

family

A D V O C A C Y

PO Box 502
Epping NSW 1710

305/16-18 Cambridge St
Epping NSW 2121

Phone: (02) 9869 0866
Facsimile: (02) 9869 0722

Record

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Author: Unknown

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Abstract

This is the second reading speech in the House of Representatives of the Disability Discrimination Bill 1992. The Bill is designed to assist all people with disabilities to exercise their rights as Australian citizens and will make discrimination on the basis of disability unlawful in Australia. **Keyword:** Government

HOUSE OF REPRESENTATIVES

DISABILITY DISCRIMINATION BILL 1992

SECOND READING SPEECH

I move: that the Bill be now read a second time.

I am pleased to be able to move the introduction of a major piece of legislation on a matter which so deeply affects the lives and opportunities of people with disabilities.

The Disability Discrimination Bill will make discrimination on the basis of disability unlawful in Australia. The Bill will assist all people with disabilities to exercise their rights as Australian citizens and represents a landmark in achieving human rights for all Australians.

People with disabilities are entitled to the same rights and the same opportunities as all other Australian citizens. However, our society currently falls well short of realising this ideal. People are still subjected to discrimination purely on the basis of disability - discrimination which, I am sure all honourable members would agree, is socially damaging, morally unacceptable and a cost to the whole community.

Research has shown that people with disabilities still face a number of barriers to the equal enjoyment of human rights in many areas of life. These include employer and co-worker attitudes, access to premises and transport and the types of jobs available. During an extensive series of consultations about ways to address these barriers, people with disabilities, their families and advocates and service providers called upon the Government to introduce comprehensive disability discrimination legislation.

This Government has a long term commitment to achieving a better deal for people with disabilities. The Government began the process of expanding opportunities for people with disabilities in 1983 with the comprehensive review of programs and services for people with disabilities - the Handicapped Programs Review. The outcomes of this review culminated in the implementation of the Disability Services Act in 1987. The Act requires that services for people with disabilities be provided in a manner consistent with their rights as Australian citizens and as human beings. These include the right to dignity, privacy, choice and the fulfilment of their capacities to contribute fully in community life.

The Disability Services Act is regarded internationally as a significant step forward in legislative support for services assisting people with disabilities. It was welcomed by people with disabilities, their families and representatives. The Principles and Objectives of the Act provided Australia with a set of ideals to strive for, and today, the Act has won widespread community understanding and support.

Now, at the end of the United Nations Decade of Disabled Persons, I think it timely to be able to introduce legislation which will extend these principles to all walks of life. The principles need to be taken up within society as a whole so that they reach all Australians with disabilities, regardless of whether they are receiving support services under the Disability Services Act. The Disability Discrimination Bill will be instrumental in continuing social change and will have far reaching and long-awaited effects for people with disabilities.

I do not believe there is any better example of social justice than this legislation - legislation which provides the framework to eliminate the discrimination which prevents fair access for people with disabilities to jobs, education, sport and entertainment and which provides an effective means of overcoming perhaps the most significant barrier that people with disabilities face in this country - the attitudinal barrier.

The Bill recognises that discrimination against people with disabilities is a matter of international concern. It is another significant step in fulfilling Australia's international obligations under a number of United Nations instruments. These include the International Labour Organisation convention concerning discrimination in respect of employment and occupation; the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; and a number of related declarations.

However, none of this would have been possible without the commitment and courage of people who believed in the legislation. While I do not like to single out any particular individuals in the process, Mr Graeme Innes, Chairperson of the Disability Advisory Council of Australia, Ms Chris Ronalds and the representatives of the Disability Anti-Discrimination Legislation Committee bear special mention. Today, not twelve months after the establishment of this Committee, we are in the fortunate position of bringing this significant indicator of the Government's continuing commitment to social justice before the Parliament.

The overall response from industry groups and State governments has also been very positive. The Government has received extensive comment from interested parties in relation to the proposal to introduce legislation. The Bill will be left to lie in the House over the winter recess so that interested parties can make any further comments. This timing builds on the widespread discussions already undertaken on the legislation.

Legislative reform is vital if the very real, but unfair, barriers that prevent people with disabilities from playing effective and valued roles are to be broken down. The legislation would constitute the legal basis for the protection and promotion of the rights of people with disabilities and would subsequently help to overcome social and economic disadvantage, by assisting people with disabilities to participate as equals in Australian society.

I turn now to a more detailed description of the Bill.

The legislation would be grievance based and fundamentally similar to the Commonwealth's existing anti-discrimination legislation; the Racial Discrimination Act 1975 (RDA) and the Sex Discrimination Act 1984 (SDA). The legislation would promote gradual structural reforms and attitudinal change - changes which would enhance the opportunities available to people with disabilities throughout community life.

The objects of the Bill are to eliminate, as far as possible, discrimination against persons on the ground of disability in the areas of work, accommodation, education, clubs, sport, the provision of goods, facilities, services and land, existing laws and the administration of Commonwealth laws and programs; to ensure, as far as practicable, that people with disabilities have the same rights to equality before the law as their fellow citizens; and to promote recognition and acceptance within the community of the principle that people with disabilities have the same fundamental rights as their fellow citizens. The legislation would therefore perform an important educative role and would further social awareness and change.

