

ACT LEGISLATIVE ASSEMBLY

EXPLANATORY MEMORANDUM

**DISCRIMINATION AMENDMENT
BILL 2002**

CIRCULATED BY HELEN CROSS MLA

Outline

This legislation amends the ACT Discrimination Act 1991. Unlike the Commonwealth, the ACT has one piece of law that addresses discrimination. The Act is structured in such a way as to describe a series of attributes that could apply to a person, then determines what constitutes discrimination and unlawful discrimination. The Act concludes with a general set of exemptions for situations that, while still considered to be discrimination, are considered reasonable grounds for discrimination and are, therefore, lawful.

This legislation adds the concept of potential pregnancy to the list of personal attributes that come under the umbrella of the Act. Existing pregnancy and breastfeeding are already covered by the Act.

The Act as amended would make it unlawful to discriminate against another person by requesting or requiring information (whether by way of completing a form or otherwise) for any purpose covered by the Act, however, the Bill concludes with an exemption to this provision on the grounds of occupational health and safety.

Clause Notes

Clause 1-2 are formal requirements and name the new Act and the day on which it commences.

Clause 3 names the Discrimination Act 1991 as the Act being amended.

Clause 4 adds *potential pregnancy* to the list of defined terms in the Act.

Clause 5 inserts new section 5A into the Act and explains the concept of potential pregnancy. Potential pregnancy includes any reference to the fact that a woman is or may be capable of bearing children; the fact that the woman has expressed a desire to become pregnant; and the fact that a woman is likely, or is perceived as being likely, to become pregnant.

Clause 6 inserts potential pregnancy into the list of personal attributes to which the Act applies.

Clause 7 renumbers section 23 by establishing existing wording into subsection (1) thus providing the opportunity to insert an additional subsection.

Clause 8 inserts new subsection 23 (2). This new provision provides clarity to the Act through making it unlawful to request a person to provide information about a personal attribute listed in section 7 if under the same circumstances the same information would not be required about a person who did not have that attribute.

An example would be an employer who in an interview intended to ask a woman if she intended to become pregnant, but who did not intend to ask the same question to a man. In combination with sections 8 and 10, this subsection would make such an example unlawful on the grounds that there was an intention to use the information about potential pregnancy as a selection criteria for employment (section 10) and that such behaviour was discriminatory (section 8).

Clause 9 inserts new section 33A and provides for an exemption to requests for information as outlined in section 23 on the sole ground of reasonable health and safety requirements at work that were relevant to the employment or work. The example is included for a woman who applied for work as a radiologist. In this situation, it would be reasonable for the woman to be asked whether she was pregnant if that information was requested in order to ensure that the woman's unborn child was not endangered by exposure to x-rays.

As noted above in clause 8, the information gained from such a question would not constitute grounds for lawful discrimination because sections (8) and (10) of the Act would still apply.