

1993-94-95

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
HOUSE OF REPRESENTATIVES

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Presented and read a first time

(Attorney-General)

## A BILL

FOR

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

The Parliament of Australia enacts:

**Short title etc.**

**1.(1)** This Act may be cited as the *Sex Discrimination Amendment Act 1995*.

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

**Commencement**

2. This Act commences on the day on which it receives the Royal Assent.

**Amendments**

3. The Principal Act is amended as set out in the Schedule.
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SCHEDULE

Section 3

AMENDMENTS OF THE SEX DISCRIMINATION ACT 1984

**1. Title**

Omit “**pregnancy**”, substitute “, **pregnancy, potential pregnancy**”.

**2. After the title:**

Insert:

“Recognising the need to prohibit, so far as is possible, discrimination against people on the ground of sex, marital status, pregnancy or potential pregnancy in the areas of work, accommodation, education, the provision of goods, facilities and services, the disposal of land, the activities of clubs and the administration of Commonwealth laws and programs:

Affirming that every individual is equal before and under the law, and has the right to the equal protection and equal benefit of the law, without discrimination on the ground of sex, marital status, pregnancy or potential pregnancy:”.

**3. Paragraph 3(b):**

Omit “or pregnancy”, substitute “, pregnancy or potential pregnancy”.

**4. Section 4:**

Insert:

“ ‘**potential pregnancy**’ has a meaning affected by section 4B;”.

**5. After section 4A:**

Insert:

**Meaning of “potential pregnancy”**

“4B. A reference in this Act to potential pregnancy of a woman includes a reference to:

- (a) the fact that the woman is or may be capable of bearing children; or
- (b) the fact that the woman has expressed a desire to become pregnant;  
or
- (c) the fact that the woman is likely, or is perceived as being likely, to become pregnant.”.

**6. Subsection 5(2):**

Omit, substitute:

“(2) For the purposes of this Act, a person (the ‘**discriminator**’) discriminates against another person (the ‘**aggrieved person**’) on the ground of the sex of the aggrieved person if the discriminator imposes, or

**SCHEDULE**—continued

proposes to impose, a condition, requirement or practice that has, or is likely to have, the effect of disadvantaging the aggrieved person because of his or her sex.

“(3) This section has effect subject to sections 7B and 7D.”.

**7. Paragraph 6(1)(a):**

Add at the end “or”.

**8. Subsection 6(2):**

Omit, substitute:

“(2) For the purposes of this Act, a person (the ‘**discriminator**’) discriminates against another person (the ‘**aggrieved person**’) on the ground of the marital status of the aggrieved person if the discriminator imposes, or proposes to impose, a condition, requirement or practice that has, or is likely to have, the effect of disadvantaging the aggrieved person because of his or her marital status.

“(3) This section has effect subject to sections 7B and 7D.”.

**9. Section 7:**

Repeal, substitute:

**Discrimination on the ground of pregnancy or potential pregnancy**

“7.(1) For the purposes of this Act, a person (the ‘**discriminator**’) discriminates against a woman (the ‘**aggrieved woman**’) on the ground of the aggrieved woman’s pregnancy or potential pregnancy if, because of:

- (a) the aggrieved woman’s pregnancy or potential pregnancy; or
- (b) a characteristic that appertains generally to women who are pregnant or potentially pregnant; or
- (c) a characteristic that is generally imputed to women who are pregnant or potentially pregnant;

the discriminator treats the aggrieved woman less favourably than, in circumstances that are the same or are not materially different, the discriminator treats or would treat someone who is not pregnant or potentially pregnant.

“(2) For the purposes of this Act, a person (the ‘**discriminator**’) discriminates against a woman (the ‘**aggrieved woman**’) on the ground of the aggrieved woman’s pregnancy or potential pregnancy if the discriminator imposes, or proposes to impose, a condition, requirement or practice that has, or is likely to have, the effect of disadvantaging the aggrieved woman because of her pregnancy or potential pregnancy.

**SCHEDULE—continued**

“(3) This section has effect subject to sections 7B and 7D.”.

**10. After section 7A:**

Insert:

**Indirect discrimination: reasonableness test**

“7B.(1) A person does not discriminate against another person by imposing, or proposing to impose, a condition, requirement or practice that has, or is likely to have, the effect of disadvantaging the other person as mentioned in subsection 5(2), 6(2) or 7(2) if the condition, requirement or practice is reasonable in the circumstances.

