

### **Explanatory note**

This explanatory note relates to this Bill as introduced into Parliament.

#### **Overview of Bill**

The object of this Bill is to remove doubt that discrimination on the ground of breastfeeding constitutes unlawful discrimination on the ground of sex. The *Anti-Discrimination Act 1977* provides that discrimination on the basis of a characteristic that appertains generally to persons of a particular sex is discrimination on the ground of sex. The Bill provides that breastfeeding is a characteristic that appertains generally to women. Discrimination on the ground of sex is unlawful in work, education, provision of goods and services (including in restaurants and cafes), provision of accommodation and in registered clubs.

The Bill also defines **breastfeeding** as including the act of expressing breast milk.

#### **Outline of provisions**

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent to the proposed Act.

**Clause 3** is a formal provision that gives effect to the amendments to the *Anti-Discrimination Act 1977* set out in Schedule 1.

**Clause 4** provides for the repeal of the proposed Act after the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

#### **Schedule 1 Amendments**

**Schedule 1 [1]** removes doubt that discrimination on the ground of breastfeeding constitutes unlawful sex discrimination. Discrimination on the ground of sex includes treating a person less favourably on the ground of a characteristic that appertains generally to persons of that sex and the amendment declares breastfeeding to be a characteristic that appertains generally to women. The amendment also provides that breastfeeding includes the act of expressing breast milk.

**Schedule 1 [2]** makes a consequential amendment to a provision about direct discrimination. Direct discrimination occurs only when the circumstances of the persons between whom discrimination occurs are the same or *not materially different*. The purpose of the amendment is to make it clear that the mere fact that the discrimination occurs between a man and a nursing mother does not of itself make the circumstances materially different.

**Schedule 1 [3]** provides that a person (including an employer) is not to be treated as having unlawfully discriminated against a man on the ground of sex by reason only of the fact that the person grants a woman rights or privileges in connection with breastfeeding.

**Schedule 1 [4]** provides for the making of savings and transitional regulations consequent on the enactment of the proposed Act.

**Schedule 1 [5]** provides that the amendments made by the proposed Act do not apply to or in respect of anything done or omitted to be done before the commencement of the amendments.