Sex Discrimination Amendment Bill 1989

Date Introduced: 11 May 1989
House: House of Representatives
Presented by: Hon. Lionel Bowen, M.P., Attorney-General

Digest of Bill

Purpose
To reduce the number of circumstances in which superannuation and insurance funds and policies may discriminate on the grounds of sex or marital status.

Background
Australian superannuation is largely unregulated by anti-discrimination legislation. The Sex Discrimination Act 1984 (the Principal Act) provides several exemptions to acts and practices that constitute discrimination on the ground of sex or marital status, including the exemptions in sub-sections 41(1) and 41(4) relating to superannuation and insurance. For example, these provisions provide an exemption for discrimination on the grounds of sex or marital status in the terms and conditions of superannuation and insurance schemes. These provisions have allowed a number of superannuation and insurance schemes (principally private schemes) to determine contribution and benefit rates and options on the basis of actuarial data using the difference in life expectancy between men and women. This practice has meant that, for example, when receiving pension benefits or buying an annuity, a woman may receive a smaller periodic benefit for the same purchase price than would a man of equal age. However, it should be noted that differences in benefits between men and women members of a scheme may be equalised where benefits, such as a pension for a surviving spouse, are taken into account. This is because, if pensions cost more for women due to their longevity, then returns from superannuation benefits to widowers may cost less, because fewer widowers' than widows' pensions are likely to be claimed.¹

On 25 November 1986, a report by the Human Rights Commission (the Commission) titled 'Superannuation and Insurance and the Sex Discrimination Act 1984 - Part 1 - Superannuation' was tabled in the Senate. The Commission was requested to report on whether the Principal Act should be amended in relation to the exemptions granted in sub-sections 41(1) and 41(4). The Commission's recommendations included: that sub-section 41(1) of the Principal Act should be repealed; superannuation schemes should be made to comply with the anti-discrimination provisions of the Principal Act; that a transition period of three years be provided to allow superannuation schemes time to remove discriminatory arrangements; and that the Commonwealth seek action by
the Governments of all States and Territories that will ensure that all superannuation schemes operated by them and their authorities avoid discrimination on grounds of sex, marital status or pregnancy. The Commission deferred any recommendations on superannuation involving insurance until the insurance segment of its inquiry has been dealt with. However, the Commission did remark that it was reasonable to allow contributions and or benefits under a personal superannuation scheme to differ by sex, but only to the extent that the difference is directly attributable to life insurance funding, and as such is exempt under sub-section 41(4) of the Principal Act.2

Main Provisions

Clause 2 provides that the Bill will operate 2 years from the day it receives the Royal Assent.

Clause 4 will repeal section 41 of the Principal Act and insert new sections 41 to 41C.

Proposed section 41 deals with insurance. In relation to an insurance policy, a person may only discriminate on the grounds of sex where the discrimination is based on actuarial or statistical data, is reasonable having regard to that data and the discrimination is contained in a term of the policy. Insurance policy is defined to be a life, accident or illness policy.

Proposed section 41A deals with new superannuation policies. Discrimination on the grounds of sex or marital status will only be allowed in three circumstances. First, where the discrimination is based on actuarial or statistical data and is reasonable having regard to that data. Secondly, a dependent benefit (i.e. a benefit payable on the policy holder's death to another) need not be provided to those who do not have a spouse, de-facto spouse or child. Thirdly, the vesting, preservation and portability provisions may result in discrimination so long as it is indirect discrimination. Indirect discrimination is defined by reference to sections 5 and 6 of the Principal Act and, basically, refers to discrimination based on characteristics, or imputed characteristics, that generally relate to the people of that sex or marital status. Indirect discrimination also includes the imposition of conditions with which a higher proportion of members of the opposite sex or marital status can comply where the condition is unreasonable and the aggrieved does not or cannot comply. However, to be able to so discriminate a fund must have a condition that any exercise of a discretion is not to allow discrimination on the grounds of sex or marital status.

Proposed section 41B deals with existing policies. Where a person is a member of a fund before the commencement of this Bill and the person has an option to take non-discriminatory benefits (or the Sex Discrimination Commission has certified that the fund is exempt from the latter requirement), the fund may continue to discriminate on the grounds of sex or marital status. A person will be deemed able to take non-discriminatory benefits if those benefits would not breach proposed section 41A.
Proposed sections 41A and 41B may be repealed by regulation. However, there must be a minimum period of 12 months between the making of the regulation and its effect (proposed section 41C). Current section 41 may be repealed by regulation.

References
2. Ibid., pp. 114 – 119.

For further information, if required, contact the Law and Government Group.

8 June 1989

Bills Digest Service

Legislative Research Service

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

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