

INQUIRY INTO THE DISABILITY DISCRIMINATION ACT 1992 – SUBMISSION BY THE COMMONWEALTH ATTORNEY-GENERAL'S DEPARTMENT

Introduction

The Commonwealth Government's disability discrimination policy is designed to break down, to the greatest extent possible, the social and economic barriers that prevent participation by people with disabilities in mainstream community life. The Government's approach is to ensure that measures that prevent discrimination on the ground of disability are based on fair, balanced and effective principles that widen the opportunities for people with a disability to gain independence, access to the goods and services available to the rest of the community, and to participate in the broader community.

2. The Commonwealth *Disability Discrimination Act 1992* (DDA) became fully operational on 1 March 1993. It is part of the suite of federal anti-discrimination laws that includes the *Racial Discrimination Act 1975*, *Sex Discrimination Act 1984* and the *Human Rights and Equal Opportunity Commission Act 1986*.

3. This submission describes and analyses the operation of the key provisions of the DDA, including:

- the objects of the Act;
- the application of the Act;
- the definition of 'disability';
- the definitions of direct and indirect discrimination;
- the operation of the 'unjustifiable hardship' defence;
- areas of activity covered by the DDA (eg discrimination in employment and education);
- the power to make disability standards;
- harassment and offences; and
- exemptions.

4. The submission also briefly explains the role of the Human Rights and Equal Opportunity Commission (HREOC) in dealing with complaints.

The Objects of the DDA

5. The objects of the DDA are set out in section 3. They are:

- (a) to eliminate, as far as possible, discrimination against persons on the ground of disability in the areas of:
 - (i) work, accommodation, education, access to premises, clubs and sport; and
 - (ii) the provision of goods, facilities, services and land; and
 - (iii) existing laws; and
 - (iv) the administration of Commonwealth laws and programs; and
- (b) to ensure, as far as practicable, that persons with disabilities have the same rights to equality before the law as the rest of the community; and

- (c) to promote recognition and acceptance within the community of the principle that persons with disabilities have the same fundamental rights as the rest of the community.

The aim of the DDA is to ensure that people and institutions, such as employers, schools and other educational institutions, providers of goods and services, clubs and sporting bodies, make reasonable accommodations for people with disabilities so that they have the same opportunities in the community as other people.

The extent of the DDA's application

6. Section 12 of the DDA provides for its application in Australia. Certain parts of the Act have limited application to reflect the extent of available constitutional power.
7. The 'limited application' provisions of the DDA include those prohibiting discrimination: in employment (section 15); against commission agents (section 16); against contract workers (section 17); in partnerships (section 18); by qualifying bodies (section 19); by employment agencies (section 21); in education (section 22); in access to premises (section 23); in the provision of goods; services and facilities (section 24); in accommodation (section 25); in the disposal of land (section 26); in the membership of clubs and incorporated associations (section 27) and in sport (section 28).
8. The provisions relating to the power to make disability standards (sections 31 – 34) and the prohibitions on harassment (sections 35 – 40) are also limited application provisions.
9. Section 13 of the DDA ensures that State and Territory laws that deal with disability discrimination will continue to operate concurrently. Subsection 13(4) provides that if a person chooses to make a complaint under a State or Territory law dealing with disability discrimination, the person cannot also make a complaint alleging a contravention of the DDA in respect of the same matter.

The meaning of 'disability' under the DDA

10. The definition of 'disability' in the DDA is very broad. It is intended to include physical, sensory, intellectual and psychiatric impairment, as well as mental illness or disorder. It also applies to the presence, in the body, of organisms causing or capable of causing disease or illness. The definition also includes a disability that presently exists, existed in the past, may exist in the future, or is imputed to a person.

11. Subsection 4(1) of the DDA provides that:

disability, in relation to a person means:

- (a) total or partial loss of the person's bodily or mental functions; or
- (b) total or partial loss of a part of the body; or
- (c) the presence in the body of organisms causing disease or illness; or
- (d) the presence in the body of organisms capable of causing disease or illness; or
- (e) the malfunction, malformation or disfigurement of a part of the person's body; or
- (f) a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction; or

(g) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour;

and includes a disability that:

- (h) presently exists; or
- (i) previously existed but no longer exists; or
- (j) may exist in the future; or
- (k) is imputed to a person.

