RACIAL DISCRIMINATION AMENDMENT BILL 1979

Date Introduced: 25 September 1979
House: Senate
Presented by: Senator the Hon. Peter Durack, Attorney-General

Short Digest of Bill

Purpose

To complement the Human Rights Commission Bill 1979 by vesting all the functions of the Commissioner for Community Relations (Commissioner) in the Human Rights Commission (H.R.C.) while to some degree retaining the informal inquiry and settlement functions in the Commissioner.

Background

The Racial Discrimination Act 1975, based on the International Convention on the Elimination of all forms of Racial Discrimination, created the office of Commissioner for Community Relations. His various functions included:

(a) inquiring into and settling alleged infringements of the Act;

(b) promoting an understanding and acceptance of the principles of the Act; and

(c) developing, conducting and researching educational programs combating racial prejudices and promoting racial understanding.

In pursuit of his first function (a), the Commissioner would rely essentially on informal conciliation and settlement procedures; however, failure to achieve satisfactory results by this process, would entitle the Commissioner to resort to compulsory conferences of the parties concerned or to refer the question to a formal conciliation committee; finally, if there was no resolution of the question at this stage, the Commissioner was empowered to issue a certificate declaring the failure of these efforts, before the institution of court proceedings.

This Bill, along with the Human Rights Commission Bill, completes the Government's plan for centralising the administration of the whole gamut of human rights in the
Human Rights Commission and the consequential downgrading of the role of the Commissioner for Community Relations. The functions of the Commissioner have been legally transferred to the H.R.C., while the office of the Commissioner remains intact as, to some extent, does his major function of informally inquiring into and settling alleged infringements although according to the explanatory memorandum his staff will be transferred to the H.R.C. The other functions of promotional, research and educational programs relating to racial discrimination will become the sole responsibility of the H.R.C.

Main Provisions

Clause 2 provides that the Act will commence when the Human Rights Commission Bill comes into operation. Clause 4 amends s.20 of the Act to provide that the functions of the Commissioner are now vested in the H.R.C. Consistent with this, clause 6 amends s.21 of the Act relating to inquiry powers, to vest these powers in the H.R.C. However this vesting of powers must be read subject to clause 5; this clause introduces a new section 20A which, for practical purposes, retains the inquiry powers in the hands of the Commissioner. It provides in part that except when the office of Commissioner is vacant or he is absent from duty, he shall continue to perform the inquiry and settlement function but on behalf of, and subject to the direction of, the H.R.C. (s.20A(1) and (2)). An additional rider to the Commissioner's broad retention of this power stems from new sub-section 20A(3) which effectively requires that all complaints concerning racial discrimination will now be directed initially to the H.R.C. and not the Commissioner although he nominally retains his power to initiate an inquiry.

In respect of the other powers of inquiry and settlement, namely compulsory conferences and conciliation committees, the Bill has wrought substantial changes to the Commissioner's powers. Clause 7 amends s.22 of the Act relating to compulsory conferences by vesting the power to direct the convening of a compulsory conference in the H.R.C. and the power to preside over a conference, in the H.R.C., its staff or a person appointed by the H.R.C. However, new sub-section 20A(3)(b) (clause 5) modifies this provision by effectively allowing the Commissioner to exercise these powers concomitantly with the H.R.C. It is not clear how this sharing of powers will operate in practice, although the directive power of the H.R.C. over the Commissioner may be a determining factor.

Clause 8 amends s.23 relating to conciliation committees by vesting the functions in this area in the
H.R.C. and replacing the Commissioner's role completely.

Clause 9 amends s.24 relating to the initiation of civil proceedings; the effect of the amendment is to enable a member of the H.R.C., as well as the Commissioner to issue a certificate to the effect that the conciliation processes have failed. The certificate is required before civil proceedings can be instituted for the application of the legal remedies provided in s.25 of the Act.

Clause 10 amends the offences provision, s.27, so as to extend the protection currently given to the Commissioner and his staff, to the H.R.C. and persons authorised by it when exercising powers or performing functions under s.21 and 22 of the Act.

Clause 11 amends s.28 so that the Community Relations Council (yet to be established) will now advise the H.R.C. instead of the Commissioner on the matters specified in the section. Clause 12 repeals s.38, thus abolishing the staff of the Commissioner.

Clause 13 repeals s.40 and substitutes a new section relating to delegation powers. It will now provide that the H.R.C. may delegate to a member of its staff or any person of its powers under the Act; as well, the Commissioner will also be empowered to delegate any of his powers to a member of the staff of the H.R.C. approved by the H.R.C. or to any other person approved by the H.R.C.

Clause 14 inserts a new s.44A which will preclude any civil action against a complainant by another person as a result of the complaint.

Clause 15 inserts a new s.45A requiring the Commissioner to furnish such information to the H.R.C. as the H.R.C. requires.

Clause 16 repeals s.46 of the Act so that the Commissioner is no longer required to report to the Attorney-General and Parliament on his activities. Instead it would appear from the Explanatory Memorandum that the report on the Commissioner's activities will now form a part of the annual report of the H.R.C.