

CHAPTER 1

INTRODUCTION

1.1 On 4 December 2008, the Senate referred the Disability Discrimination and Other Human Rights Legislation Amendment Bill 2008 to the Standing Committee on Legal and Constitutional Affairs, for inquiry and report by 24 February 2009.

1.2 The Bill was introduced in the House of Representatives on 3 December 2008 by the Attorney-General, the Hon. Robert McClelland, and seeks to amend the *Disability Discrimination Act 1992* ('the DDA', *Age Discrimination Act 2004* ('the ADA'), *Human Rights and Equal Opportunity Commission Act 1986* (the HREOC Act') and other legislation.

1.3 Foremost among the Bill's objectives is the implementation of the recommendations of the Productivity Commission in its 2004 review of the DDA.¹ The Bill also implements the House of Representatives Standing Committee on Legal and Constitutional Affairs' recommendation² to remove the 'dominant purpose' test from the ADA and makes various other amendments to the human rights legislation going to the general operation of human rights law in Australia.

Summary of key amendments

1.4 In summary, the Bill:

- makes explicit that refusal to make reasonable adjustments for people with disability may also amount to discrimination;
- makes the defence of unjustifiable hardship available in relation to all unlawful discrimination on the ground of disability, except harassment and victimization;
- clarifies matters to be considered when determining unjustifiable hardship;
- clarifies that the onus of proving unjustifiable hardship falls on the person claiming it;
- makes clear that the definition of disability includes genetic predisposition to a disability and behaviour that is a symptom or manifestation of a disability;

1 Australian Government Productivity Commission, *Review of the Disability Discrimination Act 1992*, 2004.

2 Older People and the Law, 2007.

- replaces the ‘proportionality test’ in the definition of indirect discrimination with the requirement to prove that the condition or requirement imposed has the effect of disadvantaging people with the disability of the aggrieved person;
- shifts the onus of proving the reasonableness of a requirement or condition in the context of indirect discrimination from the person with disability to the respondent, and
- extends the power to make standards under the DDA.
- seeks to assist people with assistance animals and service providers by recognising animals accredited either under a State and Territory law or by a relevant organisation.
- consolidates provisions relating to carers, assistants and aids, and addresses the issues raised by the Full Federal Court in *Forest* [2008] by clarifying that discrimination on the basis that a person possesses or is accompanied by a carer, assistant or aid, is discrimination on the basis of disability.
- implements the Government’s decision to change the name of the Human Rights and Equal Opportunity Commission to the Australian Human Rights Commission.
- extends the period within which a person may take a terminated complaint to the Federal or Federal Magistrates Court from 28 days to 60 days; and
- aims to improve the efficiency of the complaints handling process under the HREOC Act, such as allowing the President of the Commission to finalise a complaint where the complainant expresses no intention to pursue the matter.

Conduct of the inquiry

1.5 The committee advertised the inquiry in *The Australian* newspaper on 17 December 2008, and invited submissions by 12 January 2009. Details of the inquiry, the Bill, and associated documents were placed on the committee's website. The committee also wrote to over 50 organisations and individuals inviting submissions.

1.6 The committee received 38 submissions which are listed at Appendix 1. Submissions were placed on the committee's website for ease of access by the public.

1.7 The committee held public hearings in Sydney on 21 January 2009, Melbourne on 29 January 2009, and Canberra on 6 February 2009. A list of witnesses who appeared at the hearings is at Appendix 2 and copies of the Hansard transcript are available through the Internet at <http://aph.gov.au/hansard>.

Acknowledgement

1.8 The committee thanks the organisations and individuals who made submissions and gave evidence at the public hearing.

Note on references

1.9 References in this report are to individual submissions as received by the committee, not to a bound volume. References to the committee Hansard are to the proof Hansard: page numbers may vary between the proof and the official Hansard transcript.