12. A wide range of disabilities have been recognised, for example:

- Visual impairment: *Jennings v Lee* (1997) EOC ¶92-862;
- Asthma: *Francey v Hilton Hotels of Australia Pty Ltd* (1997) EOC ¶92-903;
- Cerebral Palsy: *McLean v Airlines of Tasmania Pty Ltd* (1997) EOC ¶92-862;
- Partial mental impairment: *Y v Australia Post* (1997) EOC ¶92-866;
- Paranoid schizophrenia: *X v McHugh, Auditor General for Tasmania* (1994) ¶EOC 92-623; and
- HIV/AIDS: *X v The Commonwealth* (1999) 200 CLR 177.

13. Different courts have taken different approaches to whether the definition of 'disability' includes behaviour occurring as a result of that disability. In *Purvis v State of New South Wales (Department of Education and Training) and HREOC*¹ the Full Federal Court, dismissing Mr Purvis' appeal and agreeing with Emmett J at first instance, held that paragraph 4(g) of the definition of 'disability' contemplated a distinction between the 'underlying' disability and its effects. The Full Court stated:

In our opinion, ... Emmett J was correct in holding that HREOC had misdirected itself as to the proper construction of s 4 of the Act in regarding the conduct of the complainant which occasioned the actions of those in charge of the school as part of the disability of the complainant. In our opinion, that conduct was a consequence of the disability rather than any part of the disability within the meaning of s 4 of the Act. This is made quite explicit in subs (g), which most appropriately describes the disability in question here and which distinguishes between the disability and the conduct which it causes. The same may be said of subs (f). The other subsections do not involve conduct.

14. *Purvis* has been appealed to the High Court; this definitional question will be one of the matters that the Court will be asked to determine.

15. In *Minns v State of New South Wales*² the Federal Magistrates Service found that a psychological disorder can amount to a disability under paragraph 4(1)(g) of the DDA. The facts of the case involve a student who had been excluded from two State schools because of his behaviour. The student alleged discrimination on the ground of disability as he suffered from Asperger's Syndrome, Attention Deficit Hyperactivity Disorder and Conduct Disorder. While the case was not decided on the issue Raphael FM concluded that the Conduct Disorder fell within paragraph (g) of the definition of 'disability'.

16. The definition of 'disability' in the DDA only applies for the purposes of that Act. It does not apply to the definition of disability in other Commonwealth legislation, for example, the *Disability Services Act 1986* or the *Social Security Act 1991*.

¹ *Purvis v The State of New South Wales (Department of Education and Training)* [2002] FCA 503 at paragraph 28.

² [2002] FMCA 60.

Disability Discrimination

17. The two main definitions of discrimination in the DDA, direct and indirect discrimination, are set out in sections 5 and 6, respectively.

18. Section 5 of the DDA provides:

(1) For the purposes of this Act, a person (***discriminator***) discriminates against another person (***aggrieved person***) on the ground of a disability of the aggrieved person if, because of the aggrieved person's disability, the discriminator treats or proposes to treat the aggrieved person less favourably than, in circumstances that are the same or are not materially different, the discriminator treats or would treat a person without the disability.

(2) For the purposes of subsection (1), circumstances in which a person treats or would treat another person with a disability are not materially different because of the fact that different accommodation or services may be required by the person with a disability.

19. An allegation of discrimination under the DDA, like other federal anti-discrimination legislation, is premised on establishing the 'ground' of the discrimination. In *Commonwealth of Australia v Nerilie Anne Humphries & Ors*³ the Federal Court discussed section 5 of the DDA stating:

[Section] 5 enquires as to a reason for that treatment. The language of the section suggests there is no discrimination, on the ground of disability, unless a causal relationship is established between the disability and the aggrieved person and any less favourable treatment accorded them.

20. Generally speaking, it is direct discrimination to treat a person less favourably, because of his or her disability, than a person without the disability would be treated in circumstances that are the same or not materially different.

