



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



HOUSE OF REPRESENTATIVES

**DISABILITY DISCRIMINATION
AND OTHER HUMAN RIGHTS
LEGISLATION AMENDMENT BILL 2008**

Second Reading

SPEECH

Thursday, 12 February 2009

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

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Questioner
Speaker Rea, Kerry, MP

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Ms REA (Bonner) (12.38 pm)—I too am very pleased to speak in support of the Disability Discrimination and Other Human Rights Legislation Amendment Bill 2008, which is before the House today. Protecting and promoting the human rights of every individual in the Australian community is a fundamental responsibility of every member of this House. Indeed, our democratic institutions—our parliaments and our local government chambers being the most precious—cannot properly function if we live under a cloud of discrimination.

This legislation seeks to amend the Disability Discrimination Act to better protect the rights of people with a disability and broaden the umbrella of legal protection that ensures an individual's disability does not prevent them from enjoying the opportunities and rights the rest of us do. For too long in this country so many of our citizens were not able to engage in public life, to do basic things like go shopping—much less attend school and join the workforce—because we as a society could not be bothered to cater for their needs. There are many valued employees in workplaces across the country today who are able to work simply because of a ramp or a specially designed toilet. The Disability Discrimination Act dates back to 1992, and it is an indictment of us that it took so long as a country to actually legislate to end discrimination against people with disability. On the other hand, this act is now 17 years old and, thank goodness, times have moved on and we are now much more aware of the diversity of the needs of people with a disability. In short, the act is well overdue for an update.

The bill addresses a number of key areas that improve the quality of life for people with a disability. In particular, it talks about reasonable adjustments to workplaces and other organisations so that people with a disability can enjoy many more activities and contribute to the working life of this country. There has been some criticism of these provisions, but I wish to say to employers that they should not be alarmed. The bill requires reasonable adjustments to be made to the workplace to accommodate people with a disability. However, it also allows for a business, workplace or other organisation to claim unjustifiable hardship if these adjustments are too onerous.

Instead of querying these amendments, I would urge all business, industry owners and managers to consider

what they are missing out on if these amendments are not passed. It could well be that they miss out on a valuable and very productive employee simply for the want of a ramp or a toilet, or accommodating an assistant animal. The cost of adjustments could well be outweighed by the productive and enthusiastic contribution of someone who performs brilliantly but would otherwise not even be there because the work environment did not suit their disability. We have already heard from previous speakers on this side who have talked about many examples where employers have actually commended the contribution of workers they have employed who have a disability but whose work performance often far outweighs others in their employ. It seems to me, therefore, that the real cost to the employer or manager is to overcome their prejudice and recognise the talent and skill of the person seeking employment, not their difference, so to speak. This bill in fact seeks to expand the labour pool, not restrict it. Whilst balancing the rights of people with a disability, it is also practical in that it acknowledges the concerns of business owners and others.

It is important to remind the House that these amendments have not been presented to radically change the act but rather to clarify existing provisions. The amendments come as recommendations from the Productivity Commission, the Law Reform Commission and the House's own Standing Committee on Legal and Constitutional Affairs—all esteemed groups who have done a very broad-reaching analysis of how we as a community and a workplace can work better.

The legislation also responds to the recent decision by the full Federal Court in the case of *Forest* by clarifying the operation of part 1 of the act. That is, discrimination on the basis that a person possesses or is accompanied by a carer, assistant animal or aid is discrimination on the basis of disability. Can it really be the case in 2009, 17 years after the Disability Discrimination Act came into being, that these obvious needs for people with a disability to go about their daily business cannot be acknowledged and indeed can be used to prevent employment or any other activity? You only have to look at the court case and the subsequent decision that gave rise to these amendments to appreciate just how significant this decision is. Mr Forest was denied access to a hospital and a medical centre in Cairns because he was

accompanied by an assistant animal that was trained to help manage Mr Forest's psychiatric disability. We are not just talking about a job or getting into an entertainment venue; we are talking about a needy individual being denied something as basic as medical services. Thank goodness that the full Federal Court upheld Mr Forest's right and denied the appeal by the Queensland government. As a result, we are here today debating these very necessary amendments to the legislation. I am proud to be a part of this debate and to have the opportunity to personally vote in support of this bill.

The bill also ends possible discrimination for people who may end up with a disability in the future because of genetic predisposition. I know there are some who deem the act to be sufficient in this regard, as the definition of disability is believed to be broad enough, but I am pleased that the Attorney-General has sought to put this beyond doubt by introducing this amendment. The Disability Discrimination Act also makes disability discrimination unlawful by aiming to deal with physical and attitudinal barriers that act to directly and indirectly preclude people with disabilities from making optimal use of their knowledge, skills and talents such that they may effectively participate in the community. It affords people with disabilities the right to substantive equality of opportunity in areas like employment, education and the provision of goods and services.

