

**1989-90-91**

**AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY**

**TEACHING SERVICE (AMENDMENT) BILL 1991**

**EXPLANATORY MEMORANDUM**

**Circulated by authority of  
Terry Connolly, MLA  
Attorney General**

**AUSTRALIAN CAPITAL TERRITORY  
TEACHING SERVICE (AMENDMENT) BILL 1991**

**OUTLINE**

This Bill amends the *Teaching Service Act 1972* to provide for equal opportunity in appointment and promotion of staff, and to ensure that these are based on the principle of merit. The Bill also requires the establishment of an equal opportunity program to assist in preventing unlawful discrimination and to promote equal opportunity for women and people in minority groups, as well as for others, to advance their careers in the Service.

These amendments correspond to similar amendments being made to the establishing Acts of ACT public authorities as part of the package of legislation surrounding the introduction of the *Human Rights and Equal Opportunity Bill 1991*.

The amendments are based on the equal opportunity provisions of the *Public Service Act 1922* and will therefore make the *Teaching Service Act* consistent with the law applying in the rest of the ACT public sector.

**Financial Considerations:** There are no financial considerations involved.

**FORMAL CLAUSES**

Clause 1 and 2 are formal requirements. They refer to the short title of the Bill, and definition of the Principal Act.

Clause 3 removes sexist language from section 20 of the Principal Act by substituting 'the person' for 'he'.

**AMENDMENTS**

Clause 4 amends section 21 of the Principal Act by removing age restrictions for appointments.

Clause 5 repeals the heading to Division 7 ("*Equal Employment Opportunity Programs*") and replaces it with the heading "*Personnel Management*".

Clause 6 amends section 38 of the Principal Act by removing some of the interpretations and inserting others. It provides

- . a definition of "designated group";
- . a new definition of "unjustified discrimination" referred to below in paragraph 39(1)(a);
- . removes the definition of "program"; and
- . substitutes a new definition of "equal employment opportunity program" in subsection 38(2) of the Principal Act.

**Clause 7** repeals sections 39 and 40 and substitutes new section 39. This is to ensure that each component of the Service is covered by the amendments.

**Section 39** contains subsections (1) to (9):

**Application of the Bill to the Service's 'powers in relation to employment matters'**

The key provisions of the Bill appear in paragraphs 39(1) and 39(2). These apply respectively

- to the exercise of the Service's 'powers in relation to employment matters'; and
- in relation to selection of persons for engagement as employees of the Service.

An 'employment matter' is defined in section 38 of the Principal Act and includes selection for engagement as an officer or temporary employee, promotion and transfer of officers, transfer of temporary employees, training and staff development, conditions of service and any other matter related to the employment of persons by the Service.

**Prohibition of unjustified discrimination, patronage and favouritism**

**Paragraph 39(1)(a)** provides that decisions in relation to employment matters shall be made without unjustified discrimination, patronage and favouritism. 'Unjustified discrimination' as inserted in section 38 of the Principal Act includes discrimination on the ground of age and social origin, and discrimination prohibited by the *Human Rights and Equal Opportunity Act 1991*. According to the definition discrimination is not unjustified and is therefore permissible if:

- it is not unlawful under the Human Rights and Equal Opportunity Act 1991, is essential for the effective performance of the work required and is prescribed; or
- it is not unlawful and is in accordance with an equal opportunity program for the Service or other program established by the regulations.

**Paragraph 39(1)(b)** provides that employment decisions must be made with regard to the equal opportunity program of the relevant component of the Service.

An equal employment opportunity program for a component is defined in section 38 as a program designed to ensure that unjustified discrimination against designated groups such as Aboriginal people is eliminated and that such groups and women can have, along with others, equal opportunity to compete for promotion and transfer in that component, and for advancement and career development.

Subsections 14B(4) to 14B(7) set out procedures for establishing and reviewing the programs.

### **Application of Merit Based Principles to Employment Decisions**

**Subsection 39(2)** requires that decisions on the selection of persons for engagement by the relevant authority as employees of a component are made in accordance with procedures ensuring

- potential applicants, as far as is practicable, have a reasonable opportunity to apply for positions; and
- assessment is on the basis of merit, that is the relative suitability for the position, given the nature and requirements of the job, and the relevant abilities, qualifications, experience, personal qualities and potential for development of the applicant.

The subsection does not apply to temporary staff employed for a period of less than 3 months.

The legislation makes it clear that practicality and reasonableness are the benchmarks for required procedures. The intention of the Bill is to exclude impractical measures or unreasonable and unaffordable advertising and selection procedures as a requirement for appointment and promotion.

**Subsection 39(3)** ensures that the Authority can also make reports or recommendations for carrying out of the principles established by this Act.

### **Equal opportunity program**

**Subsection 39(4)** provides that any equal employment opportunity program for a component of the Service existing immediately before this Bill comes into force is to remain in force.

**Subsection 39(5)** requires the relevant authority of a component of the Service which does not currently have one to develop, after consultation with relevant unions and other appropriate persons, an equal employment opportunity program for that component.

**Subsection 39(6)** requires the relevant authority for each component to periodically review the effectiveness of the equal opportunity program and consult with relevant staff organisations and other organisations considered appropriate. A 'relevant staff organisation' is defined in section 4 of the Principle Act as an organisation within the meaning of the *Industrial Relations Act 1988 (C'th)* of which employees of the Authority would be eligible for membership.

**Subsections 39(7), (8) and (9)** require the relevant authority for each component to provide details of the program to the Head of Administration and to take any necessary action to give effect to the equal employment opportunity program. The Head of Administration may issue guidelines on the provisions, development, implementation or review of the program.

Measures adopted by the smaller statutory authorities in establishing equal employment opportunity programs will not have to be as extensive or

complex as those of the larger authorities. Also EEO programs may be adapted to the particular nature and needs of the authority involved. Details can also be dealt with in the Guidelines as established by the Head of Administration.

**Clause 8** provides for substitution of the gender-neutral term 'Chairperson' for the term 'Chairman' wherever occurring.