day the Bill is notified in the Gazette. Clauses 3 and 4, the remaining provisions in the Bill, will commence on a day fixed by the Minister by notice in the Gazette. If those provisions have not commenced within 6 months of the Bill's gazettal, they will automatically commence at the end of that period. The delayed commencement will allow finance providers a period of time to become aware of and make any necessary arrangements to accommodate the new law.

Clause 4 inserts a new provision into Part 4, Division 6 of the *Discrimination Act 1991*. New section 57MA is an exception to the general rule under section 7 that prohibits discrimination on the ground of age. It permits a credit provider to discriminate against a credit applicant on the basis of age by refusing credit, or in the terms on which credit is given when the credit contract is entered into. To rely on this exception, the credit provider's decision must be:

- based on reliable, actuarial or statistical data, or in the absence of this, other data on which it is reasonable for the credit provider to rely; and
- the criteria for refusal or the terms imposed must be reasonable in the context of the available data and any other relevant factors.

Further, the credit provider must be prepared to tell the Discrimination Tribunal and the Discrimination Commissioner the sources on which the data is based and the relevant factors if asked to do so. This provision is a measure designed to ensure that the material relied upon is of high integrity and therefore a reliable source, as opposed to information which may have been obtained based on hearsay and stereo-typical views.

Paragraph 57MA(1)(a) makes it clear that new section 57MA will only apply to credit applications lodged after the date of commencement of that section and to the initial terms of any credit contract arising from that application. The provision will not apply to existing credit contracts or to the variation of such contracts.