

2003

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Mrs Helen Cross)

Discrimination (Genetic Status) Amendment Bill 2003

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Legislation amended	2
4 Grounds	
New section 7 (ja)	2
5 Section 7	2
6 Insurance	
Section 28	3
7 New section 28 (2)	3
8 Superannuation	
New section 29 (1A)	3
9 Section 29	3

Contents

10	Dictionary, new definitions	Page 3
Schedule 1	Other amendments	5
Part 1.1	Crimes Act 1900	5
Part 1.2	Health Records (Privacy and Access) Act 1997	8

2003

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Mrs Helen Cross)

Discrimination (Genetic Status) Amendment Bill 2003

A Bill for

An Act to amend the *Discrimination Act 1991*, and for other purposes

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

1 **1 Name of Act**

2 This Act is the *Discrimination (Genetic Status) Amendment Act*
3 *2003*.

4 **2 Commencement**

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

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

8 **3 Legislation amended**

9 This Act amends the *Discrimination Act 1991*.

10 *Note* This Act also amends the following legislation (see sch 1):
11 • *Health Records (Privacy and Access) Act 1997*
12 • *Crimes Act 1900*.

13 **4 Grounds**
14 **New section 7 (ja)**

15 *insert*

16 (ja) a genetic characteristic or a genetic predisposition to a
17 condition or disease;

18 **5 Section 7**

19 *renumber paragraphs when Act next republished under Legislation*
20 *Act*

6 Insurance
Section 28

omit

Part 3

substitute

(1) Part 3

7 New section 28 (2)

insert

(2) Subsection (1) does not apply to the use of predictive genetic information to discriminate against a person in relation to the terms on which an annuity or a policy of insurance is offered to, or may be obtained by, the person.

8 Superannuation
New section 29 (1A)

insert

(1A) Subsection (1) does not apply to the use of predictive genetic information to discriminate against a person in the terms or conditions relating to a superannuation or provident fund or scheme.

9 Section 29

renumber subsections when Act next republished under Legislation Act

10 Dictionary, new definitions

insert

genetic testing includes gene testing (DNA testing) and biochemical testing (protein testing).

- 1 ***predictive genetic information*** means information obtained by
2 genetic testing that identifies a genetic predisposition to a condition
3 or disease.

Schedule 1 Other amendments

(see s 3)

Part 1.1 Crimes Act 1900

[1.1] Section 7A, note 1

insert

- s 49G (Genetic testing without consent)
- s 49H (Unlawful obtaining of genetic testing consent)

[1.2] New part 2B

insert

Part 2B Genetic testing

49F Definitions for pt 2B

In this part:

genetic testing includes gene testing (DNA testing) and biochemical testing (protein testing).

relevant person, for a sample, means—

- (a) if the person from whom the sample is taken is an adult (other than a person mentioned in paragraph (c))—that person; and
- (b) if the person from whom the sample is taken is a child—a person who has custody of the child; and
- (c) if the person from whom the sample is taken is otherwise incapable of consenting to having a medical test carried out—the person who has the care and control of that person.

1 *sample* means any sample of a person's body tissue, and includes a
2 sample of the person's blood, saliva or hair.

3 **49G Genetic testing without consent**

4 (1) A person commits an offence if—

5 (a) the person—

6 (i) takes a sample from someone else for the purpose of
7 genetic testing; or

8 (ii) submits a sample from someone else for genetic testing;
9 or

10 (iii) conducts genetic testing on a sample from someone else;
11 and

12 (b) a relevant person has not consented to the taking of the sample
13 for the purpose of genetic testing; and

14 (c) the person knows that a relevant person has not consented to
15 the taking of the sample for the purpose of genetic testing.

16 Maximum penalty: 200 penalty units, imprisonment for 2 years or
17 both.

18 (2) A person commits an offence if—

19 (a) the person—

20 (i) takes a sample from someone else for the purpose of
21 genetic testing; or

22 (ii) submits a sample from someone else for genetic testing;
23 or

24 (iii) conducts genetic testing on a sample from someone else;
25 and

26 (b) a relevant person has not consented to the taking of the sample
27 for the purpose of genetic testing; and

1 (c) the person is reckless about whether a relevant person has
2 consented to the taking of the sample for the purpose of genetic
3 testing.

4 Maximum penalty: 100 penalty units, imprisonment for 1 year or
5 both.

6 (3) This section does not apply to a person acting in accordance with—

7 (a) a law in force in the Territory relating to the taking of forensic
8 samples; or

9 (b) a court order.

10 **49H Unlawful obtaining of genetic testing consent**

11 (1) A person commits an offence if the person—

12 (a) obtains by deception a relevant person's consent to the taking
13 of a sample for the purpose of genetic testing; or

14 (b) coerces a relevant person to consent to the taking of a sample
15 for the purpose of genetic testing.

16 Maximum penalty: 200 penalty units, imprisonment for 2 years or
17 both.

18 (2) Without limiting subsection (1) (b), a person coerces someone to
19 give consent if the person requires the consent—

20 (a) as a condition or precondition of someone's employment; or

21 (b) as a condition or precondition for the provision of insurance
22 services or health services.

1 **Part 1.2 Health Records (Privacy and**
2 **Access) Act 1997**

3 **[1.3] Section 4, definition of *health service*, paragraph (a)**

4 *substitute*

5 (a) any activity that is intended or claimed (expressly or by
6 implication), by the person performing it—

7 (i) to assess, record, improve or maintain the physical,
8 mental or emotional health of a consumer; or

9 (ii) to diagnose or treat an illness or disability of a consumer

10 including an activity relating to the collection of genetic
11 information about a predisposition of the consumer to illness or
12 disability; or

13 **[1.4] Section 4, definition of *personal health information***

14 *substitute*

15 *personal health information*, for a consumer, means any personal
16 information—

17 (a) relating to the health, an illness or a disability of the consumer;
18 or

19 (b) collected by a health provider in relation to the health, an
20 illness or a disability of the consumer;

21 whether or not the information is recorded in a health record, and
22 includes genetic information about a predisposition of the consumer
23 to illness or disability.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2003.

2 Notification

Notified under the Legislation Act on 2003.

3 Republications of amended laws

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

© Australian Capital Territory 2003