

## Equal Opportunity Amendment Bill 2011

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Western Australia

LEGISLATIVE ASSEMBLY

*(Introduced by Mr Hyde, MLA)*

## **Equal Opportunity Amendment Bill 2011**

**A Bill for**

**An Act to amend the *Equal Opportunity Act 1984* and for related purposes.**

The Parliament of Western Australia enacts as follows:

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1     **1.       Short title**

2             This is the *Equal Opportunity Amendment Act 2011*.

3     **2.       Commencement**

4             This Act comes into operation on the day on which it receives  
5             the Royal Assent.

6     **3.       Act amended**

7             This Act amends the *Equal Opportunity Act 1984*.

8     **4.       Long title amended**

9             In the long title delete “**grounds.**” and insert:

10

11            **grounds, and in respect of racially offensive behaviour.**

12

13    **5.       Section 3 amended**

14            After section 3(b) insert:

15

16                    (ca)   to eliminate, so far as is possible, racially  
17                            offensive behaviour in public; and

18

19    **6.       Section 4 amended**

20            In section 4(1) —

21                   (a)   in paragraph (a) of the definition of *complaint* delete  
22                           “representative” and insert:

23

24                           group

25

26                   (b)   delete the definition of *representative complaint*

(c) insert in alphabetical order:

***group complaint*** means a complaint lodged under section 83(1)(a) or (b) or (1a) by a person on behalf of the person and other persons or by 2 or more persons on behalf of themselves and other persons, but does not include such a complaint after it has been amended by the Tribunal under section 116(b);

**7. Part III heading replaced**

Repeal the heading to Part III and insert:

**Part III — Racial discrimination, harassment  
and offensive behaviour**

**8. Part 3 Division 3B inserted**

After section 49D insert:

**Division 3B — Racially offensive behaviour**

**49E. Racially offensive behaviour**

(1) It is unlawful for a person to do any act, otherwise than in private, that is reasonably likely to offend, insult, humiliate or intimidate another person on the ground of —

- (a) the race; or
- (b) a characteristic that appertains generally to persons of the race; or
- (c) a characteristic that is generally imputed to persons of the race,

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- 1 of that other person or of a relative or associate of that  
2 other person.
- 3 (2) Conduct is taken not to occur in private if it —
- 4 (a) consists of any form of communication with the  
5 public or a section of the public; or
- 6 (b) occurs in a public place or in the sight or  
7 hearing of people who are in a public place.
- 8 (3) In subsection (2) —
- 9 **public place** includes a place to which the public or a  
10 section of the public has access, or is expressly or  
11 impliedly permitted to have access, whether on  
12 payment or not.
- 13 **49F. Exceptions**
- 14 Nothing in section 49E renders it unlawful to do an act  
15 reasonably and in good faith —
- 16 (a) in the performance, exhibition or distribution of  
17 an artistic work; or
- 18 (b) in the course of a statement, publication,  
19 discussion or debate made or held for —
- 20 (i) a genuine academic, artistic or scientific  
21 purpose; or
- 22 (ii) any other genuine purpose in the public  
23 interest;
- 24 or
- 25 (c) in making or publishing —
- 26 (i) a fair and accurate report of; or  
27 (ii) a fair comment that is an expression of a  
28 genuine belief held by the person  
29 making the comment in relation to,  
30 an event or matter of public interest.  
31

**9. Section 80 amended**

In section 80 —

(a) delete “age eliminating” and insert:

age, eliminating

(b) after “accommodation,” insert:

eliminating, as far as possible, racially offensive  
behaviour in public,

(c) in paragraph (a) delete “discrimination or sexual or  
racial harassment” and insert:

discrimination, sexual or racial harassment or racially  
offensive behaviour

(d) after paragraph (b)(ii) insert:

(iiia) elimination of racially offensive  
behaviour in public; and

(e) in paragraph (e) delete “harassment; and” and insert:

harassment, and means of eliminating racially offensive  
behaviour in public; and

(f) after each of paragraphs (g)(i) and (ii) insert:

and

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1     **10.     Section 83 amended**

2         (1)   In section 83(1)(c) delete “persons.” and insert:

3

4                         persons; or

5                         (d)   in the case of an alleged contravention of  
6                                 section 49E and subject to subsection (4A), a  
7                                 representative body on behalf of one or more  
8                                 named members of the affected racial group.

