

1994

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

HUMAN RIGHTS LEGISLATION
AMENDMENT BILL 1994

EXPLANATORY MEMORANDUM

(Circulated by authority of the Attorney-General, the Honourable
Michael Lavarch MP)



HUMAN RIGHTS LEGISLATION AMENDMENT BILL 1994

Outline

1. This Bill amends the Human Rights and Equal Opportunity Act 1986 and other Human Rights legislation to implement recommendations of the initial report of the joint review of the Human Rights and Equal Opportunity Commission (HREOC). That report made recommendations relating to resource utilisation, corporate performance and the structure of HREOC.
2. The HREOC Act is to be amended to provide that the responsibility for the management of the Commission is vested in the Commission as a body corporate with Chief Executive Officer powers to be delegated by it to an Executive Director appointed by the Commission under the Public Service Act. This means that all the powers of a Secretary under the Public Service Act will be removed from the Human Rights Commissioner and settled upon the President and Commissioners collectively.
3. The amendment to the HREOC Act tabulates the President powers which remain the same as before but acknowledges the senior role of the President.
4. The HREOC Act is amended to require HREOC to prepare a corporate plan.
5. The amendment to the HREOC Act, the Race Discrimination Act, the Sex Discrimination Act, the Disability Discrimination Act and the Privacy Act provides general qualifications and requires appropriate knowledge or experience for appointment to each specialised position of Commissioner.

Financial Impact Statement

The financial impact of the proposal is comparatively small with some increased costs if a full time President were appointed.

Notes on Clauses

Clause 1: Short title

1. Clause 1 provides for this legislation to be called the Human Rights Legislation Amendment Act 1994.

Clause 2: Commencement

2. Clause 2 provides for the commencement of the legislation. Subclause 2(1) provides that this legislation other than item 16 of the Schedule comes into effect on the day it receives Royal Assent.
3. Subclause 2(2) provides that a minor technical amendment made by item 16 of the Schedule, to the Human Rights and Equal Opportunity Legislation Amendment Act 1992 which commenced on 30 October 1992, is taken to have commenced at the same time. The amendment rectifies a misdescription of the words omitted so as to make sense.

Clause 3: Amendment of Acts

4. Clause 3 provides that the Acts specified in the Schedule are amended as set out in the Schedule.

Clause 4: Transitional provision - validity of current appointments not affected

5. Clause 4 provides that existing appointments are not affected by this legislation.

Clause 5: Transitional provision - powers of a Secretary in relation to staff of the Commission

6. Subclause 5(1) defines Commission as the Human Rights and Equal Opportunity Commission and Commissioner as the Human Rights Commissioner.
7. Subclause 5(2) provides that action taken by the Commissioner under section 43(2) before these amendments take effect, is to be treated as action taken by the Commission. This will enable the Commission to continue action taken under the powers of a Secretary that has been started by the Human Rights Commissioner following the removal of these powers from the Commissioner by this legislation.

Schedule

Part 1

8. This Part of the Schedule deals with the amendments to the Human Rights and Equal Opportunity Commission Act 1986.

Item 1 - Paragraph 8(1)(d)

9. Item 1 is a minor technical amendment adding "and" at the end of paragraph 8(1)(d).

Item 2 - Subsections 8(2), (3), (4) and (5)

10. Item 2 omits subsections 8(2), (3), (4) and (5) of the principal Act. It also inserts a new subsection (2) which requires members to act consistently with a collegiate Commission.

Item 3 - Subsection 8(8)

11. Item 3 omits subsection 8(8) which defined 'legally qualified person'. This is related to the omission of the subsection 8(4) requirement that the Human Rights Commissioner be a legally qualified person.

Item 4 - After Section 8

12. Item 4 inserts two new sections in the Human Rights and Equal Opportunity Commission Act. Section 8A deals with the appointment of the President as a full or part-time member of the Commission. It also refers to the President's senior role in the Commission. It highlights for ease of reference in one table the existing significant powers and functions of the President under various Acts.

Section 8B provides for the appointment of the Human Rights Commissioner by the Governor-General as a full time member. The requirement that the Human Rights Commissioner be legally qualified has been replaced by the requirement that the person so appointed hold appropriate qualifications, knowledge or experience.

Item 5 - Heading to Division 2 Part II

13. Item 5 omits the heading to Division 2 of Part II and substitutes a new heading. The Division will now deal with the duties and powers of the Commission as well as its functions.

