

Equal Opportunity Bill 1983

NOTES ON CLAUSES

Preamble sets out the consolidating and amending nature of the Bill.

Clause 1 is a provision in the usual form as to the short title and proclamation of the date or dates of commencement.

Clause 2 sets out the Parts and Divisions.

Clause 3 repeals the Acts listed in the Schedule, most notably the *Equal Opportunity Act 1977*, and the *Equal Opportunity (Discrimination against Disabled Persons) Act 1982* and contains the necessary transition provisions.

Clause 4—

Sub-clause (1) contains the general interpretative provisions, with new definitions of “Brother”, “Sister”, “Child”, “Marital Status”, “Parent”, “Private Life”, “Services” and “Status”.

Sub-clause (2) includes a reference to colour, nationality and national or ethnic origin in reference to race.

Sub-clause (7) provides that the substantial ground or reason for an act of discrimination is the relevant ground or reason if two or more grounds or reasons exist.

Sub-clauses (9) and (10) designate the officers against whom an action will lie if the respondent is an unincorporated association.

Clause 5. This Act shall bind the Crown.

Clause 6 creates the office of the Commissioner of Equal Opportunity.

Clause 7 outlines the delegation powers of the Commissioner.

Clause 8 establishes the Equal Opportunity Board.

Clause 9 provides for the appointment and conditions of office of members of the Board.

Clause 10 allows for the appointment of an acting chairman or member of the Board.

Clause 11 provides for the resignation or removal of a member of the Board.

Clause 12 is a validation provision in the event of a vacancy or defect in appointment.

Clause 13 contains the main procedures to be observed at Board meetings.

Clause 14 provides for the appointment of a Registrar of the Board and support staff.

Clause 15—

Sub-clause (1) lists the persons to whom this clause applies.

Sub-clause (2) prohibits the disclosure, by persons mentioned in sub-clause (1), of any information acquired by reason of office, employment or for the purposes of the Act.

Sub-clause (3) extends privilege to persons receiving information with the exception of prosecutions under or arising from the Act.

Clause 16—

Sub-clause (1) requires the Board to undertake an educational role.

Sub-clause (2) requires the Board to undertake a review of legislation with a view to identifying discriminatory provisions.

Sub-clause (3) gives the Board a general research function.

Sub-clause (4) empowers the Board to report to the Minister.

Clause 17—

Sub-clause (1) contains the criteria for discrimination, i.e. the less favourable treatment of one person *vis-a-vis* others, on the basis of status or by reason of his or her private life.

Sub-clause (2) qualifies that criteria, if, in respect of impairment, unreasonable expense or inconvenience is involved.

Sub-clause (3) requires comparisons of like cases, if a comparison is made.

Sub-clause (4) deems that any rights or privileges accorded in connection with pregnancy or childbirth shall not be regarded as discrimination against men.

Clause 18 makes it unlawful for a person to discriminate against another on the basis that the latter has or intends to invoke the protection available under the Act, unless a false and *mala fide* allegation is made.

Clause 19 lists the definitions of "fellow worker" and "supervisor" applicable to *Clause 20*.

Clause 20—

Sub-clause (1) makes it unlawful for an employer or supervisor to make it appear to another person that they will be disadvantaged in respect of their educational or career prospects or working conditions, if that other person does not accept sexual advances or tolerate persistent sexual innuendo, or to permit an employee to be harassed with sexual advances or persistent sexual suggestions or innuendo by a fellow employee.

Sub-clause (2) makes it unlawful for a prospective employer to make it appear that employment prospects are contingent upon the acceptance of sexual advances or persistent suggestions or innuendo.

Sub-clause (3) makes it unlawful for a person supplying goods or services to make it appear to the recipient that that supply is contingent upon the acceptance of sexual advances or toleration of persistent sexual suggestion or innuendo.

Sub-clauses (4) and (5) extend the prohibition upon sexual harassment to the provision of accommodation.

Clause 21—

Sub-clause (1) renders it unlawful to discriminate on the ground of status or private life, against an applicant for employment.

Sub-clause (2) makes it unlawful for an employer to discriminate against an employee on the basis of status or private life.

Sub-clause (3) provides for the existence of an impairment or knowledge of the impairment of an employee to be pre-employment for the purposes of *sub-clause (2)*.

