

**2004**

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL  
TERRITORY**

**DISCRIMINATION AMENDMENT BILL 2004**

**EXPLANATORY STATEMENT**

Circulated by authority of the  
Attorney General  
Mr Jon Stanhope MLA

This explanatory statement relates to the Discrimination Amendment Bill 2004 as introduced into the Legislative Assembly.

## **Overview of Bill**

The purpose of this Bill is to clarify the operation of Section 27 of the *Discrimination Act 1991* relating to special measures. In particular, the Bill ensures that measures that are put in place to assist disadvantaged groups are protected from legal challenge by people not intended to benefit from them, without protecting any negative discrimination in the administration of those measures.

## **Notes on Clauses**

### **Clause 1      Name of Act**

The Bill once enacted will be known as the *Discrimination Amendment Act 2004*.

### **Clause 2      Commencement**

The Act will commence on the day after its notification day.

### **Clause 3      Legislation Amended**

The Act will amend the *Discrimination Act 1991*.

### **Clause 4      Section 27**

This clause substitutes a new section 27.

Examples are used to clarify that the words ‘members of a relevant class of people’ in section 27(1)(a) and (b) refer to the intended beneficiaries of measures designed to achieve equality of opportunity or access to facilities, services and opportunities for people with special needs.

A technical amendment is made to section 27(1)(b) by adding the words ‘they have as members of the relevant class’ and substituting the word ‘their’ for ‘the’.

A test for reasonableness substitutes the relevance test in section 27(2). An act that discriminates against a member of the relevant class will be unlawful if it does so in a way that is not reasonable for achieving the aims in section 27(1)(a) and (b). Whether a discriminatory act is reasonable depends on whether it is proportionate to achieve a legitimate aim. Proportionality requires that the difference in treatment be necessary and rationally connected to the objective; the least restrictive to achieve the object; and not have a disproportionately severe effect on the person to whom it applies.