

1993

AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY

DISCRIMINATION (AMENDMENT) BILL (No. 3) 1993

EXPLANATORY MEMORANDUM

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## DISCRIMINATION (AMENDMENT) BILL (NO. 3) 1993

## OUTLINE

The object of this Bill is to amend the *Discrimination Act 1991* to make discrimination because of age unlawful by adding age to the grounds listed in section 7 of the Act. This means it will be unlawful to discriminate because of age in the areas of work; education; access to premises; goods, services and facilities; accommodation; clubs and in requests for information. The existing complaint mechanism based on conciliation and the more formal powers of determination will apply to complaints of age discrimination.

Apart from the exception for superannuation, the general exceptions in the *Discrimination Act 1991* will also apply to the age discrimination ground. The Bill introduces a partial exception for superannuation in respect of age discrimination.

This Bill inserts proposed Section 57 into Part IV of the Principal Act which introduces additional exceptions in this Bill that will apply only to the ground of age.

**Clause 1: Short title**

The legislation may be referred to as the *Discrimination (Amendment) Act (No. 3) 1993*

**Clause 2: Commencement**

The Act will commence on the day on which it is notified in the Gazette.

**Clause 3: Principal Act**

The "Principal Act" means the *Discrimination Act 1991*.

**Clause 4: Grounds**

Section 7 of the *Discrimination Act 1991* will be amended to include the attribute of age.

**Clause 5: Adoption**

Proposed section 25A is an exception for decisions made under specific sections of the *Adoption Act 1993* to place names of applicants on a register of persons seeking the placement of a child for the purpose of adoption, for placing a child in the custody of applicants pending determination of the application or for the reconsideration of such decisions by the Director of Family Services after a request for review. This means these decisions will not be subject to the provisions of the *Discrimination Act 1991* as amended.

## **Clause 6 Superannuation**

Section 29 of the *Discrimination Act 1991* will be amended so that the exception for superannuation will only apply where the discrimination:

- occurs because of the application of standards under the Commonwealth *Occupational Superannuation Standards Act 1987* or to comply with or obtain a benefit under a Commonwealth law;
- is based on valid statistical information that is reasonable or is reasonable because of other relevant factors.

This partial exception will not apply to existing superannuation fund conditions as they apply to those who became members within 12 months of the commencement of this Act.

## **Clause 7 Exceptions relating to age**

There are a number of exceptions relating to the age ground that will be included in a new Division 6 in Part IV of the *Discrimination Act 1991*.

### **· Genuine Occupational Qualifications**

Proposed section 57A will allow age discrimination in the area of work in certain specified circumstances if the job requires that the person be of a particular age. These circumstances are dramatic performances, work as an artist's or photographic model and the provision of welfare services for a particular age group where the service is best provided by someone of that age.

### **· Youth wages**

Proposed section 57B will permit the payment of youth wages in accordance with current awards and offers of employment to be made to those subject to youth award provisions.

### **· Employment and work - health and safety**

Proposed section 57C will allow an employer to impose certain employment conditions where that can be justified for reasonable for health and safety reasons that are relevant to the employment or work:

### **· Compulsory retirement**

Proposed section 57D provides a temporary exception for compulsory retirement because of age. This means that while the exception operates, it is not unlawful age discrimination to set an age for compulsory retirement or require a person to retire because of their age. This exception will cease automatically for private sector employees two years after the commencement of the legislation. It will cease for Territory employees by notice in the Gazette, although that cannot occur earlier than two years after the commencement date.

### **Education**

The proposed section 57E will permit in some circumstances the setting of minimum age limits at educational institutions. The kind of circumstances permitted by the exception would be setting a minimum age for school commencement or mature age admission schemes.

Proposed section 57F will permit the setting of a maximum age limit for the completion of senior secondary college. This exception will cease to operate on 1 January 1996.

### **Legal capacity**

Proposed section 57G will mean that the legislation does not affect the laws relating to legal capacity because of age where they are relevant to a transaction.

### **Benefits and concessions**

Proposed section 57H means that *bona fide* benefits, including concessions, provided on the basis of age would not be unlawful age discrimination. This exception will apply to all of Division 2 of Part III of the *Discrimination Act* and so will apply to clubs that provide concessions based on age.

### **Goods, services and facilities - health and safety**

Proposed section 57J permits age discrimination in the provision of goods and services or in access to premises to comply with reasonable and relevant health and safety requirements.

### **Recreational tours and recreational accommodation**

Proposed section 57K means that it will be not be unlawful to limit recreational tours and recreational accommodation to certain age groups.

### **Clubs**

Proposed section 57L means that it is not unlawful for clubs formed to cater for a particular age group to discriminate on the ground of age in the provision of goods and services or admitting members or providing benefits to members.

### **Sport**

The exception in the proposed section 57M will mean that it is not unlawful age discrimination to hold sporting competitions for people of particular age groups. This exception does not apply to coaching, umpiring, to the administration of sport or any sporting activity prescribed by regulations.