Sub-clause (4) contains exceptions to this section—

- (a) employers of not more than 3 persons in the personal or domestic context;
- (b) discrimination on the basis of sex, race or impairment for the reason of authenticity;
- (c) discrimination on the basis of political preference where the employment is related to a political role or function;
- (d) discrimination because a person refuses to hold union membership;
- (e) discrimination on the basis of sex, race or impairment in respect of persons providing services to promote the welfare of specified persons;
- (f) employers of not more than three persons, not including persons employed under (a);
- (g) impaired persons who require special facilities, the provision of which is not reasonable or persons who cannot perform work reasonably required;
- (h) the employment of impaired persons if there is a reasonable risk of injury to others or a substantial risk of self injury;
- (i) special conditions, if reasonable, upon the employment contract of an impaired person;

- (j) discrimination against impaired persons for the purpose of private household employment;
- (k) discrimination against an impaired person if that person is not the person best-suited to perform the employment duties.

Sub-clause (5) provides for the granting of a temporary exemption from the operation of the Act in regard to the offering of employment where the employer can only provide single sex accommodation.

Sub-clause (6) declares the major shareholder as an employer for the purposes of corporate private employment.

Clause 22 prohibits discrimination, on the basis of status or private life, by principals against agents. Sub-clauses (4), (5) and (6) replicate the impairment qualifications.

Clause 23 prohibits discrimination, on the ground of status or private life, by principals against employers of contract workers. Sub-clauses (3), (4) and (5) contain the impairment qualifications.

Clause 24 makes it unlawful for a firm of three or more partners to discriminate against a partner on the ground of status or private life. Sub-clauses (2), (3) and (4) refer to the impairment qualifications.

Clause 25 prohibits discrimination, on the ground of status or private life, by professional or other organizations, subject to specified qualifications in respect of impaired persons.

Clause 26 provides that discrimination, on the basis of status or private life, by a qualifying body is unlawful, with exceptions applicable to impairment.

Clause 27 makes it unlawful for employment agencies to discriminate on the basis of the status or the private life of a prospective employee.

Clause 28 extends the prohibition upon discrimination, on the ground of status or private life (with qualifications) to educational authorities.

Clause 29 designates as unlawful, discrimination against persons by reason of their status or private life, in the provision of goods and services. Sub-clause (3) makes special provision for lawful discrimination on the ground of race, if the services or access relate to the special needs or cultural or religious sensibilities of a particular race.

Clause 30—

Sub-clause (1) provides that discrimination, by reason of status or private life, in the access to accommodation is unlawful.

Sub-clause (2) makes it unlawful to discriminate against another person, who has been provided with accommodation, on the ground of status or private life.

Sub-clause (3) includes “impairment” as “status” irrespective of when that impairment arose or became apparent.

Sub-clause (4) makes it unlawful for an impaired person to be discriminated against in the provision of accommodation on the basis that that person needs a dog trained to assist an impaired person.

Sub-clause (5) retains the responsibility of an impaired person for the actions of such a dog.

Sub-clause (6) excludes acts of discrimination based on the unsuitability of the person, because of impairment or no impairment.

Sub-clause (7) lists exceptions to this section, being premises (a) for the assistance of disadvantaged persons; (b) which are the principal place of residence of the landlord; (c) which are a specific type of shared household; or (d) unsuitable for occupation by a child.

Sub-clause (8) exempts accommodation designed for the welfare of persons of the one sex, race or marital status.

Sub-clause (9) protects persons, abiding by the provisions of this Act, against legal action for breach of any obligation, the observance of which would amount to an act of discrimination.

Clause 31 prohibits acts of discrimination on the basis of status or private life (other than political preference) by a member or members of a municipal or shire council, against another member, to the detriment of the latter.

Clause 32 enables exclusion, on the basis of impairment, of impaired persons from sporting activity if the impaired person is incapable of performing that activity, persons are selected by a method related to skill and ability, or the activity is only for persons of a particular impairment.

Clause 33 provides for the joint and several liability of a principal and agent (including an employee). It shall be a defence for a principal to prove that he or she took reasonable precautions to ensure an agent would not act in contravention of the Act.

Clause 34 prohibits "indirect" discrimination, whether the discrimination by one person being procured by another or, as a result of unsuccessful procurement, the person refusing to discriminate is subjected to detriment.

Clause 35 confirms the non-application of the Act to discriminatory provisions relating to pensions or superannuation.

