

Senate Legal and Constitutional Legislation Committee  
Inquiry into the Provisions of the

Civil Aviation Amendment

(Relationship to Anti-Discrimination Legislation)

Bill 2004

PUBLIC HEARING

WEDNESDAY, 16 JUNE 2004

**Questions on Notice from the hearing**

Question 1 (Mr Minogue, pp 28-29, *Proof Hansard*)

**Senator LUDWIG**—Just in relation to the submission by the Griffith Law School—you might want to take this on notice—they have two paragraphs on page 2 of their submission that seem to indicate, and I am summarising their arguments perhaps badly, that there would be in fact no inconsistency with the Disability Discrimination Act 1992. Firstly, they say that the DDA already contains adequate exceptions and secondly, they argue that, in relation to the Sex Discrimination Act 1984, the bill proposes to immunise medical standards inconsistent with the Sex Discrimination Act. I was wondering if you could have a look at that and tell me whether or not you say that their arguments are invalid or wrong or whether there is something that they have missed—because in that instance there would be no need for your proposal. I am trying to understand why you say there is a need.

...

**Mr Minogue**—I think we will take that on notice to give you a comprehensive answer. My initial response is that the references that the Griffith University submission makes to the DDA are quite limited and do not cover the range of policy concerns that CASA and the department of transport have: section 15(4) being related to employment—and there might be non-employment related issues—and section 24(2) relating to goods and services and facilities. The carve-out or remedy there for the airline is purported to be unjustifiable hardship, but it is unjustifiable hardship on the person who is providing the goods and services. It may be difficult for an airline to demonstrate unjustifiable hardship when in fact the concept of air safety might not be as direct as unjustifiable hardship would tend to imply it needs to be—it may be more for the preservation of good and safe methods of operation.

Departmental answers to the question follows:

The Department notes that the Griffith University submission maintains that the *Disability Discrimination Act 1992* (DDA) already contains adequate exceptions (eg section 15(4) inherent requirements of the position (in employment) or section 24(2) unjustifiable hardship in goods and services). However, the proposed Bill would

enable regulations to be made which are inconsistent with all aspects of the DDA, provided that the inconsistency is necessary for the safety of air navigation. The Department of Transport and Regional Services advises that the areas where matters are or may need to be dealt with by regulations giving effect to international air safety standards, extend beyond employment or beyond the provision of goods and services. For example, transfers on and off the tarmac, or emergency seating. These areas would continue to be potentially inconsistent with the DDA. However, to the extent that a regulation provided a discretion about how to implement the safety standard, individual decisions and actions taken by airline staff would continue to be subject to the DDA and *Sex Discrimination Act 1984* (SDA).

The Griffith University submission suggests that the Disability Standards for Accessible Public Transport contain similar exceptions in relation to the provision of transport. We note that the Standards do not have an inherent requirements exception. Section 33.7 of the Standards provides that it is not unlawful to fail to comply with the Standards if such compliance would impose unjustifiable hardship. However, the extensive criteria for assessing unjustifiable hardship relate primarily to the costs and benefits of providing access as required by the Standards and do not address matters of the safety of air navigation.

The Government does not consider section 40 of the SDA is the best method to achieve the objectives of the Bill as suggested by Griffith University. This is because the Bill as introduced is a narrowly confined amendment authorising regulations inconsistent with the SDA or DDA if necessary for the safety of air navigation. Listing the *Civil Aviation Act 1988* in section 40 of the SDA would exempt all regulations made under the *Civil Aviation Act 1988* from the SDA, rather than only exempting medical standards necessary for the safety of air navigation. Amending section 40 to refer to individual regulations would not be practical given the time involved in amending primary legislation each time a regulation is proposed, but we note that all relevant regulations will be subject to parliamentary scrutiny and disallowance.