

1993
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

**Discrimination (Amendment) Bill (No. 3)
1993**

A BILL
FOR

An Act to amend the *Discrimination Act 1991*

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

Short title

- 5 1. This Act may be cited as the *Discrimination (Amendment) Act (No. 3) 1993*.

Commencement

2. This Act commences on the day on which it is notified in the *Gazette*.

Principal Act

- 10 3. In this Act, "Principal Act" means the *Discrimination Act 1991*.¹

83090 1992/202 (T90/93)

Grounds

4. Section 7 of the Principal Act is amended by inserting after paragraph (1) (ia) the following paragraph:

“(ib) age;”.

5 Insertion

5. After section 25 of the Principal Act the following section is inserted:

Adoption

10 “25A. Nothing in this Act prevents the Director of Family Services from discriminating against a person in making a decision—

- (a) under paragraph 16 (1) (a) of the *Adoption Act 1993* in relation to the inclusion of the person’s name in the register of persons seeking the placement of a child for the purposes of adoption;
- 15 (b) under paragraph 16 (1) (b) of the *Adoption Act 1993* in relation to the placement of a child in the custody of that person; or
- (c) under subsection 17 (4) of the *Adoption Act 1993* confirming or varying a decision under paragraph 16 (1) (a) of that Act.”.

Superannuation

20 6. Section 29 of the Principal Act is amended by adding at the end the following subsections:

“(2) In the case of discrimination on the ground of age, subsection (1) only applies where—

- 25 (a) the discrimination is due to the application of a standard in force under the *Occupational Superannuation Standards Act 1987* of the Commonwealth;
- (b) the discrimination is for the purpose of—
 - (i) complying with;
 - (ii) avoiding a penalty under; or
 - (iii) obtaining a benefit under;
- 30 (c) the discrimination is—
 - (i) based on actuarial or statistical data on which it is reasonable to rely; and

- (ii) reasonable having regard to the data and any other relevant factors;
- (d) if there are no actuarial or statistical data on which it is reasonable to rely—the discrimination is—

 - 5 (i) based on other data on which it is reasonable to rely; and
 - (ii) reasonable having regard to that data and any other relevant factors; or
- (e) if there are no data at all on which it is reasonable to rely—the discrimination is reasonable having regard to any other relevant factors.

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- “(3) Subsection (2) applies in relation to a new superannuation fund condition irrespective of—

 - (a) whether the fund was in existence immediately before the commencement date; and
 - 15 (b) when the person to whom the discrimination relates became a member of the fund.
- “(4) Subsection (2) does not apply in relation to an existing superannuation fund condition where the person to whom the discrimination relates became a member of the fund before, or not later than 12 months after, the commencement date.

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- “(5) In this section—

 - ‘commencement date’ means the date of commencement of the *Discrimination (Amendment) Act (No. 3) 1993*;
 - 25 ‘existing superannuation fund condition’ means a superannuation fund condition in existence immediately before the commencement date;
 - ‘new superannuation fund condition’ means—
 - (a) a superannuation fund condition that came into existence on or after the commencement date; or
 - 30 (b) an alteration made on or after the commencement date to an existing superannuation fund condition.”.

Insertion

7. After section 57 of the Principal Act the following Division is inserted in Part IV:

“Division 6—Exceptions relating to age**Genuine occupational qualifications**

5 “57A. Nothing in paragraph 10 (1) (a) or (b), 12 (1) (a) or (b), 13 (b) or 14 (1) (a) or (2) (a) renders it unlawful to discriminate against a person on the ground of age in relation to employment or work which involves any of the following activities:

- (a) participation in a dramatic performance or other entertainment in a role in which a person belonging to a particular age group is required for reasons of authenticity;
- 10 (b) participation as an artist’s or photographic model in the production of a work of art, visual image or sequence of visual images for which a person belonging to a particular age group is required for reasons of authenticity;
- 15 (c) providing persons belonging to a particular age group with services for the purpose of promoting their welfare, where those services can most effectively be provided by a person belonging to a particular age group.

Youth wages

20 “57B. (1) This section applies where an award provides for the payment of reduced wages to employees under the age of 21 years.

“(2) Where this section applies, nothing in subsection 10 (1) or paragraph 10 (2) (a) or (b) renders it unlawful for an employer to discriminate on the ground of age against a person—

- 25 (a) where the person is 21 years of age or older—in relation to the offer of employment to a person under the age of 21 years; or
- (b) where the person is under the age of 21 years—in relation to the payment of reduced wages to the person in accordance with the award.