9

10        (2)   In section 83(3) —

11               (a)   after “subsection (1)” insert:

12

13                       (a) or (b)

14

15               (b)   delete “representative” in both places where it occurs  
16                       and insert:

17

18                       group

19

20        (3)   After section 83(3) insert:

21

22               (4A)   A complaint cannot be lodged under subsection (1)(d)  
23                       unless —

24                       (a)   each person named in the complaint has  
25                               consented to the complaint being made on his  
26                               or her behalf; and

27                       (b)   the act the subject of the alleged contravention  
28                               is a matter of genuine concern to the body  
29                               because of the way acts of that kind affect, or  
30                               may affect, the people the promotion of whose  
31                               interests or welfare is the body’s primary  
32                               purpose.



(4) Repeal section 83(6) and insert:

(6) In this section —

***affected racial group***, in relation to an alleged contravention of section 49E, means the class of persons it is alleged are likely to be offended, insulted, humiliated or intimidated by the act the subject of the alleged contravention;

***representative body***, in relation to an alleged contravention of section 49E, means a body (whether incorporated or not) that has as its primary purpose the promotion of the interests or welfare of people who are, or include, members of the affected racial group;

***trade union*** means an organisation of employees or an organisation of employers.

**11. Section 89 amended**

In section 89(1) —

(a) delete “substance or” and insert:

substance,

(b) delete “Act,” and insert:

Act or, in the case of a complaint lodged under section 83(1)(d), is made in contravention of section 83(4A),

**s. 12**

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1     **12.     Section 114 amended**

2             In section 114 delete “representative” in both places where it  
3             occurs and insert:

4  
5             group  
6

7     **13.     Section 115 amended**

8         (1) In section 115(1) —

9             (a) insert after “permit a complaint”:

10  
11             lodged under section 83(1)(a) or (b) or (1a)  
12

13             (b) delete “representative” in both places where it occurs  
14             and insert:

15  
16             group  
17

18         (2) In section 115(2) —

19             (a) insert after “In considering”:

20  
21             under subsection (1)  
22

23             (b) delete “representative” in both places where it occurs  
24             and insert:

25  
26             group  
27

28     **14.     Section 116 amended**

29             In section 116 —

30             (a) insert after “Where”:

1  
2  
3  
4  
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8  
9  
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, having considered a complaint under section 115,

- (b) in paragraphs (a) and (b) delete “representative” in each place where it occurs and insert:

group

**15. Section 117 amended**

In section 117 —

- (a) delete “representative” in the first place where it occurs and insert:

group

- (b) delete “representative complaint” in the second place where it occurs and insert:

group complaint or a complaint under section 83(1)(d)

**16. Section 126 amended**

- (1) In section 126 —

- (a) before “The Tribunal” insert the subsection designation “(1)”;

- (b) delete “a party to an investigation at any time after the lodging of the complaint into which that investigation is held,” and insert:

the complainant or respondent to a complaint into which an inquiry is being held,

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- 1       (2) At the end of section 126 insert:
- 2           (2) In this section —
- 3                 *parties*, in relation to a group complaint or a complaint
- 4                 lodged under section 83(1)(c) or (d), includes the
- 5                 persons on whose behalf the complaint was made.

6   **17. Section 127 amended**

- 7       (1) In section 127(b)(i) —
- 8           (a) delete “representative” and insert:
- 9
- 10                 group
- 11
- 12           (b) delete “to the complainant”
- 13       (2) In section 127(b)(iii) —
- 14           (a) delete “representative” and insert:
- 15
- 16                 group
- 17
- 18           (b) delete “the complainant;” and insert:
- 19
- 20                 reason of the respondent’s conduct;
- 21
- 22

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