“(2) The matters to be taken into account in deciding whether a condition, requirement or practice is reasonable in the circumstances include:

- (a) the nature and extent of the disadvantage resulting from the imposition, or proposed imposition, of the condition, requirement or practice; and
- (b) the feasibility of overcoming or mitigating the disadvantage; and
- (c) whether the disadvantage is proportionate to the result sought by the person who imposes, or proposes to impose, the condition, requirement or practice.

**Burden of proof**

“7C. In a proceeding under this Act, the burden of proving that an act does not constitute discrimination because of section 7B lies on the person who did the act.

**Special measures intended to achieve equality**

“7D.(1) A person may take special measures for the purpose of achieving equality between:

- (a) men and women; or
- (b) people of different marital status; or
- (c) women who are pregnant and people who are not pregnant; or
- (d) women who are potentially pregnant and people who are not potentially pregnant.

“(2) A person does not discriminate against another person under section 5, 6 or 7 by taking special measures authorised by subsection (1).

“(3) A measure is to be treated as being taken for a purpose referred to in subsection (1) if it is taken:

**SCHEDULE—continued**

- (a) solely for that purpose; or
- (b) for that purpose as well as other purposes, whether or not that purpose is the dominant or substantial one.

“(4) This section does not authorise the taking, or further taking, of special measures for a purpose referred to in subsection (1) that is achieved.”.

**11. Subsection 9(4):**

Omit “the provisions of Division 3”, substitute “the prescribed provisions of Division 3”.

**12. Subsection 10(2):**

Add at the end “or potential pregnancy”.

**13. Subsection 11(2):**

Add at the end “or potential pregnancy”.

**14. Section 14:**

Omit “or pregnancy” (wherever occurring), substitute “, pregnancy or potential pregnancy”.

**15. Section 15:**

Omit “or pregnancy” (wherever occurring), substitute “, pregnancy or potential pregnancy”.

**16. Section 16:**

Omit “or pregnancy”, substitute “, pregnancy or potential pregnancy”.

**17. Section 17:**

Omit “or pregnancy” (wherever occurring), substitute “, pregnancy or potential pregnancy”.

**18. Section 18:**

Omit “or pregnancy”, substitute “, pregnancy or potential pregnancy”.

**19. Section 19:**

Omit “or pregnancy” (wherever occurring), substitute “, pregnancy or potential pregnancy”.

**20. Section 20:**

Omit “or pregnancy”, substitute “, pregnancy or potential pregnancy”.

**SCHEDULE—continued**

**21. Section 21:**

Omit “or pregnancy” (wherever occurring), substitute “, pregnancy or potential pregnancy”.

**22. Subsection 22(1):**

Omit “or pregnancy”, substitute “, pregnancy or potential pregnancy”.

**23. Section 23:**

Omit “or pregnancy” (wherever occurring), substitute “, pregnancy or potential pregnancy”.

**24. Subsection 24(1):**

Omit “or pregnancy”, substitute “, pregnancy or potential pregnancy”.

**25. Section 25:**

Omit “or pregnancy” (wherever occurring), substitute “, pregnancy or potential pregnancy”.

**26. Subsection 26(1):**

Omit “or pregnancy”, substitute “, pregnancy or potential pregnancy”.

**27. Subsection 27(1):**

Omit “or pregnancy”, substitute “, pregnancy or potential pregnancy”.

**28. Subsection 27(1):**

After “pregnant”, insert “or potentially pregnant”.

**29. Section 33:**

Repeal.

**30. Subsection 40(6):**

Omit “section 33”, substitute “subsection 7D(1)”.

**31. Paragraphs 43(1)(a) and (b):**

Omit “or combat-related duties”.

**32. Subsection 43(2) (definition of “combat-related duties”):**

Omit.

**33. Paragraphs 48(1)(g), (ga) and (gb):**

Omit “or pregnancy”, substitute “, pregnancy or potential pregnancy”.

**SCHEDULE**—continued**34. Subsection 48(2):**

Omit “section 33”, substitute “subsection 7D(1)”.

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**NOTE**

1. No. 4, 1984, as amended. For previous amendments, see No. 72, 1984; No. 65, 1985; Nos. 76 and 126, 1986; Nos. 38, 75, 80 and 87, 1988; No. 115, 1990; Nos. 70 and 71, 1991; Nos. 132, 165, 179, 180 and 196, 1992; No. 109, 1993; and Nos. 13 and 164, 1994.

**NOTE ABOUT SECTION HEADING**

1. The heading to section 19 of the *Sex Discrimination Act 1984* is altered by omitting “**Conciliation and Arbitration Act**” and substituting “***Industrial Relations Act 1988***”.

