

DISCRIMINATION LAW AMENDMENT BILL 2002

AMENDMENTS IN COMMITTEE

EXPLANATORY NOTES

General Outline

Objectives of the Amendments

The amendments have the following objectives:

- To insert a Preamble to explain the reasons for the Bill;
- To make amendments to the *Anti-Discrimination Act 1991* (ADA) to clarify that bodies established for religious purposes and educational institutions under their direction or control have the capacity to discriminate in a manner that is not unreasonable, in relation to certain areas of work;
- To remove doubt regarding the effect of the transitional provisions relating to the amendments which the Bill makes to the ADA; and
- To insert a minor technical amendment to the *Supreme Court of Queensland Act 1991* into the Schedule to the Bill.

Reasons for the objectives and how they will be achieved

Following the introduction of the Bill, various bodies established for religious purposes and school communities have expressed concern at the potential impact of the Bill on the capacity of religious schools, particularly, to employ appropriate staff.

The amendments will clarify that educational institutions under the direction or control of bodies established for religious purposes and bodies

established for religious purposes will be able to discriminate in a manner that is not unreasonable in certain areas of work.

In Alert Digest No 11 of 2002, the Scrutiny of Legislation Committee raised an issue regarding the proposed section 269(2) and its interpretation. The Committee stated that it considered that the effect of the proposed section 269(2) was that *“the changes to the prohibited grounds of discrimination and to the range of exemptions available would therefore seem to be applicable in cases where a complaint has already been made as at the date of the commencement of the bill”*. To remove doubt regarding the intended effect of this section, it is amended by expressly listing the provisions of the *Anti-Discrimination Act 1991* (as inserted or amended by the Bill) that will apply to complaints whenever lodged.

Administrative cost to Government of implementation

The amendments have no financial implications for Government.

Consistency with Fundamental Legislative Principles

The amendments are consistent with fundamental legislative principles.

In particular, the amendment to section 269(2) will remove doubt regarding its construction and clarify that the section does not retrospectively affect the rights of parties by either:

- making lawful an act of discrimination which was unlawful when committed; or
- making unlawful an act which was lawful when committed.

CONSULTATION

Community

Consultation has occurred with representatives of a wide range of religious bodies and community organisations, including the following:

- the Catholic Education Commission
- the Christian Schools Association
- the Anglican Church of Australia
- the Lutheran Church

- the Baptist Union of Queensland
- the Presbyterian Church of Queensland
- Churches of Christ
- the Greek Orthodox Church of Australia
- the Salvation Army
- the Islamic Council of Brisbane
- Queensland Pride
- Queensland Aids Council
- Parents and Friends of Lesbians and Gays
- Rainbow Labor
- Australian Transgender Support Association of Queensland

Government

There has been consultation with the Department of the Premier and Cabinet and the Anti-Discrimination Commission Queensland on the amendments.

NOTES ON AMENDMENTS

Amendment 1 inserts a Preamble to the Act which sets out Parliament's reasons for enacting the legislation.

Amendment 2 amends Clause 15 by setting out the way the genuine occupational requirement exemption will apply in relation to work for educational institutions under the direction or control of a body established for religious purposes and other work for bodies established for religious purposes which genuinely and necessarily involves adhering to and communicating the body's religious beliefs. The amendment inserts subsections 25(2) - (8). which provide that it is not unlawful for an employer (as defined in the section) to discriminate in the pre-work and work area in a way that is not unreasonable if a person openly acts in a way that the person knows or ought reasonably to know is contrary to the employer's religious beliefs and where it is a genuine occupational

requirement that the person in the course of, or in connection with the person's work act in a way consistent with the employer's religious beliefs. The amendments provide that whether discrimination is or is not unreasonable depends on all the circumstances of the case including whether the action taken by the employer is harsh or unjust or disproportionate to the person's actions and the consequences for both the person and employer should the discrimination happen or not happen.

Amendment 3 amends Clause 43 by listing the specific provisions of the *Anti-Discrimination Act 1991* (as inserted or amended by the Bill) that will apply to complaints whenever lodged. The purpose of this is to remove doubt regarding the intended effect of section 269(2).

Amendment 4 inserts a minor and technical amendment into the schedule of the *Discrimination Law Amendment Bill 2002*. The amendment replaces references to 'widow' and 'widower' in the definition of remuneration in schedule 2 of the *Supreme Court of Queensland Act 1991* with 'surviving spouse'.