21. Subsection 5(2) of the DDA provides that 'materially different' does not include the fact that different accommodation or services may be required by the person with the disability. This provision is intended to prevent the discriminator from claiming that there is not less favourable treatment because the different accommodation or services constitute a 'material difference'.

22. The definition in the DDA is based on comparison, that is, comparing the person who has the disability to another person without the disability in the same circumstances or in circumstances that are not materially different.

23. A finding of direct discrimination will also involve analysis of what constitutes 'less favourable treatment' when making the comparison. A complaint of discrimination on the ground of disability will not be made out if there is not 'less favourable treatment'. The Full Federal Court in *Purvis*⁴, when discussing 'less favourable treatment' in an education context, said:

The relevant prohibition here is against discrimination on the ground of the person's disability (s 22). Section 5 of the Act is related to the assessment of that issue. It is difficult to illustrate the comparison called for by s 5 by way of a wholly hypothetical example, as it involves a comparison of treatment by the particular alleged discriminator, and requires findings of fact as to the particular disability, as to

³ (1998) 86 FCR 324 at 333.

⁴ *Purvis v State of New South Wales (Department of Education and Training)* [2002] FCA 503 at paragraph 32.

how the alleged discriminator treats or proposes to treat the aggrieved person, and as to how that alleged discriminator treats or would treat a person without the disability. The task is to ascertain whether the treatment or proposed treatment is based on the ground of the particular disability or on another (and non-discriminatory) ground. There must always be that contrast. To be of any value, the hypothetical illustration must make assumptions as to all factual integers.

Indirect Discrimination

24. Section 6 of the DDA provides:

For the purposes of this Act, a person (*discriminator*) discriminates against another person (*aggrieved person*) on the ground of a disability of the aggrieved person if the discriminator requires the aggrieved person to comply with a requirement or condition:

- (a) with which a substantially higher proportion of persons without the disability comply or are able to comply; and
- (b) which is not reasonable having regard to the circumstances of the case; and
- (c) with which the aggrieved person does not or is not able to comply.

Indirect discrimination involves the application of a requirement or condition that is neutral or non-discriminatory on its face, but in fact disadvantages a particular group of people. Intention is not relevant. For example, stairs are a common form of access to buildings and are the same for everyone, but some people cannot use them.

25. Indirect discrimination involves the added criteria of ‘reasonableness’. In *Waters v Public Transport Corporation (Waters case)*,⁵ a decision relating to the *Equal Opportunity Act 1984* (Vic), it was held by a majority of the High Court that ‘reasonableness’, in an anti-discrimination context, means what is reasonable in all the circumstances of the case. Brennan J said:

It is not possible to determine reasonableness in the abstract; it must be determined by reference to the activity or transaction in which the putative discriminator is engaged. Provided the purpose of the activity or transaction is not to discriminate on impermissible grounds, the reasonableness of a requirement or condition depends on whether it is reasonable to impose the requirement or condition in order to perform the activity or complete the transaction ... Effectiveness, efficiency and convenience in performing the activity or completing the transaction and the cost of not imposing the discriminatory requirement or condition or of substituting another requirement or condition are relevant factors in considering what is reasonable.

⁵ (1991) 173 CLR 349 at 378.

Unjustifiable hardship

26. Section 11 of the DDA lists a number of considerations to be taken into account in determining ‘unjustifiable hardship’. In deciding whether a person is required to make reasonable adjustments to accommodate a person with a disability the person seeking to rely on this defence will have to provide some evidence to show that the accommodation would involve unjustifiable hardship.⁶

27. Section 11 of the DDA states:

For the purposes of this Act, in determining what constitutes unjustifiable hardship, all relevant circumstances of the particular case are to be taken into account including:

- (a) the nature of the benefit or detriment likely to accrue or be suffered by any persons concerned; and
- (b) the effect of the disability of a person concerned; and
- (c) the financial circumstances and the estimated amount of expenditure required to be made by the person claiming unjustifiable hardship; and
- (d) in the case of the provision of services, or the making available of facilities—an action plan given to the Commission under section 64.

