

Equal Opportunity Amendment Bill 2011
EXPLANATORY MEMORANDUM (E212)

(Introduced by Mr J. Hyde, MLA)

General

This Bill amends Part III of the *Equal Opportunity Act 1984* (“the Act”), which deals with discrimination on the grounds of race. The Bill inserts a new Division into Part III entitled ‘Racially Offensive Behaviour’. It will be unlawful for a person to do any act, otherwise in private, that is reasonably likely to offend, insult, humiliate or intimidate another person on the grounds of race, or on the grounds of a characteristic appertaining or imputed to persons of that race.

The Bill will allow a person, a group of persons, or a representative body on behalf of an affected racial group to lodge a complaint of racially offensive behaviour with the Equal Opportunity Commission (“the Commission”). The Commission investigates and attempts to resolve complaints by conciliation. If the complaint cannot be so resolved, it may be referred to the State Administrative Tribunal (“the Tribunal”) for a determination.

The Bill creates defences to a complaint of racially offensive behaviour, if the conduct in question was done for a range of genuine purposes in the public interest. The Bill also makes various amendments clarifying the procedures by which the Commission and Tribunal deal with complaints made on behalf of others, including complaints lodged by representative bodies.

Clause Notes

- | | |
|----------|---|
| Clause 1 | sets out the short title of the Bill. |
| Clause 2 | provides that the Act comes into operation on the day on which it receives the Royal Assent. |
| Clause 3 | provides that the amendments are to the <i>Equal Opportunity Act 1984</i> . |
| Clause 4 | amends the long title by deleting the word “grounds.” and inserting instead “grounds, and in respect of racially offensive behaviour.” |
| Clause 5 | amends section 3 by inserting after section 3(b) a new subsection (ca) which provides that an object of the Act is to eliminate, so far as is possible, racially offensive behaviour in public. |
| Clause 6 | amends section 4. |

Section 4 defines a “representative complaint” as a complaint lodged under section 83 by a person on behalf of the person and other persons or by 2 or more persons on behalf of themselves and other persons, and which is treated by the Tribunal as a representative complaint.

The Bill will allow a “representative body” to lodge a complaint of racially offensive behaviour under section 83 on behalf of members of an affected racial group. To avoid confusion between a representative complaint and a complaint by a representative body, the Bill amends the existing definition of a representative complaint in section 4 by re-naming it a “group complaint”.

The definition of a group complaint (formerly “representative complaint”) is amended to make clear the distinction between a group complaint and the other types of complaints that can be lodged under section 83.

The definition is further amended to make it clear that a group complaint that is amended by the Tribunal pursuant to section 116(b) is no longer by definition a group complaint, but can be dealt with as another kind of complaint.

Clause 7 repeals the heading to Part III and inserts instead a new heading, “Racial discrimination, harassment and offensive behaviour”.

Clause 8 inserts a new Division – “Division 3B - Racially offensive behaviour” – after Division 3A.

The Bill creates two new sections under this Division.

Section 49E is the operative provision for racially offensive behaviour. It is in similar terms to the equivalent provisions in the Commonwealth *Racial Discrimination Act 1975*. As with all of the grounds of discrimination under the Act, racially offensive behaviour incorporates acts done on the grounds of a characteristic that generally appertains or is imputed to persons of that race.

Conduct is taken not to occur in private if it consists of any form of communication with the public or occurs in a public place, or in sight or hearing of people who are in a public place. Although not defined, “any form of communication” can include print or electronic media, including the internet. The term “public place” is defined.

Section 49F sets out the exceptions to conduct caught by section 49E. The exceptions are very similar to the exemptions in the *Racial Discrimination Act*, and the defences to the racial harassment and animosity offences in *The Criminal Code*. The exceptions are needed to ensure that free speech and opinion, artistic expression, and fair and accurate reporting of events are preserved.

Clause 9 amends various parts of section 80 of the Act. Section 80 sets out the general functions of the Commissioner for Equal Opportunity. This clause inserts in selected subsections references to racially offensive behaviour in public, where necessary.

Clause 10 amends section 83(1) of the Act by inserting subsection (1)(d), which provides that a representative body can make a complaint of racially offensive behaviour on behalf of one or more named members of the “affected racial group”.

Clause 10 amends section 83(3) by substituting “group” for “representative” where it occurs, and specifying that a group complaint can be lodged under section 83(1)(a) or (b) or (1a).

Clause 10 inserts after section 83(3) subsection (4A), which provides that a complaint by a representative body cannot be lodged unless each person named in the complaint has consented to the complaint being made on his or her behalf, and that the act complained of is of genuine concern to the

representative body because of the way the act affects or may affect the people whose interests or welfare the body promotes.

Clause 10 repeals section 83(6), which defined the term “trade union”, and inserts instead a new subsection (6), which defines the terms “affected racial group”, “representative body”, and “trade union”.

Clause 11 amends section 89(1) by inserting wording that allows the Commissioner for Equal Opportunity to dismiss a complaint lodged by a representative body under proposed section 83(1)(d) if it does not comply with the requirements of proposed section 83(4A).

Clause 12 amends section 114 by deleting “representative” where it occurs and inserting instead “group”.

Clause 13 amends section 115(1) by deleting “representative” where it occurs and inserting instead “group”, and by inserting words that make it clear that the Tribunal shall not permit a complaint lodged under section 83(1)(a) or (b) or (1a) to be dealt with as a group complaint unless it is satisfied that the complaint is made in good faith as a group complaint.

Clause 13 amends section 115(2) by deleting “representative” where it occurs and inserting instead “group”, and by inserting words that make it clear that section 115(2) relates only to complaints considered by the Tribunal under section 115(1).

Clause 14 amends section 116 by deleting “representative” where it occurs and inserting instead “group”, and by inserting words that refer specifically to the Tribunal’s consideration of a representative complaint under section 115.

Clause 15 amends section 117, which provides that an ordinary complaint is not precluded by a representative complaint, by deleting “representative” in the first place that it occurs and inserting instead “group”, and by deleting “representative complaint” in the second place where it occurs and inserting instead “group complaint or a complaint under section 83(1)(d)”.

The effect of this amendment is that a person will be permitted to lodge a complaint of racially offensive behaviour, notwithstanding that a group complaint or a complaint by a representative body has been lodged in respect to the same conduct.

Clause 16 amends section 126 by inserting two subsections.

Proposed section 126(1) deletes the reference to a “party” to a complaint and inserts instead a reference to a “complainant or respondent”.

Proposed section 126(2) defines the term “parties” as used in section 126(1), in relation to a group complaint or a complaint lodged by a trade union or a representative body, to include the persons on whose behalf the complaint was made.

The effect of this amendment is to clarify that an interim order made under section 126 applies not only to persons or bodies who lodge complaints on behalf of others, but also to the actual persons on whose behalf the complaint is made.

Clause 17 amends section 127 by deleting “representative” where it occurs and inserting instead “group”, and by deleting the words “the complainant” in subsection (b)(iii) and inserting instead “reason of the respondent’s conduct”.

The effect of the amendment is to make it clear that the Tribunal can make an order that the respondent perform any reasonable act or course or conduct to redress loss or damage suffered by the persons on whose behalf another person or body – the complainant – has lodged a complaint.