

1979

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

RACIAL DISCRIMINATION AMENDMENT BILL 1979

EXPLANATORY MEMORANDUM

(Circulated by authority of the Attorney-General,  
Senator the Honourable P.D. Durack, Q.C.)



## RACIAL DISCRIMINATION AMENDMENT BILL 1979

### Purpose

The Bill is associated with the Human Rights Commission Bill 1979. It is designed to integrate the functions of the Commissioner for Community Relations with those of the Human Rights Commission (HRC), following establishment of the HRC. The integration will be achieved by vesting all the existing functions of the Commissioner for Community Relations (Commissioner) in the HRC with its broader responsibilities and by providing that the Commissioner will continue to discharge his existing responsibilities for inquiry and conciliation, subject to directions from the HRC and acting on its behalf. The result will be rationalisation of the activities of the two agencies. In the absence of the Commissioner, or in the event of a vacancy in the office, the HRC will also carry out the inquiring and conciliating functions.

### Clause 2 - Commencement

The Act will come into operation when the associated Human Rights Commission legislation is proclaimed, because it will only be effective when the HRC is in existence.

### Clause 4 - Functions of Human Rights Commission

The functions of the Commissioner for Community Relations as defined in section 20 of the Racial Discrimination Act 1975 (the Principal Act) are vested in the HRC.

### Clause 5 - Functions of Commissioner for Community Relations

Sub-clause (1) provides that the Commissioner is to perform on behalf of the HRC the inquiring and conciliating functions defined in paragraph (a) of section 20 of the Principal Act.

Sub-clause (2) provides that the HRC may give directions to the Commissioner relating to the performance of the inquiring and conciliating functions.

Sub-clause (3) consists of a series of detailed provisions designed to enable the Commissioner to continue to perform the inquiring and conciliating functions effectively, notwithstanding that they will be performed on behalf of the Commission.

Clause 6 - Inquiries by Human Rights Commission

This clause is designed to ensure that as necessary the HRC can perform the inquiring and conciliating functions of the Commissioner, although he will be charged with carrying them out on a day to day basis. The technical problem is that some of the provisions in the RDA refer to the Commissioner with a demonstrative pronoun, and this needs to be deleted.

Clause 7 - Compulsory Conferences

This clause is a technical amendment. The rationalising purpose of the Bill is achieved in sub-paragraph (a) by enabling the HRC members or staff, or persons appointed by the HRC, to preside over the compulsory conferences provided for in section 22 of the Principal Act.

Clause 8 - Conciliation Committees

By this amendment, authority for a conciliation committee (if these are at any stage provided for by regulations) to perform conciliation functions is vested in the HRC rather than the Commissioner.

Clause 9 - Civil Proceedings

The effect of this clause is to enable a member of the HRC, as well as the Commissioner, to issue the certificate under section 24 of the Principal Act that the conciliation

processes have been attempted but have failed. The certificate is required before civil proceedings can be instituted for the application of the legal remedies provided in section 25 of the Principal Act.

#### Clause 10 - Offences

Paragraph (a) amends section 27 of the Principal Act so as to extend the protections given to the Commissioner and members of his staff to the HRC and persons authorised by it when exercising powers or performing functions under sections 21 and 22 of the Principal Act. (Section 21 relates to decisions to investigate a complaint and section 22 to the conduct of inquiries and conciliation, including the calling of a compulsory conference.)

Paragraph (b) is purely technical.

#### Clause 11 - Community Relations Council

Although section 28 of the Principal Act, which provides for the establishment of a Community Relations Council, has not been implemented, it is appropriate to vest the relevant powers in the HRC rather than the Commissioner. The amendment will achieve this purpose.

#### Clause 12 - Staff

Under the arrangements proposed by the Bill, the staff of the Commissioner will be transferred to the HRC. The Commissioner will of course continue to be assisted by them in the exercise of the inquiring and conciliating functions, but the promotional and education/research functions under the Principal Act will be carried out for the HRC.

#### Clause 13 - Delegation

Sub-clause (1) authorises the HRC, when exercising functions under the Racial Discrimination Act, to delegate functions either to members of its own staff or to persons

appointed by the Commissioner. The reference to 'another person' is designed to allow the HRC to delegate inquiry powers to an officer of a State authority, when arrangements have been made with that State pursuant to clause 11 of the Human Rights Commission Bill.

Under sub-clause (2) the Commissioner continues to be able to delegate his functions, subject to the approval of the HRC.

Sub-clauses (3) and (4), which are substituted for sub-sections (2) and (3) of the Principal Act, are in accordance with normal forms for delegated powers.

#### Clause 14 - Protection of Complainants

The proposed new section 44A protects complainants from civil actions flowing from the making of a complaint. It is a provision normally in legislation of this kind and a similar provision is contained in clause 33 of the Human Rights Commission Bill (and see also section 37 of the Ombudsman Act 1976). A form of qualified privilege is conferred on the complainant.

#### Clause 15 - Information

The Commissioner is required to furnish information to the HRC to ensure that it is able to make use of material in his possession that is relevant to the functioning of the HRC.

#### Clause 16 - Annual Report

The HRC will become responsible for including in its annual report to the Attorney-General and Parliament a report on its own activities, and those of the Commissioner, under the Principal Act.

Clause 17 - Additional Amendments

The amendments contained in the schedule are routine in character and are designed to bring the terminology of the Principal Act into conformity with current practice, e.g. by substituting "Commonwealth" for "Australia".