Item 6 - Before Section 11

14. Item 6 inserts new section, section 10A before section 11. Section 10A states that the duty of the Commission is to ensure that its functions are carried out effectively having regard for all human rights . This duty is a statement of principle and is not legally enforceable.

Item 7 - Section 12

15. Item 7 repeals section 12 which has been incorporated into new section 10A.

Item 8 - Subsection 36(1)

16. Item 8 omits subsection 36(1).

Item 9 - Subsection 36(2)

17. Item 9 omits all the words after paragraph 36(2)(b). The effect of items 8 and 9 is to remove the automatic right of the Human Rights Commissioner to act as President during a vacancy in the office of the President. The Minister will now have the power to appoint a person to act as President during a vacancy.

Item 10 - Subsection 38(3)

18. Item 10 makes a minor technical amendment to subsection 38(3).

Item 11 - Subsection 43(2)

19. By omitting subsection 43(2) and substituting a new subsection, this item transfers to the Commission all the powers of a Secretary under the Public Service Act previously exercised by the Human Rights Commissioner.

Item 12 - After Section 43

20. Item 12 inserts a new section, section 43A after section 43. New section 43A states that the Commission is able to expend its resources on the functions of the Privacy Commissioner under the Privacy Act or any other Act.

Item 13 - Subsection 44(5)

21. Item 13 omits subsection 44(5) and substitutes a new subsection which states that members attending a Commission meeting from which the President is absent are able to elect one of their number to preside at that meeting.

Item 14 - After Section 43

22. Item 14 inserts a new division, Division 6 in Part II dealing with a corporate plan.
- (1) New section 46AA requires that the Human Rights and Equal Opportunity Commission prepare a Corporate Plan within 12 months after the commencement of the section. The plan is to cover a three year period and may be reviewed and revised at any time. The Commission is to take account of the current corporate plan when exercising its powers and performing functions.
 - (2) New section 46AB deals with the matters to be included in the corporate plan.
 - (3) New section 46AC states that as soon as practicable, after the Commission prepares or revises a corporate plan, the Minister is to be given a copy.

Part 2

23. This Part of the Schedule deals with amendments of other Acts.

Item 15 - Section 113

24. Item 15 amends section 113 of the Disability Discrimination Act 1992 by adding a new subsection 2 stating that, to be appointed as the Disability Discrimination Commissioner, the person must have appropriate qualifications, knowledge or experience.

Item 16 - Paragraph 9(c)

25. Item 16 deals with a minor technical amendment to paragraph 9 (c) of the Human Rights and Equal Opportunity Legislation Amendment Act 1992. It amends section 19(2) of the Human Rights and Equal Opportunity Commission Act.

Item 17 - Section 19

26. Item 17 amends section 19 of the Privacy Act 1988 by adding a new subsection 2 stating that to be appointed as the Privacy Commissioner, the person must have appropriate qualifications, knowledge or experience.

Item 18 - Subsection 21(3)

27. Item 18 makes a minor technical amendment to subsection 21(3) of the Privacy Act 1988.

Item 19 - Section 29

28. Item 19 amends section 29 of the Racial Discrimination Act 1975 by adding a new subsection 2 stating that, to be appointed as the Race Discrimination Commissioner, the person must have appropriate qualifications, knowledge or experience.

Item 20 - Subsection 31(3)

29. Item 20 makes a minor technical amendment to subsection 31(3) of the Race Discrimination Act 1975.

Item 21 - Subsection 42 (3)

30. Item 21 makes a minor technical amendment to subsection 42(3) of the Race Discrimination Act 1975.

Item 22 - Subsection 44(3)

31. Item 22 amends subsection 44(3) of the Sex Discrimination Act 1984 by inserting after the reference to paragraph 41 (1) (e) a reference to paragraph 41 B (1) (b) to give the Commission a discretion when granting exemptions under that paragraph.

Item 23 - Section 96

32. Item 23 amends section 96 of the Sex Discrimination Act 1984 by adding a new subsection 2 stating that, to be appointed as the Sex Discrimination Commissioner, the person must have appropriate qualifications, knowledge or experience.

Item 24 - Subsections 98(3)

33. Item 24 makes a minor technical amendment to subsection 98(3) of the Sex Discrimination Act 1984.

Note about Section Heading

Note 1

This amends the heading of section 13 at the time item 6 of the Schedule commences.