29. The unjustifiable hardship defence applies across almost all of the provisions in Part 2 of the DDA. However, in the provisions prohibiting discrimination in education (section 22), the unjustifiable hardship defence is only available in respect of decisions not to enrol a child with a disability. The Disability Standards for Education, which are currently under development, would extend the application of the unjustifiable hardship defence beyond enrolment in an educational institution.

30. The operation of the ‘unjustifiable hardship’ defence has been considered in a number of court and HREOC decisions. For example:

- *Hills Grammar School v Human Rights & Equal Opportunity Commission*⁷ - in this case, the Federal Court upheld the decision of HREOC, finding that the school had discriminated against the complainant on the ground of her disability (spina bifida). The school had sought to rely on the ‘unjustifiable hardship’ defence in s 22(4) of the DDA, claiming it could not cater for the child’s disability because of the cost of modifying the school buildings. The Federal Court found that the true cost of accommodating Scarlett was substantially less than that put forward by the school.
- *Scott and Disabled Peoples International v Telstra*⁸ - the applicant lodged a complaint alleging direct disability discrimination under section 24 of the DDA (the provision of goods, service and facilities). The applicant, who was Deaf, alleged that Telstra had acted unlawfully by denying him access to the telecommunications system in not providing him with a tele-typewriter (TTY) in the same way it provides hearing subscribers with a standard telephone. Telstra argued that it was not being discriminatory by not supplying TTY

⁶ For example: *Scott and Disabled Peoples International v Telstra* [1995] EOC ¶92-717.

⁷ (2000) 100 FCR 306.

⁸ [1995] EOC ¶92-717.

because it did not supply a TTY to anyone. Telstra sought to rely, in part, on the ‘unjustifiable hardship’ defence, arguing that it would be too costly to provide TTY telephones as a standard service. HREOC found that the defence of unjustifiable hardship had not been made out. In particular, HREOC stated that it expected to see evidence from Telstra on relevant research (including overseas experience), the revenue to be expected from increased billing of Deaf subscribers, research on subscriber levies to offset any additional cost and any reasonable adjustment to its voluntary concession programme.

Prohibition of disability discrimination in employment and related areas

31. The DDA prohibits discrimination in employment (section 15), against commission agents (section 16), against contract workers (section 17), by partnerships consisting of three or more partners (section 18), by qualifying bodies (section 19), by unions and employer organisations registered under the *Workplace Relations Act 1996* (section 20), and by employment agencies (section 21).

32. In *Allender v The Department of Human Services, Victoria*⁹ HREOC found that the employer had discriminated against an employee with deteriorating vision by suspending him without pay and then terminating his employment. The Commission found that the employer should have conducted a more adequate assessment of the employee's ability to perform the requirements of his job. Instead, the employer had placed the onus on the employee to produce satisfactory information about his capacity to perform the work.

Inherent requirements defence

33. Subsection 15(4) of the DDA provides that it is not unlawful to discriminate against a person on the ground of disability in employment where the person would, because of his or her disability, be unable to:

- carry out the inherent requirements of the particular employment; or
- would, in order to carry out those requirements, require services or facilities that are not required by persons without the disability and the provision of which would impose an unjustifiable hardship on the employer.

34. Subsection 15(4) of the DDA also includes the factors to be considered in determining whether the ‘inherent requirements’ or ‘unjustifiable hardship’ defences will apply. These are:

- the person’s past training, qualifications and experience relevant to the particular employment;
- if the person is already employed, their performance as an employee; and
- all other relevant factors that it is reasonable to take into account.

⁹ (1997)EOC ¶92-904.

35. The High Court considered the operation of the 'inherent requirements' defence in *X v Commonwealth*¹⁰ *X* concerned the dismissal of an HIV infected soldier from the Australian Defence Force (ADF) because of his HIV status, and his inability to 'bleed safely'. In their joint judgment, Gummow and Hayne JJ¹¹ set out the following approach to the defence:

The reference to "inherent" requirements invites attention to what are the characteristic or essential requirements of the employment as opposed to those requirements that might be described as peripheral. Further, the reference to "inherent" requirements would deal with at least some, and probably all, cases in which a discriminatory employer seeks to contrive the result that the disabled are excluded from a job. But the requirements that are to be considered are the requirements of the particular employment, not the requirements of employment of some identified type or some different employment modified to meet the needs of a disabled employee or applicant for work.

