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THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

DISCRIMINATION AMENDMENT BILL (No 2) 1999

EXPLANATORY MEMORANDUM

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DISCRIMINATION AMENDMENT BILL (No 2) 1999

BACKGROUND

The amendment to section 27 of the *Discrimination Act 1991* ("the Act") has been necessitated following the interpretation of that section in two cases. First, by the Administrative Appeals Tribunal (AAT) in a disability discrimination case - *Re ACT Community Care and Discrimination Commissioner and Vella and Ors* (number AT 98/14, 4 November 1998) and more recently by the ACT Supreme Court in a similar case in *Richardson v ACT Health and Community Care Service and the ACT* [1999] ACTSC 83 (27 May 1999). The effect of these decisions is that recipients of any special measures programs provided by a service provider could be denied access to redress pursuant to the Act, if discriminated against by the service provider, in the course of providing that service.

Section 27 has commonly been used to ensure that any special measures conferred on a disadvantaged class of persons for their benefit are not to be taken to discriminate against those persons who are not so disadvantaged. The AAT in the *Vella* decision and the Supreme Court in *Richardson* have interpreted the section to an additional effect.

The AAT stated that the wording of section 27 was such that no person could make a discrimination complaint about anything done in the course of providing a program designed to meet the needs of disadvantaged persons. This included a member of the disadvantaged class that any special measures program was intended to benefit. Thus, section 27 as it currently stands is not limited to barring actions only by those persons who are not disadvantaged.

Concern has been raised that this could lead to the effect that it might be considered lawful to discriminate against a person in a special measure program for a reason unrelated to the provision of the special measure; for example, on an irrelevant ground of race or sex. The amendment will make it clear that it will not be lawful to discriminate on irrelevant grounds. It is intended to ensure that a service provider could not refuse a person access to a special facility, or special services designed to suit their needs, because, for example, of their religion or sex if that were an irrelevant consideration for the purpose of providing the service

The amendment will allow people within a disadvantaged group to take action against a service provider if they are treated unfavourably in the course of the provision of a special measures program, in a way that is irrelevant to achieving the purposes of that special measure, and enable them to avail themselves of the remedies under the Act.

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REVENUE/COST IMPLICATIONS

There may be some impact on the budgets of service providers as persons in receipt of services may be able to seek redress for discrimination on the grounds that an act done by a service provider was irrelevant to achieving the purposes of the special measure. There is also potential for increased litigation given that recipients will have the additional ground of relevancy to challenge unfavourable treatment. Consequently, service providers' costs of defending legal actions may increase.

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DETAILS OF THE DISCRIMINATION AMENDMENT BILL (No 2) 1999

Clauses 1,2 and 3 are formal requirements. They refer to the name of the Act, its commencement and the Act being amended by it. The Bill will commence on the day it is notified in the *Gazette*.

Clause 4 amends section 27 of the *Discrimination Act 1991* by adding a new subclause. New subclause 27(2) provides that an act done pursuant to subsection 27(1) will not be lawful if the act discriminates against a member of the relevant class in a way that is irrelevant to achieving the purpose of the special measure.

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