

1990

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
HOUSE OF REPRESENTATIVES

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Presented and read a first time, 12 September 1990

(Attorney-General)

**A BILL**

FOR

**An Act to amend the *Sex Discrimination Act 1984***

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

**Short title etc.**

5       **1. (1)** This Act may be cited as the *Sex Discrimination Amendment Act 1990*.

**(2)** In this Act, “Principal Act” means the *Sex Discrimination Act 1984*<sup>1</sup>.

**Commencement**

10       **2.** This Act commences 2 years after the day on which it receives the Royal Assent.

### Interpretation

3. Section 4 of the Principal Act is amended by inserting in subsection (1) the following definitions:

“**‘dependant superannuation benefit’**, in relation to a member of a superannuation fund, means a benefit that is payable, under the terms and conditions relating to the fund, to someone other than the member in the event of the member’s death or physical or mental incapacity;

**‘member’**, in relation to a superannuation fund, means a person who is, or has at any time been, a member of the fund, and includes a person who is receiving, or has at any time received, benefits from the fund;

**‘superannuation fund’** means a superannuation or provident fund or scheme;

**‘superannuation fund conditions’**, in relation to a superannuation fund, means the terms and conditions that relate to membership of, or benefits payable from, the superannuation fund;”.

### Discrimination in employment or in superannuation

4. Section 14 of the Principal Act is amended by adding at the end the following subsection:

“(4) It is unlawful for a person who exercises a discretion in relation to the payment of a dependant superannuation benefit for a member of a superannuation fund (not being a member to whom section 41B applies in respect of that fund) to discriminate against another person, on the ground of that other person’s sex or marital status, in the exercise of the discretion.”.

5. Section 41 of the Principal Act is repealed and the following sections are substituted:

### Insurance

“41. (1) Nothing in Division 1 or 2 makes discrimination by one person (in this subsection called the **‘insurer’**) against another person (in this subsection called the **‘client’**) unlawful if:

- (a) the discrimination is on the ground of the client’s sex; and
- (b) the discrimination is in the terms on which an insurance policy is offered to, or may be obtained by, the client; and
- (c) the discrimination is based on actuarial or statistical data from a source on which it is reasonable for the insurer to rely; and
- (d) the discrimination is reasonable having regard to those data and any other relevant factors.

“(2) In this section:

**‘insurance policy’** includes an annuity, a life assurance policy, an accident insurance policy and an illness insurance policy.

**New superannuation fund conditions**

“41A. (1) This section applies to a person in respect of a superannuation fund unless section 41B applies to the person in respect of that fund.

5 “(2) Nothing in Division 1 or 2 makes discrimination by one person (in this subsection called the ‘discriminator’) against another person unlawful if:

(a) this section applies to that other person in respect of a superannuation fund; and

10 (b) the discrimination is on the grounds of that other person’s sex or marital status; and

(c) the discrimination arises only because of one or more of the following:

15 (i) the inclusion in the superannuation fund conditions of a provision that:

(A) is based on actuarial or statistical data from a source on which it is reasonable for the discriminator to rely; and

20 (B) is reasonable having regard to those data and any other relevant factors;

(ii) a failure to provide, in the superannuation fund conditions, for a dependant superannuation benefit to a member who does not have a spouse, a de facto spouse or a child, or the inclusion in the superannuation fund conditions of a provision providing for less generous dependant superannuation benefits to such a member;

25 (iii) the inclusion in the superannuation fund conditions of provisions that relate to:

30 (A) the vesting in members of benefits arising directly or indirectly from amounts contributed to the fund; or

(B) the preservation of benefits arising directly or indirectly from amounts contributed to the fund; or

35 (C) the portability of benefits arising directly or indirectly from amounts contributed to another superannuation fund;

40 if the inclusion of those provisions results in indirect discrimination against that other person on the ground of that other person’s sex or marital status.

“(3) For the purposes of this section, discrimination against a person on the ground of the person’s sex or marital status is taken to be indirect if paragraph 5 (1) (b) or (c), subsection 5 (2), paragraph 6 (1) (b) or (c) or subsection 6 (2) applies to the discrimination.

**Existing superannuation fund conditions**

"41B. (1) This section applies to a person in respect of a superannuation fund if:

- (a) the person became a member of the fund before the commencement of this section; and
- (b) unless the Commission has, under section 44, granted an exemption from the operation of this paragraph—the person has an option to obtain non-discriminatory superannuation benefits.

"(2) Nothing in Division 1 or 2 makes discrimination by one person against another person unlawful if:

- (a) this section applies to that other person in respect of a superannuation fund; and
- (b) the discrimination is on the ground of that other person's sex or marital status; and
- (c) the discrimination is in the superannuation fund conditions.

"(3) The option referred to in subsection (1) may be one that must be exercised before the end of a particular period.

"(4) The period must end at least 2 months after:

- (a) the day on which the option is made available to the person; or
- (b) the commencement of this section;

whichever is the later.

"(5) For the purposes of this section, a person is taken to obtain non-discriminatory superannuation benefits if:

- (a) the person is a member of a superannuation fund; and
- (b) section 41A applied to the person in respect of the fund, the superannuation fund conditions that relate to the benefits payable to or in respect of the person would not give rise to discrimination that is unlawful under Division 1 or 2."

**NOTE**

1. No. 4, 1984, as amended. For previous amendments, see No. 72, 1984; No. 65, 1985; Nos. 76 and 126, 1986; and Nos. 38, 75, 80 and 87, 1988.