36. In *Cosma v Qantas Airways Ltd*¹² the Federal Court held that the ability to perform the 'inherent requirements' of the job was to be measured against the pre-injury job of the appellant, not against the work that he had been performing during his rehabilitation program. The Court noted that to find otherwise would be a disincentive for employers to provide modified duties while attempting rehabilitation.

37. In *Qantas Airways Limited v Christie*¹³ which was an appeal from a decision of the Industrial Relations Court of Australia arising under the former *Industrial Relations Act 1988* (the Act), the High Court considered that the expression 'inherent requirements' should be given its natural and ordinary meaning, formulating the following approach:

A practical method of determining whether or not a requirement is an inherent requirement, in the ordinary sense of that expression, is to ask whether the position would essentially be the same if that requirement were dispensed with.¹⁴

The 'inherent requirements' defence is also available in sections 16, 17, 18 and 19 of the DDA.

Prohibition of disability discrimination in other areas of public life

38. Sections 22-30 of the DDA prohibit discrimination in the following areas of public life: education, access to premises, goods, services and facilities, accommodation, land, clubs and incorporated associations, sport, administration of Commonwealth laws and programs, and requests for information.

39. For example, section 22 of the DDA makes it unlawful for an educational authority to discriminate against a person, or his or her relatives or associates, on the grounds of a person's disability by:

- refusing or failing to accept the person's application for admission as a student; or
- in the terms or conditions on which it is prepared to admit the person as a student.

¹⁰ (1999) 200 CLR 177.

¹¹ (1999) 200 CLR 177 at 208.

¹² [2002] FCAFC 425.

¹³ (1998) 193 CLR 280.

¹⁴ (1998) 193 CLR 280, Gaudron J at 295.

40. In *Travers v State of NSW*¹⁵ the Federal Magistrates Service found that the respondent school had discriminated against the applicant, a student with spina bifida, because it required her to utilise a toilet which was not the most accessible toilet. This amounted to indirect discrimination in education (section 22 of the DDA). Raphael FM said:

At all times the school had advice that Stephanie needed to be not less [sic] than 12 seconds from the nearest accessible toilet. I have found that the toilet in E Block was such an accessible toilet and that there were no satisfactory reasons for excluding it [in] the case of Stephanie.

41. The Federal Magistrate also confirmed that the motives of the school were not relevant.

42. In *Rigon v CAMS Ltd*¹⁶ HREOC found that CAMS had discriminated against a racing driver, who only had vision in one eye, when it suspended his licence. The licensing rules required him, as a driver with vision in one eye, to have a greater field of vision than a driver with vision in both eyes. Evidence was provided that showed his vision was sufficient for racing. HREOC accepted this evidence in finding that CAMS had discriminated against Mr Rigon in contravention of section 28 of the DDA.

43. In *Michelle Bryant and Mark Nagy v Cuna Mutual Group Ltd*¹⁷ HREOC found that an insurer had discriminated against a deceased man's brother and sister because of the deceased's HIV status. The insurer refused to pay out on a loan insurance policy taken out by the deceased man. The Commissioner decided that, as the beneficiaries of their brother's estate, the complainants were capable of being regarded as 'persons aggrieved', and therefore able to bring an action alleging that they had been discriminated against on the basis of the disability of their associate.

The power to make Disability Standards

44. Section 31 of the DDA allows the Minister to formulate standards, known as the Disability Standards. Section 32 of the DDA provides that it is unlawful to contravene a disability standard.

45. Section 34 provides a defence for a person who has acted in accordance with a disability standard. In relation to s 34, the explanatory memorandum to the Disability Discrimination Bill 1992 states:

Disability standards are intended to be a standard which if abided by would protect a person from any other action under this Bill relating to action covered by those standards. It will not therefore be possible for a person to lodge a complaint alleging that someone has done an act where that person has done that act in accordance with a disability standard.

