



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

Source Senate
Proof No
Responder
Question No.

Senator XENOPHON (South Australia) (13:41): I thank the minister for his response. I still have reservations about the potential operation of subclause (2), not subclause (1)—that is not an issue--which is largely a restatement of the existing section 7A of the act. My problem is with the third to last word in subclause (2), the word 'with', not 'because of', not 'due to' and not 'as a direct result of' family responsibilities. It is the word 'with' that I think extends it in a way that may not be reasonable, that will not enhance the operation of the act and that could well lead to the unintended consequence of litigation in the context of section 7B, which gives a reasonableness test. With section 7C there is a reverse onus of proof. I have reservations about this particular subclause. That is why I have difficulty in supporting it.

I make it clear that this is not about taking away the rights of those who have family responsibility. That is clearly in the legislation as it is now and it is restated in proposed subclause (1). I think there will be some very real issues here in litigation. I am not convinced that there will not be some adverse consequences for small businesses and I am concerned at the impact it may have in the way that small businesses regard the employment of those individuals with families. For Senator Ludwig—for whom I have enormous respect—to say that the sky did not fall in—no, it did not.

Anti-discrimination legislation is an essential feature of a civil society, but let us not have something that could well be contrary to the aims of that legislation, something that I think could lead to the legislation having consequences that were not intended and something that will cause damage all round, to those it is seeking to protect and to those that could be the subject of litigation. Question put:

That the amendments (Senator Brandis 's) be agreed to.

The committee divided. [13.47]

(The Chairman—Senator Ferguson)

Question agreed to.