HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION BILL 1985

Date introduced: 9 October 1985
House: House of Representatives
Presented by: Hon. Lionel Bowen, M.P., Attorney-General

DIGEST OF BILL

Purpose

To establish a new Human Rights and Equal Opportunity Commission ("the Commission") to administer the Racial Discrimination Act 1975, the Sex Discrimination Act 1984, the proposed Australian Bill of Rights, any future human rights legislation and to implement the Discrimination (Employment and Occupation) Convention.

Background

A substantially similar Bill of the same name was introduced in the Senate on 12 September 1984 but did not progress further.

The Commission will replace the existing Human Rights Commission that was established in 1981. (The Human Rights Commission will be abolished under the Human Rights and Equal Opportunity Commission (Transitional Provisions and Consequential Amendments) Bill 1985). Since the Human Rights Commission was established, such circumstances as the passage of the Sex Discrimination Act 1984 and the introduction of the Australian Bill of Rights Bill 1985, have rendered it less capable of overseeing the entire range of legislative rights and freedoms. This Bill will allow one body, namely the Commission, to be responsible for such rights and freedoms.

The Commission's human rights functions will be similar to those presently carried out by the Human Rights Commission. The human rights concerned are those recognised in the International Covenant on Civil and Political Rights, the Declaration of the Rights of the Child, the Declaration on the Rights of Mentally Retarded Persons and the Declaration on the Rights of Disabled Persons.
Part of the Commission's role will be the implementation of Australia's obligations under the Convention Concerning Discrimination in respect of Employment and Occupation (International Labour Organisation Convention 111). Australia's national policy under the Convention was first announced by the then Minister for Labour, the Hon. Clyde Cameron, in 1973. It included the establishment of National and State Employment Discrimination Committees with the co-operation of Commonwealth and State governments, employers and unions. The National Committee advised the Government on the implementation of the Convention. Together with State committees, it considered complaints of discrimination in employment, and promoted equality of opportunity in employment. The present Attorney-General stated, in his Second Reading Speech that the national policy has undergone de facto changes and needs to be reconsidered.[1] In particular, the integration of the State committees within the new framework has been forecast.

Outline

The Commission is to be established by Part II of the Bill which contains 5 Divisions relating to various aspects of the Commission. The content of the Conventions, Covenants and Declarations to be administered by the Commission are contained in Schedules 1 to 5 of the Bill.

Main Provisions

For a detailed analysis of the clauses of the Bill refer to the Explanatory Memorandum.

The Bill is not intended to exclude or limit the operation of any State of Territory law (clause 4).

Clause 8 provides that the Commission shall consist of a President, the Race and Sex Discrimination Commissioners, and between one and three other members.

An extensive list of Commission functions is set out in clauses 11 and 31. Clause 13 empowers the Commission to do all things necessary for the performance of its functions. Clause 14 provides that the form of any enquiries shall be at the Commission's discretion.
Clause 16 facilitates inter-governmental arrangements to enable the performance of human rights functions on a joint Commonwealth-State basis. It will also enable a State to perform human rights functions on behalf of the Commonwealth and vice versa.

Clause 17 enables the Minister to establish advisory committees. The Commission may also establish advisory committees with the Minister's approval.

The circumstances in which the Commission shall inquire into acts or practices which are or may be contrary to human rights or which constitute discrimination are set out in clauses 20 and 32 respectively. Those clauses also deal with the circumstances in which the Commission may decide not to pursue, or to terminate an inquiry.

The Commission is empowered to obtain information and documents relevant to its inquiry by clause 21, but clause 24 exempts certain documents and information from disclosure if the Attorney-General certifies that production would be contrary to the public interest. However, clause 24 also provides that a person cannot refuse to give information on the grounds that it would contravene another Act, or would be against the public interest. Clause 22 permits a member of the Commission to examine a person on oath (or after an affirmation). Fines may be imposed where a person refuses to be sworn or make an affirmation, or to give information when required to do so (clause 23), or where a person gives false or misleading information (clause 25). A number of other offences relating to the administration of the proposed Act are set out in clause 26.

Where the Commission believes a person has acted inconsistently with any human right or in a way that constitutes discrimination, it is required by clause 27 to give the person an opportunity to make a submission before making a report to the Minister.

If the Commission finds that an enactment or proposed enactment is contrary to human rights or is likely to impair equality of opportunity in employment, clauses 29 and 35 respectively direct the Commission to make recommendations for the amendment of the enactment or proposed enactment. Where the Commission finds after an inquiry that an act or practice is contrary to human rights or constitutes discrimination, clauses 29 and 35 require the Commission to serve notice of its findings and its reasons
on the person who engaged in the act, and it may make recommendations for preventing further such acts or practices.

Administrative matters are dealt with in clauses 36 to 46. These include provision for an Acting President, terms and conditions of appointment of members, remuneration and allowances, leave of absence, termination of appointment, disclosure of interests, staff, meetings of the Commission and annual reports.

Part III contains a number of miscellaneous provisions. Clause 47 provides for the declaration of international instruments. Clause 48 protects the Commission and its members from actions for damages in relation to acts done in good faith in the performance of any Commission function. It also protects complainants and persons providing submissions, information or documents to the Commission. Clause 50 provides that the Governor-General may make regulations under the Act.

For further information, if required, contact the Law and Government Group.

15 November 1985

Reference