HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION BILL 1984

Date Introduced: 12 September 1984
House: Senate
Presented by: Senator the Hon. Gareth Evans, Attorney-General

Short 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 and any future human rights legislation.

Background

The Commission will replace the existing Human Rights Commission, which was established by the Human Rights Commission Act 1981. Since then the Sex Discrimination Act 1984 has been passed, and there are proposals to introduce a Bill of Rights. The existence of a single body to administer these provisions and the Racial Discrimination Act 1975, will enhance the possibility of achieving "one-stop shopping" arrangements with those States presently having human rights and equal opportunity agencies with similar names.

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 (ILO 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 national policy has undergone de facto changes since 1973 and needed to be reconsidered. In particular, the integration of the State committees within the framework of a new Human Rights Commission has been forecast. In this way complaints will be able to go to one body.

Main Provisions

The Bill comprises Parts I-III. Part I contains formal matters and definitions and provides that the proposed Act is not intended to exclude or limit the operation of any State of Territory law (clause 4).

Part II is made up of five Divisions dealing with the Human Rights and Equal Opportunity Commission. 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 clauses 27 and 33 respectively 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.
The Convention Concerning Discrimination in respect of Employment and Occupation and the International Covenant on Civil and Political Rights are incorporated in Schedules 1 and 2 respectively.

For further information, if required, contact:

2 October 1984

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