The legislation would cover both direct and indirect discrimination on the ground of disability, and would also cover discrimination on the basis of association with people with disabilities.

The legislation would apply throughout Australia and in this regard relies on all available and appropriate heads of Commonwealth constitutional power.

In the preparation of this Bill, the Government has paid attention to existing State disability discrimination legislation and the role played by State disability discrimination machinery in eliminating discrimination.

Disability anti-discrimination legislation currently exists in differing forms in New South Wales, Victoria, South Australia, Western Australia, Queensland and the Australian Capital Territory. Such legislation is proposed for Tasmania and the Northern Territory. However, there are considerable variations in the scope and coverage of the various Acts. National, comprehensive legislation is required in order to ensure that people with disabilities are not disadvantaged by their place of residence. Moreover, State legislation alone does not provide comprehensive coverage for people with disabilities, due to the limited ability of the States to regulate discriminatory practices against Commonwealth authorities.

The Bill includes a definition of disability that draws upon existing definitions in both Commonwealth and State legislation and includes the concepts of physical, sensory, intellectual and psychiatric impairment. The definition of disability includes the total or partial loss of a bodily function; the presence in the body of organisms causing, or capable of causing, disease, including HIV AIDS; total or partial loss of a part of the body; and malfunction or disfigurement of part of a person's body. It includes a disability which presently exists, existed in the past but has now ceased to exist, or may exist in the future, and a disability which is imputed or presumed to a person.

I will now describe the areas in which the Bill proscribes discrimination on the ground of disability.

The legislation would make unlawful discrimination against applicants for jobs and employees generally and would include access to employment; the practices of employment agencies; the use of discriminatory questions in employment application forms; access to opportunities for promotion, transfer or training, or to any other benefits connected with employment; and dismissal of an employee or subjecting an employee to any detriment. The legislation would also cover the employment of agents and contract workers; membership as a partner in a firm; membership of a trade union; and any action of a licensing or a qualifying body with respect to the conferring, renewal or extension of any licence or qualification.

With regard to education, it would be unlawful for an educational authority to discriminate in the admission and treatment of students and in the provision of all levels of education, training and vocational or educational assistance, including financial assistance.

It would be unlawful to discriminate against people with a disability in relation to the provision of access to premises, including vehicles to which the general public has access.

The legislation would also make unlawful discrimination in the provision of goods, facilities and services, covering the supply, and term of supply or provision, of goods and facilities and the provision of services including services relating to banking, insurance and the provision of grants, loans, credit or finance; services relating to entertainment, recreation or refreshment; services relating to transport, travel or telecommunications; services of any profession or trade; selling or leasing an interest in land; and services provided by a government, government authority or local government body. Discrimination relating to the provision of accommodation, including access to any benefits associated with accommodation, would also be unlawful.

The legislation would mean that it would be unlawful for a club, the committee or management of a club, or a committee member, to discriminate on the ground of disability, including membership and access to the benefits associated with membership. The legislation would also apply to sporting and recreational activities.

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The legislation would cover administrative practices adopted by people charged with the administration of Commonwealth enactments, where the enactment does not itself authorise the discrimination. The legislation would make it unlawful to require another person to provide information on which unlawful discrimination might be based, unless the information is reasonably required for a lawful purpose.

The Bill provides for two general exemptions, unjustifiable hardship and the inherent requirements of the job. These exemptions will be very significant in terms of the overall effects of this legislation on service providers, businesses and employers.

Under the Bill employers, providers of accommodation, education, goods and services, clubs and sporting groups would be able to argue that action necessary to accommodate the needs of people with disabilities would impose unjustifiable hardship. In determining unjustifiable hardship, all of the relevant circumstances of a particular case would be taken into account. These circumstances would include the nature of the benefit or detriment likely to accrue or be suffered by any persons concerned, the effect of the impairment of the persons concerned and the financial circumstances and the estimated amount of expenditure required to be made by the person claiming unjustifiable hardship. Any judgement made would allow for the financial viability of an employer having to meet additional costs, even where on the face of it, the costs would appear to be fairly small.

The legislation would not require that people with disabilities be given jobs which they cannot do. Subsequently there is an exemption which does not prohibit discrimination if the person is not able to perform adequately the inherent requirements of the job, even where reasonable accommodation has been made.

The Bill contains a provision which requires the Human Rights and Equal Opportunity Commission to take into account the provision of any action plan lodged by a service provider or educational authority, when determining whether unjustifiable hardship exists in relation to a particular complaint. These plans are entirely voluntary but the Bill indicates that they shall include certain provisions if they are drawn up. These include policies and programs to achieve the objects of the Bill; the communication of those policies and programs to persons within the body preparing the plan; the setting of goals or targets against which the success of the plan may be measured; the means of evaluating the policies and programs developed; the revision of the plan; and the appointment of persons charged with the implementation of the plans. The plans would be lodged with the Human Rights and Equal Opportunity Commission and would be publicly available. The Commission will not be required to agree to a plan lodged with it, but the plan will have to be considered by the Commission when determining whether unjustifiable hardship exists in the circumstance that a complaint is made against the particular agency.

