



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



THE SENATE

BILLS

**Sex and Age Discrimination
Legislation Amendment Bill 2010**

In Committee

SPEECH

Thursday, 12 May 2011

BY AUTHORITY OF THE SENATE

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Questioner
Speaker Xenophon, Sen Nick

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Senator XENOPHON (South Australia) (13:25): I want to put some questions to the government in relation to this. I have been listening carefully to Senator Brandis and I have had an opportunity to discuss this matter further with him. And I am, of course, grateful to the government for the discussions I have had with them in relation to this. Let me make it clear, so that there is no misunderstanding for anyone who is listening or who reads the *Hansard* in relation to this, that proposed section 7A(1) is a reworking of the current section 7A of the Sex Discrimination Act and makes it very clear that, if a person discriminates against another person on the ground of the aggrieved person's family responsibilities, that is an offence, that is prohibited—as it should be. Also, it ought to be read in the context of section 7B in that, with indirect discrimination, there is a reasonableness test, and in section 7C of the act there is effectively a reverse onus of proof. Normally, a reverse onus of proof is something you would be quite cautious about, but I think it is appropriate to have a reverse onus of proof in the scheme of this legislation in order for the legislation to be effective. But here we have a situation, with subclause (2), where what is proposed is that, if a person discriminates against another person on the ground of the aggrieved person's family responsibilities, if the discriminator imposes or proposes to impose a condition, requirement or practice that has or is likely to have the effect of disadvantaging persons with family responsibilities, there is a reverse onus of proof. The concern I have—and I would be very grateful if the minister could give his views in relation to this—is that, in the whole context of this particular subclause, there is no cause and effect. It would make it much easier for a claim without any particular substance to be brought against an employer, a small business person—a person who does not have the resources of a BHP Billiton or a Commonwealth Bank. That employer would have to be dragged through the courts and would then have to rely on section 7B of the act and also on section 7C, where there is a reverse onus of proof. So the onus is on the employer to show that what they did was reasonable—and there are considerable costs involved in that. That is my concern in relation to indirect discrimination. I do not support the opposition's other amendments, I want to make that clear, but I am concerned about unintended consequences in the context of the proposed section 7A(2) of this bill. By having the words 'with family responsibilities', there is no requirement for cause and effect, and that causes me real concern about whether there could be unintended consequences in relation to this bill.