

The Chairperson  
Senate Legal and Constitutional Legislation Committee  
Parliament House  
CANBERRA ACT 2600

Dear Chairperson

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

Thank you for the opportunity to provide submissions to your inquiry into the *Civil Aviation Amendment (Relationship with Anti Discrimination Legislation) Bill 2004* (the **Bill**).

As you would be aware, the Anti Discrimination Board administers the NSW *Anti-Discrimination Act, 1977 (NSW) (ADA)*. The Board's role is to investigate, and attempt to conciliate, complaints made under the ADA. Where complaints cannot be conciliated (and in some other circumstances) complaints may be referred to the Administrative Decisions Tribunal (**ADT**) for determination.

The ADA makes it unlawful to discriminate in a number of areas of public life, on the following specified grounds:

- race
- sex (including pregnancy and sexual harassment)
- marital status
- carer's responsibilities
- disability
- homosexuality
- transgender status
- age

The areas of public life covered by the ADA are employment, education, the provision of goods and services, accommodation and the activities of registered clubs.

In the Board's view, it is fundamentally in the public interest to prevent and eliminate unlawful sex and disability discrimination. For that reason, the Board is of the view that Federal laws should take account of the principles of anti-discrimination law.

I note the comment in the Bill's Explanatory Memorandum that "there is uncertainty in relation to the validity of some actions carried out in accordance with safety regulations where these actions may appear inconsistent with either the *Disability Discrimination Act 1992* (DDA) or the *Sex Discrimination Act 1984*." (the **SDA**).

It is the Board's view that the *Civil Aviation Act 1988* (Cth) (the **Act**) should not be inconsistent with the DDA, SDA or the ADA and that, where possible, there should be consistency across state and federal laws.

Generally, people with disabilities should not have their rights to employment unnecessarily curtailed. Under both federal and NSW discrimination law, the test for excluding a person from employment is whether the person is able to perform the inherent requirements of the job. If not, attention turns to whether the person is able to do so with the assistance of services and facilities provided by the employer and whether the provision of such services and facilities would cause unjustifiable hardship to the employer.

An estimated 12% of the working age population in NSW have a disability.<sup>1</sup> An estimated 7% of the NSW working age population have a disability that would require work related adjustments.

In the past decade the Board has dealt with over two and a half thousand complaints of disability discrimination, most of them in the area of employment. These complaints most commonly relate to refusing to employ or promote a person with a disability, detrimental treatment during employment and termination of employment. In many cases employers do not appear to have properly considered whether services or facilities could be provided without causing unjustifiable hardship in order to enable an employee who has a disability to perform the inherent requirements of a position.

For similar reasons, the Board is of the view that an amendment to the Act which will, in effect, allow an employer in the aviation industry to discriminate against a person on the basis of sex, should be avoided where possible. The imposition of a regulation relating to objective medical standards may have the effect of indirectly discriminating against a woman because she is pregnant with no consideration of the subjective, individual circumstances of the person.

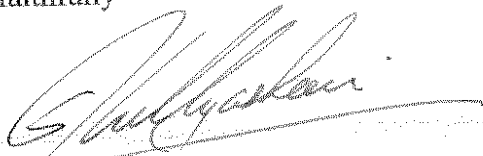
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<sup>1</sup> The population benchmark for people with a disability is derived from the ABS Survey of Disability, Ageing and Carers (1998) and includes all people aged between 15 and 64 but excludes people who are permanently unable to work because of a disability. See ODEOPE *Advancing Diversity: EEO Statistical Profile of the NSW Public Sector for 1999*, 1999, p. 59 and *People with a disability - Comparative tables 2000 - NSW Public Sector* footnote 1, available at: [www.eeo.nsw.gov.au/stats/pwd00.htm](http://www.eeo.nsw.gov.au/stats/pwd00.htm)

As a general principle there is merit in having consistency between the operation of State and Federal laws where appropriate. Consistency of laws assists in increasing understanding of rights and responsibilities and may assist in minimising compliance costs.

Should you wish to discuss any of the matters raised more fully please contact Fiona Kerr, Acting Legal Officer, on 9268 5542.

Yours faithfully



Stepan Kerkyasharian AM  
President

*24 May 2004*