The Bill makes it clear that once a complainant has been able to show that he or she has been subjected to unlawful discrimination, a respondent claiming unjustifiable hardship would bear an evidentiary burden. Similarly, an employer will have to determine what the inherent requirements of a particular job might be. However, the overall legal burden of proof, in proving discrimination unlawful, will remain with the complainant.

Special exemptions include those special measures taken to assist people with disabilities to meet their particular needs; affirmative action measures which are designed to enable and encourage equality of opportunity; and insurance and superannuation where there is actuarial or statistical data to support a particular action. Acts done under Statutory Authority, in direct compliance with any other Acts, regulations, rules or by-laws, and acts done in accordance with determinations of the Human Rights and Equal Opportunity Commission would be exempt from the legislation for a period of three years. Special exemptions would also apply to infectious diseases; to participation in sporting activities for people with particular disabilities; the provision of pensions under specific Acts; and to the recruitment of certain defence force personnel. Further, an exemption of three years would apply to telecommunications to allow for the impact of the legislation on Telecom and the proposed second carrier to be properly assessed.

Provision is also made for applications to the Human Rights and Equal Opportunity Commission for short term, renewable exemptions from all or parts of the legislation. The Commission would have the power to make interim determinations to preserve the status quo or the rights of the parties to a complaint.

Administration of the legislation would be vested in the Human Rights and Equal Opportunity Commission. The functions of the Commission would include holding inquiries into and making determinations on complaints; hearing applications for exemption from the Act; undertaking research and educational programs; and examination of existing and proposed legislation to ensure its consistency with the provisions of this legislation.

The Bill would establish a Disability Discrimination Commissioner who is required to investigate and conciliate complaints of discrimination on the ground of disability. The Commissioner would be empowered to dismiss a complaint if found to be unsubstantiated, or attempt to reach a settlement of the complaint. The Commissioner would have the power to summons witnesses to give evidence or produce documents and to call compulsory conferences. The aim of the legislation would be to promote resolution through conciliation wherever possible.

However, where the Commissioner was unable to resolve a complaint by conciliation, he or she would have the power to refer the matter to the Human Rights and Equal Opportunity Commission. The Commission would then consider the complaint and make a determination on that complaint based on the requirements of the Act. The determination of the Commission would not of itself be binding. Should a party wish to enforce the determination of the Commission an application would be made to the Federal Court. That Court would then hear the matter again and make a legally binding judgement taking into account the same criteria taken into

The Bill also contains provisions to allow for the making of disability standards in the future. Equivalent standards are provided for in both the American and Canadian legislation of this sort. These standards would not be made without extensive consultations by the Commonwealth with all affected parties. The Bill contains provisions requiring that account be taken of comments by State and Territory governments before such standards are enacted.

A national public education and awareness campaign will accompany the introduction of this legislation in order to raise the level of understanding of people with disabilities about their rights.

The direct financial implications of this legislation relate to the establishment of the Office of Disability Discrimination Commissioner, the public education and awareness campaign, some minor additional public service staffing and additional resources for support and representative agencies. This is expected to amount to approximately \$5.5m in the first full year.

Costs to Commonwealth agencies affected by the Bill are not easy to predict but on the basis of previous State experience are not expected to be significant and would occur over a lengthy period of time.

As part of this Government's commitment to social justice for all Australian citizens, we have already passed legislation to provide protection for women and ethnic or racial groups who experience discrimination. It is now time to address the discrimination that people with disabilities have historically suffered. The introduction of this Bill is further evidence of the unwavering commitment of this Government to social justice for people with disabilities.

Our vision is a fairer Australia where people with disabilities are regarded as equals, with the same rights as all other citizens, with recourse to systems that redress any infringements of their rights; where people with disabilities can participate in the life of the community in which they live, to the degree that they wish; where people with disabilities can gain and hold meaningful employment that provides wages and career opportunities that reflect performance; where control by people with disabilities over their own bodies, lives and future is assumed and ensured; where difference is accepted, and where public instrumentalities, communities and individuals act to ensure that society accommodates such difference. Only then will we be able to say that justice has been achieved.

It is therefore essential that there is a legislative basis to enable people with disabilities to participate in the economic, social and political spheres of the community and subsequently to determine the direction of their own lives. This legislation would be a vital element in removing the attitudinal, physical, structural and institutional barriers that people with disabilities currently face. The realisation of this Government's social justice goals for people with disabilities will benefit not only people with disabilities, but society as a whole.

In the gallery there are members of the Disability Advisory Council of Australia and people who represent people with disabilities. This legislation is a major achievement for them, and it is a significant day for the Parliament when we are able to produce further legislation in terms of anti-discrimination that ensures we add to people's rights as citizens.

I commend the Bill to the House.

I present the Explanatory Memorandum for this Bill.