46. On 23 October 2002 the Disability Standards for Accessible Public Transport (the Transport Standards) became law in Australia. The Transport Standards are practical measures to be taken by transport operators and providers so that public transport will become more accessible, particularly for people with disabilities, as well as the elderly and those travelling with young children.

47. Disability Standards in the areas of access to premises and of education are currently being developed.

¹⁵ [2001] FMCA 18.

¹⁶ An unreported decision of HREOC (28 August 2000).

¹⁷ An unreported decision of HREOC (23 December 1999).

Harassment and offences under the DDA

49. Sections 35 – 40 of the DDA prohibit discrimination involving harassment. These provisions make it unlawful for a person to harass a person with a disability or an associate in a range of areas, including: employment, (sections 35 and 36), education (sections 37 and 38), and in the provision of goods and services (sections 39 and 40).

50. ‘Harassment’ is not separately defined in the DDA, and there appear to have been no cases considering the term as it is used in the DDA.

51. Section 41 makes it clear that unless the Act specifically provides, none of the acts that are made unlawful in this Part (Divisions 1, 2 and 3 of Part 2) are offences. Section 42 of the DDA makes it an offence to victimise (defined in subsection 42(2)) someone where he or she has taken action under the DDA, or has indicated an intention to do so.

52. Section 43 makes it a criminal offence for someone to incite another person to do an act that is unlawful in Part 2 – for example, incite a person to discriminate against another person in employment on the ground of disability. Section 44 of the DDA makes it unlawful to advertise (defined in subsection 44(2)) an intention to do an act that is unlawful under this Part.

Exemptions

53. Where an exemption applies it is not unlawful to discriminate on the ground of disability. The areas exempted include those in Division 5, Part 2 of the DDA. These are: special measures (section 45), superannuation and insurance (section 46), acts done under statutory authority (section 47), infectious diseases (section 48), charities (section 49), migration (section 52), combat duties, combat-related duties and peacekeeping services (section 53), and peacekeeping services and the AFP (section 54).

54. For example, the DDA allows ‘special measures’ which favour people with a disability. The explanatory memorandum to the Disability Discrimination Bill 1992 states that section 45:

...is designed to provide an exemption for someone who does an act which might be otherwise unlawful under this Part where that action is designed to either assist people who have a disability to obtain greater equality of opportunity or is designed to give people with disabilities access to facilities, services or opportunities or to provide them with grants or benefits to meet their special needs.

55. Therefore, it is not unlawful to treat people with a disability more favourably than people without a disability. This includes doing things which promote equal opportunity for people with a disability; this includes adjustments, or special benefits or opportunities for people with disabilities.

56. Sections 46 – 54 set out exemptions in specific areas of activity. For example, s 47 provides for an exemption for actions done in direct compliance with a determination of a court, a law prescribed in the Disability Discrimination Regulations, or certain awards, orders, certified agreements or Australian workplace agreements that provide for rates of pay to a person who would otherwise be receiving a disability support pension, and which are calculated by reference to the work capacity of the person.

57. Section 48 of the DDA does not render it unlawful for a person to discriminate against another person on the ground of the other person's disability if the person's disability is an infectious disease and the discrimination is reasonably necessary to protect public health.

58. HREOC also has the power, under section 55, to grant temporary administrative exemptions (up to a period of five years) from the operation of a provision of Part 2 of the DDA and from the operation of a disability standard dealing with public transport. An exemption may be granted, for example, where a service provider has made a commitment to undertake considerable adjustments to comply with obligations under the DDA, but requires some time to do so. Section 58 makes it clear that action taken in accordance with an exemption granted by HREOC is not unlawful under other parts of the DDA.

Action plans

59. Part 3 of the DDA relates to action plans. Action plans are designed to allow service providers an opportunity to put in place longer term plans which would indicate how they intend to overcome perceived discriminatory practices. Action plans must include provisions that deal with the issues listed in section 61 of the DDA. Section 64 provides that a copy of an action plan may be given to HREOC.