What I am really pleased about is that the amendments to this act will reinforce and strengthen that very noble goal and aim of this legislation. It could mean that, for example, in my electorate of Bonner, the 3,376 people with a disability who are currently on the disability services support pension may well be able to seek employment now and overcome that hurdle that they have faced in the past and that has denied them employment—that is, prejudice because of their disability. It may well be that, now through these amendments, they are able to seek employment, to contribute fully to the workforce and to participate more fully in their local community and more broadly in our national society, and not necessarily be what some people perceive themselves as—a burden on the taxpayer. They would rather give than take. This act enables them to do that. It also means that the children who graduate from the many wonderful schools in my electorate that cater for children with disability—the Darling Point Special School, the Mount Gravatt East Special School, the Mount Gravatt West Special School and Seton College, which is just outside my electorate, but many families in my electorate use the services of that wonderful college—will find themselves with greater opportunities as a result of this legislation. I am very proud to support it.

The bill also removes the dominant reason test in the Age Discrimination Act. Not only is this, once again, a basic redress; it was also recommended by both the Australian Human Rights Commission and the Law Council of Australia to bring the Age Discrimination Act in step with other pieces of discrimination legislation. It is almost ironical to think that we actually have one act that is more discriminatory than other pieces of discrimination legislation and we are finally bringing them in step together.

This particular amendment will also have far-reaching consequences for improving the contribution of many more people to our workforce. We live in the age of the baby boomer. I am the youngest of seven children. I am, in fact, 13 years behind the next youngest sister, which means that I just made it into generation X, thank goodness. But I have six siblings who are all baby boomers. I am only too well aware of their force in this world. Baby boomers are never going to give up, they are never going to slow down, they are never going to move aside and they are never going to roll over. As they get older it seems that everyone gets younger—40 becomes the new 30, 60 becomes the new 40 and so on. The expression 'you are too old to do that' will not last for much longer. If anyone is brave enough to tell the Rolling Stones and Leonard Cohen that they are too old to work, then they are a braver person than I.

Of course, that is how it should be. Any workplace that does not respect the skill, wisdom and corporate knowledge attained by people who have worked for a long period of time, either in one company or in one profession, does so to their detriment. The concept that youth means you are better is only a fairly recent phenomenon. Every culture on earth has always respected, honoured and venerated their elders. Indeed, it was the elders of any community that were given the authority as decision makers and judges. Why? Because nothing can beat wisdom that is borne of experience. That is why, once again, I would like to say to the employers, business owners and managers out there that they should not be afraid of this amendment but rather embrace the opportunities this will give them to choose from the best candidates for the job rather than have people excluded because of their age or disability. It is also particularly important that, at this most difficult economic time, anyone who wishes to remain in the workforce or, indeed, return to the workforce should be able to do so without fear of discrimination on the basis of their age.

The bill also seeks to change the name of the Human Rights and Equal Opportunity Commission to the Australian Human Rights Commission. It gives the commission a truly national, indeed distinctly Australian, identity. This name change is important

and it comes at a time when the Attorney-General is asking all Australians to get involved in the national consultation on human rights which is currently underway. Our democracy cannot survive or progress unless we remain vigilant about the protection and promotion of human rights for all our citizens. Our parliaments and our courts become farcical if we do not respect our citizens through laws which protect their individual rights and prevent discrimination. That is why I am very pleased that the Attorney-General has established this consultation process. In fact, he has announced a consultation committee of very eminent persons in our country to go right around Australia to engage everybody in this consultation: Father Frank Brennan, who, of course, everyone in this House knows, has been a great champion of human rights and the prevention of discrimination for many years in this country; Mary Kostakidis, a well-known journalist who has given many of us very important and valuable news from here and around the world over many years; Tammy Williams, an Indigenous lawyer; and former Australian Federal Police Commissioner, Mick Palmer—all of whom are very eminent persons and very worthy of being members of a committee that will be consulting people on this very important matter.

I would like to take this opportunity to encourage all Australians to get involved in the consultation. This is not just an issue for lawyers for whom so many human rights issues are reduced to debate and discussion about laws and the specifics of law. This is an issue that affects every single one of us, particularly if rights are taken away. And that is why I would encourage all Australians to embrace this incredible opportunity to have a say in how their country addresses the issue of human rights, how their country can legally protect their individual human rights and how their country can better promote and protect human rights.

The committee has addressed a number of parliamentarians in this House and has advised us all, particularly at the launch, of the incredible scope and number of visits that they are making across the country. They are going to the furthest and most remote communities of our country as well as our major cities. They are giving every citizen in this country as much opportunity as is humanly possible to be involved and to engage in this process. It is a very important one. It is one that we must always have at the top of our minds. We must never become complacent, because the day that we do our human rights will start to be eroded and our democratic institutions will no longer be as strong as they have always been. So I would like to take this opportunity to support the amendment to change the name and to support the amendment which gives people more time to bring complaints to the new Australian Human Rights Commission. The need for this also highlights the need to be ever vigilant about

protecting our rights, to engage in consultation and to embrace the opportunity to not just discuss our own individual rights but to produce legislation such as this which further amends our discrimination acts to end discrimination against those who are more vulnerable in our community. On that note, I commend the bill to the House.