

61 8 92163960

Your Ref:  
Our Ref: 04/89/0161  
Enquiries: Allan Macdonald (08) 9216 3952

21 MAY 2004

Ms Louise Gell  
Committee Secretary  
Senate Legal and Constitutional Legislation Committee  
Parliament House  
CANBERRA ACT 2600

Dear Ms Gell

**Inquiry into Civil Aviation Amendment (Relationship with Anti-Discrimination Legislation) Bill 2004**

Thank you for your letter dated 30 March 2004 inviting me to make a submission on the proposed amendment to the *Civil Aviation Act 1988*.

In my role as Commissioner for Equal Opportunity in Western Australia, I am always interested in following developments in anti-discrimination law at the Commonwealth level. In relation to this particular legislative proposal, I should point out that my office does receive from time to time complaints of discrimination in the provision of services by air carriers and agents from travellers with disabilities, which I investigate in accordance with the *Equal Opportunity Act 1984 (WA)* ("the Act").

You may be aware that the Act already provides exceptions to otherwise unlawful acts of discrimination on the ground of impairment in the areas of employment, access to places, and the provision of goods and services, in terms similar to the *Disability Discrimination Act 1992 (DDA)*. In addition, the Act provides an exception to acts of unlawful discrimination on the ground of pregnancy, where the discrimination can be shown to be reasonable in the circumstances. This is an exception that does not exist in the *Sex Discrimination Act 1984 (SDA)*.

I value highly the right enshrined in both State and Commonwealth anti-discrimination laws that a person aggrieved by an act of discrimination can lodge a complaint with the relevant statutory agency, and have that complaint investigated and, if necessary, determined by a court or tribunal, taking into account the exemptions that the legislature has seen fit to include. In this way, the substance of the complaint and the conduct of the respondent can be examined in a fair and balanced manner, under the guidance of the relevant statute.

61 8 92163960

- 2 -

My difficulty generally with regulations of the kind the Bill proposes, is that the conduct of civil air carriers in relation to employees and passengers who have disabilities, or who are pregnant, will no longer be subjected to the level of inquiry that is currently possible under the DDA and SDA. There would no longer be a requirement that carriers provide responses in accordance with the relevant exemptions contained in the legislation, which would otherwise enable agencies and courts to determine whether the conduct complained of is justifiable or reasonable in the particular circumstances of the case.

Further, broad-ranging regulations that excuse a particular industry or section of the economy from an investigative process such as those provided for in the SDA and DDA, may serve to buoy the prospects of campaigners for similar relaxations in other industries.

Ordinarily, I would be opposed to regulations of this kind, for the reasons I have outlined above. They are very likely to have the effect of diminishing the substantive rights of a significant and vulnerable section of the community. My preference is that such significant changes to the law should be scrutinised by Parliament directly, by way of proposed amendments to DDA and SDA respectively.

However, I am reassured to a certain extent by the comment that any proposed regulations that have the potential to be inconsistent with Commonwealth anti-discrimination law will be subject to clearance by the Human Rights Branch of the Attorney-General's Department, and will undergo comprehensive consultation procedures and parliamentary scrutiny. I trust that such scrutiny would include a consideration of the Commonwealth's other international obligations, in relation to human rights, particularly those from which the SDA and DDA are derived.

I trust my response will be of assistance to you, and thank you again for providing me with the opportunity to comment.

Yours sincerely



Yvonne Henderson

**COMMISSIONER FOR EQUAL OPPORTUNITY**

21 MAY 2004