Clause 36 exempts charitable benefits from the ambit of the Act.

Clause 38 contains a series of exemptions so that the following are not unlawful:

- (a) Organizations for the advancement of persons of a particular race or impairment, the exclusion of persons of a different race or impairment (including non-impairment) or for the advancement of persons with a certain private life, the exclusion of persons of a different private life;
- (b) the exclusion of persons on the basis of status or private life from a social, recreational, community service or sporting club, provided that club does not conduct its activities on Crown land or is in receipt of public funding;
- (c) discrimination, on the basis of status, in the provision of insurance provided the discrimination is both reasonable and based on reliable data;
- (d) acts done to comply with an order of the Equal Opportunity Board or a legislative or related directive; and
- (e) the exclusion of any person from a genuine programme which has as its aim the prevention or reduction of disadvantage suffered by a particular category of persons.

Clause 39 empowers the Equal Opportunity Board to grant exemptions, for a period not exceeding three years, from compliance with the provisions of this Act.

Clause 40—

Sub-clause (1) enables the Equal Opportunity Board to refer a matter of suspected discrimination to the Commissioner of Equal Opportunity for investigation.

Sub-clause (2) empowers the Commissioner to investigate such a matter, as if it were a complaint, according to the provisions of Clause 44.

Sub-clause (3) enables the Commissioner to investigate other acts of suspected discrimination revealed in the course of an investigation commenced as a result of complaint or reference from the Equal Opportunity Board.

Clause 41—

Sub-clause (1) requires the Commissioner to endeavour to resolve the matter by negotiation.

Sub-clause (2) requires the Commissioner to refer unresolved matters to the Board.

Sub-clause (3) renders evidence of negotiation proceedings inadmissible in proceedings before the Board.

Clause 42 provides that where satisfied that there has been a contravention of the Act, the Board may make an appropriate order. The maximum penalty for non-observance of

an order of the Board is 20 penalty units (\$2000) and 5 penalty units (\$500) for each day of continuing non-observance.

Clause 43 outlines the procedures upon complaint.

Sub-clause (1) requires written complaint of an alleged act of discrimination which must be lodged either with the Registrar of the Board or, if the alleged act occurred outside the metropolitan area, with the Clerk of a Magistrates' Court.

Sub-clause (2) permits an impaired complainant to authorize another to act on his or her behalf in lodging and proceeding with a complaint. The Registrar, if the authority under sub-clause (2) is not in writing, shall approve the form of that authority.

Sub-clause (4) allows for multiple complaints.

Sub-clause (5) limits the lodging of a complaint to within 12 months of the alleged act of discrimination which is the subject matter of the complaint.

Sub-clause (6) requires the Registrar to refer each and every complaint to the Commissioner for Equal Opportunity.

Clause 44 details the manner in which the Commissioner may deal with a complaint.

Sub-clause (1) Allows the Commissioner to inform the complainant in writing that the complaint will not proceed on the basis it is frivolous, vexatious, misconceived or lacking in substance.

Sub-clause (2) requires the Commissioner to resolve complaints, except for complaints declined under sub-clause (1), by conciliation.

Sub-clause (3) enables the Commissioner to require, by notice in writing, the attendance of any person alleged to have committed an act of discrimination and to require that person to produce documents.

Sub-clause (4) provides for a penalty not exceeding 10 penalty units for a refusal or failure to comply with a notice under sub-clause (3).

Sub-clause (6) directs the Commissioner to refer a complaint to the Board if (a) the matter is one not appropriate of resolution by conciliation; (b) conciliation has been unsuccessful; or (c) after declining to entertain a complaint, the complainant has, by notice in writing, required the Commissioner to do so.

Sub-clause (7) renders inadmissible, in proceedings before the Board, evidence presented or gained in the course of conciliation.

Clause 45—

Sub-clause (1) directs the Board to hear and determine a complaint referred by the Commissioner.

Sub-clause (2) lists the orders that may be made by the Board, i.e. an order or orders that—(a) the respondent refrain from continuing any further act of discrimination; (b) the respondent pay the complainant a sum of damages; (c) the respondent perform an act or acts necessary to redress the loss, damage or injury suffered by the complainant; or (d) the complaint be dismissed.

Sub-clause (3) enables the Board to make necessary interim orders.