“(3) In this section—

30 ‘award’ means an award in force under the *Industrial Relations Act 1988* of the Commonwealth.

Employment and work—health and safety

35 “57C. (1) Nothing in paragraph 10 (1) (c), (2) (a) or (b), 12 (1) (c), (2) (a) or (b), 13 (a) or (c) or 14 (1) (b), (2) (b) or (3) (a) renders it unlawful to discriminate against a person on the ground of age in relation to employment or work, or qualifications for employment or work, where that discrimination is practised in order to comply with reasonable health and safety requirements relevant to such employment or work.

“(2) In determining for the purposes of subsection (1) what health and safety requirements are reasonable, regard shall be had to all the relevant circumstances of the particular case, including the effects of the discrimination on the person discriminated against.

5 Compulsory retirement—2-year exemption

“57D. (1) Nothing in Division 1 of Part III renders it unlawful to discriminate against an employee, commission agent, contract worker or partner on the ground of age by—

- (a) setting an age for the compulsory retirement of that person; or
- 10 (b) requiring that person to retire.

“(2) Subsection (1) ceases to have effect—

- (a) in relation to Territory employees—on a day fixed by the Minister by notice in the *Gazette*, being a day not earlier than 2 years after the date of commencement of the *Discrimination (Amendment) Act (No. 3) 1993*; and
- 15 (b) in any other case—2 years after the date of commencement of the *Discrimination (Amendment) Act (No. 3) 1993*.

Education—minimum-age admissions

20 “57E. (1) Nothing in section 18 renders it unlawful to discriminate against a person on the ground of age in respect of the admission of the person to an educational institution where the level of education or training sought is provided only for students older than a particular age.

25 “(2) Nothing in section 18 renders it unlawful to refuse or fail to accept an application for admission as a student at an educational institution under a mature age admission scheme, where the application is made by a person whose age is below the minimum age fixed under that scheme for admission.

Education—senior secondary colleges (until 1 January 1996)

30 “57F. (1) Nothing in section 18 renders it unlawful to discriminate against a person on the ground of age in respect of the refusal to admit, or to re-admit, the person to a senior secondary college where there is a maximum age fixed for completion of studies at the college.

“(2) Subsection (1) ceases to have effect on 1 January 1996.

Legal capacity

35 “57G. Nothing in Part III renders it unlawful to discriminate against a person on the ground of age in relation to any transaction where the person

is subject to a legal incapacity due to his or her age which is relevant to that transaction.

Benefits and concessions

- 5 “57H. Nothing in Division 2 of Part III renders it unlawful to discriminate against a person in relation to the provision of *bona fide* benefits, including concessions, to another person by reason of his or her age.

Goods, services and facilities—health and safety

- 10 “57J. (1) Nothing in section 19 or 20 renders it unlawful to discriminate against a person on the ground of age in relation to the provision of goods, services or facilities where that discrimination is practised in order to comply with reasonable health and safety requirements relevant to such provision.

- 15 “(2) In determining for the purposes of subsection (1) what health and safety requirements are reasonable, regard shall be had to all the relevant circumstances of the particular case, including the effects of the discrimination on the person discriminated against.

Recreational tours and accommodation

- 20 “57K. Nothing in section 20 or 21 renders it unlawful to discriminate against a person on the ground of age in relation to the provision of a recreational tour or recreational accommodation.

Clubs

- 25 “57L. (1) Nothing in section 20 or 22 renders it unlawful for a club to discriminate against a person on the ground of age where the club’s principal object is the provision of benefits for persons belonging to a particular age group.

“(2) In determining whether the principal object of a club is as referred to in subsection (1), regard shall be had to—

- 30 (a) the essential character of the club;
- (b) whether the persons primarily enjoying the benefits of membership belong to the particular age group specified in the club’s objects; and
- (c) any other relevant circumstance.

Sport

- 35 “57M. (1) Nothing in Part III renders it unlawful to discriminate against a person on the ground of age by his or her exclusion from .

participation in any competitive sporting activity where competition is only permitted between persons belonging to a particular age group.

“(2) Subsection (1) does not apply in relation to the exclusion of persons from participation in—

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- (a) the coaching of persons engaged in any sporting activity;
 - (b) the umpiring or refereeing of any sporting activity;
 - (c) the administration of any sporting activity; or
 - (d) any sporting activity prescribed by the regulations.”.

NOTE

1. Act No. 81, 1991 as amended by Nos. 25, 44 and , 1993.