

2023

**Legislative Assembly for the
Australian Capital Territory**

**Amendments to the
Discrimination Amendment Bill 2022**

Supplementary Explanatory Statement

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AMENDMENTS TO THE DISCRIMINATION AMENDMENT BILL 2022

This explanatory statement relates to the Discrimination Amendment Bill 2022 as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the bill and to help inform debate on it. It does not form part of the bill and has not been endorsed by the Assembly. The Statement must be read in conjunction with the bill. It is not, and is not meant to be, a comprehensive description of the bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Purpose

The proposed amendments to the bill would amend the Discrimination Amendment Bill 2022 to reflect best practice in promoting equal opportunity; broadens the exception for clubs and voluntary bodies to ensure that those groups coming together with a shared interest or common purpose are protected, to align the commencement dates for both of the positive duties and to allow for the other changes in the Bill to commence 12 months after enactment.

Clause Notes

Proposed new clause 3A

This clause adds a new sub-section 4 (2) to the *Discrimination Amendment Act 1991*, aimed at ensuring best practice in promoting equal opportunity.

The principles outlined in this new sub-section reflect the well-established and foundational rule of international human rights law that all rights must be treated with equal importance, and no right should be prioritised at the expense of another.

Importantly, the new objects' clause does not override the specific protections prescribed in the *Discrimination Amendment Bill 2022*.

The Bill takes precedence in determining individual protections, including Section 8 of the *Human Rights Act*, the right to equality and non-discrimination.

Proposed new section 31

This clause will amend the Bill to provide a broad exception in relation to clubs and voluntary bodies, being those groups that come together with a shared interest or common purpose.

This amendment promotes the right of freedom of association in section 15 of the *Human Rights Act*. The right to freedom of association protects the right of all persons to group together voluntarily for a common goal and to form and join an association.

Proposed amendment to Clause 2

This clause provides for the changes to commence 12 months after enactment (except for the Positive Duties section which has a separate commencement date).

This amendment provides a safeguard to ensure that schools, organisations, businesses, and people with organisational management responsibility, including sporting organisations, have adequate time to educate staff and are adequately prepared to implement the new requirements.

Proposed amendment to Clause 30

This clause will align the commencement dates for the two new positive duties allowing for s74, which inserts a positive duty to make reasonable adjustments to accommodate a person's protected attribute, to commence at the same time as s75.

This will allow time for persons, including persons with management responsibility, time to make the necessary reasonable adjustments where required.