Sub-clause (4) provides a penalty of 20 penalty units for the offence of failing to observe an order of the Board with a penalty of 5 penalty units per day for a continuing offence.

Sub-clause (5) entitles a person, to whom payment is to be made, to enforce that order by registering, free of charge, the order with a Court of appropriate jurisdiction whereupon it shall be deemed to be and may be enforced as if it were an order of that Court.

Clause 46 permits the Board, at its discretion, to order a complainant or a respondent to meet the costs of the proceedings or other pecuniary loss if, in the opinion of the Board, the former's complaint is frivolous, vexatious or totally lacking in substance or the latter, as a respondent, has behaved unreasonably.

Clause 47 requires the Board, at the request of a party to proceedings, to state its reasons for an order made.

Clause 48—

Sub-clause (1) provides for the Board (either of its own motion or on the application of any party to the proceedings) to state a special case for the opinion of the Supreme Court.

Sub-clause (2) requires the Board to await and abide by the opinion of the Supreme Court on a point or points of law, obtained pursuant to sub-clause (1).

Sub-clause (3) empowers the Judges of the Supreme Court, subject to the *Supreme Court Act 1958*, to make rules in respect of special cases stated for opinion.

Sub-clause (4) allows for an appeal by any party to the proceedings on question of law only, to the Supreme Court. The appeal procedures are to follow, with such modification as is necessary, that provided for in respect to orders of Magistrates' Courts. A 28-day period of right of appeal is set.

Sub-clause (5): The appeal period shall run, if the written reasons of the Board for making an order are not available at the time of the making of the order, from the time when the appellant receives the written notification of those reasons.

Clause 49 is a formal statement of restriction of the clauses 50 to 56 inclusive to clauses 40 to 56 inclusive.

Clause 50 requires the Board to act fairly and according to the substantial merits of a case but is not otherwise bound by the judicial rules of evidence and procedure.

Clause 51—

Sub-clause (1) permits personal appearance before the Board or, if the respondent is a legal entity, by an officer of that entity, or in any other case, if the Board thinks fit, by a person determined as an appropriate representative by the Board.

Sub-clause (2) enables the Board to grant leave for a person to be assisted by an interpreter.

Sub-clause (3) prohibits legal representation for fee or reward without the leave of the Board.

Sub-clause (4) prohibits representation, other than a duly qualified legal practitioner who has been granted the leave of the Board pursuant to sub-clause (3), for fee or reward without the leave of the Board. The penalty for contravention of Clause 51 is 5 penalty units.

Clause 52 requires the Board to give adequate notice and reasonable opportunity, to elicit or present evidence or argument, to any person who is a party to the proceedings or to whom an inquiry relates. If reasonable notice has been given the Board may proceed to hear and determine the matter in the absence of the person given notice.

Clause 53 provides for the Board to join other parties and grant leave to intervene.

Clause 54 allows the Board to take evidence on oath or affirmation (administered by the Registrar of the Board or a member), and a member to summon a person to give evidence or produce documents. Any person who is a party to the proceedings or to whom an inquiry relates may call witnesses, and such a witness may be subjected to examination in the usual manner.

Clause 55 imposes retention and copying powers of the Board in regard to documents produced to the Board in the course of an inquiry or proceedings.

Clause 56 renders unlawful specified actions in relation to Board proceedings.

Sub-clause (1) makes it an offence for a potential witness, duly summoned, to fail to appear as a witness.

Sub-clause (2) makes it an offence for a potential witness to refuse to be so, refuse or fail to answer a question or to produce a document.

Sub-clause (3) makes it an offence for any person to interfere with or create a disturbance in respect of the function of a member of the Board, or the proceedings of the Board, or engage in behaviour which, if the Board was a court of record, would constitute contempt of that court. The penalty for each clause 56 offence is 20 penalty units.

Clause 57 places a duty upon the Commissioner and the Board to submit, within three months of the year end (defined as June 30th) to the Minister, reports on the discharge of their respective duties under the Act. The Minister is required to lay before the appropriate House those reports within three weeks of receipt or sitting of the House.

- Clause 58* makes it unlawful for certain advertisements to be published.
Clause 59 states the limit of sanctions of contraventions of this Act.
Clause 60 provides for the summary determination of alleged offences under this Act.
Clause 61 provides for the Governor in Council to make regulations under the Act.