The Human Rights and Equal Opportunity Commission

60. The Human Rights and Equal Opportunity Commission is responsible for handling complaints under the DDA.

61. Section 67 of the DDA outlines some of the functions of the Human Rights and Equal Opportunity Commission. These include:

- receiving action plans under section 64;
- promoting an understanding and acceptance of, and compliance with, the DDA;
- undertaking research and educational programs, and other programs on behalf of the Commonwealth for the purpose of promoting the objects of the DDA;
- preparing, and publishing in such a manner as the Commission considers appropriate, guidelines for the avoidance of discrimination on the ground of disability.

62. HREOC's powers in relation to complaints and inquiries are contained in the *Human Rights and Equal Opportunity Commission Act 1986*, and so complaints are made under that Act. When a complaint is lodged with the Commission, it is investigated by the President or her delegate, and may proceed to conciliation. If conciliation is inappropriate or unsuccessful, the complainant may bring an action in the Federal Court of Australia or the Federal Magistrates Service.

Australian Human Rights Commission Legislation Bill 2003

63. The Australian Human Rights Commission Legislation Bill 2003 (the Bill) was recently introduced into Parliament. The Bill will continue the Government's program to reform the Human Rights and Equal Opportunity Commission to provide it with a framework to undertake its future work efficiently and effectively. In that context, the Bill implements the Government's 2001 election commitment to reform HREOC 'to ensure that it is efficient and focused on educating the broader Australian community about human rights issues'. Some of the key elements of the Bill are outlined below.

64. The Bill renames HREOC as the Australian Human Rights Commission, which will have an executive structure of the President and three Human Rights Commissioners. This new structure will strengthen the Commission's 'collegiate' approach to its work. The President and three Commissioners will have a common responsibility to protect and promote human rights for all Australians.

65. In addition to requirements for individual expertise, knowledge or experience, the President and Commissioners will be required to have the collective knowledge and expertise to cover the variety of important matters likely to come before the Commission. Existing Commissioners, provided there are no more than three when the amendments commence, will become Human Rights Commissioners for the remainder of their terms of appointment.

66. The aim of the reforms is to provide a more flexible framework for the Commission to accommodate new areas of responsibility (such as the proposed age discrimination legislation) and to deal more effectively with issues that cut across existing portfolio boundaries (such as women with disabilities).

67. The few functions that are currently legislatively allocated to individual commissioners will be retained and will become functions of the Commission as a whole.

68. The President will be responsible for all complaint handling functions. In order to provide greater flexibility for managing this workload, the Attorney-General will be able to appoint legally qualified persons as 'Complaints Commissioners' on a part-time basis to assist the President. Complaints Commissioners will act in the place of the President for the purpose of handling complaints. However, these commissioners will not be 'members' of the Commission. Work will be allocated to Complaints Commissioners by the President.

69. The highest priority for the new Australian Human Rights Commission will be to educate individuals, businesses and governments about their responsibility to respect human rights. Education is already an important focus of the existing Human Rights and Equal Opportunity Commission. This Bill supports the Commission's approach to protecting and promoting the human rights of all Australians by giving greater legislative priority to education and the dissemination of information about human rights.

70. The new Commission will be able to seek leave to intervene in court proceedings that raise human rights issues on approval by the Attorney-General. The Bill lists broad criteria for the Attorney-General to consider in making this decision. This will ensure that the wider interests of the Australian community are taken into account in the exercise of the intervention function.

71. To ensure that no constitutional issues arise, where a federal Judge is appointed to the position of President the Attorney-General's approval for seeking leave to intervene in court proceedings

will not be required. In this case, the new Commission will notify the Attorney-General of its intention to seek leave to intervene and its reasons for doing so.

72. The Commission will continue to be able to assist the Federal Court as *amicus curiae* (or “friend of the court”) in proceedings arising under federal anti-discrimination legislation without approval from the Attorney-General. This Bill confers the *amicus* function on the three new Human Rights Commissioners in the Commission.

73. Copies of the Bill and explanatory memorandum are attached.