

## Equal Opportunity (Amendment) Bill (No. 2)

### EXPLANATORY MEMORANDUM

#### PART 1—AMENDMENTS TO THE EQUAL OPPORTUNITY ACT 1984

*Clause 1* states that the purposes of the Bill are:

- (a) to provide for the expeditious hearing of certain complaints;
- (b) to establish an Equal Opportunity Commission and a Chief Conciliator; and
- (c) to make other amendments.

*Clause 2* states:

- (1) sections 1 and 2 come into operation upon receiving the Royal Assent;
- (2) the remaining provisions come into effect on a day or days to be proclaimed; and
- (3) if a provision has not been proclaimed to come into effect within six months of the date of the Royal Assent referred to in (1), it will come into operation six months after that date.

*Clause 3* provides that the Principal Act is the **Equal Opportunity Act 1984**.

*Clause 4* adds to the *Definitions* section for “appointed members of the Commission”, “Commission”, “Chief Conciliator”, “complainant”, “Deputy President” and “respondent”.

*Clause 5* inserts new Divisions 1 and 1A to Part II to establish the Equal Opportunity Commission and the role of Chief Conciliator.

*Sub-clause (1)* states that the Commission is a body corporate and outlines features accompanying this status.

*Sub-clause (2)* defines the powers and duties of the Commission:

- (a) to establish certain policies and guidelines;
- (b) to receive and investigate complaints regarding the conducting of conciliations;
- (c) to conduct information and education campaigns; and
- (d) any other functions conferred upon it.

This clause also amends section 7 of the Act:

7A defines the membership of the Commission as including a Chief Conciliator and four other members appointed by the Governor in Council.

7B outlines the terms of office of appointed members of the Commission.

7C provides for the resignation and removal of appointed members.

7D allows a Chairperson of the Commission to be appointed by the Governor in Council and regulates his or her resignation and removal from office.

7E governs the conditions of appointment of acting members.

7F provides for the payment of members.

7G states the procedure for Commission meetings.

7H defines the effect of a vacancy in membership or a defect in appointment of a member.

7I gives the Commission power to delegate its powers and functions.

The new Division 1A establishes the position of Chief Conciliator.

7J provides for the appointment of a Chief Conciliator by the Governor in Council.

7K outlines the terms of office of the Chief Conciliator.

7L provides for the resignation and removal of the Chief Conciliator.

7M provides for the payment of the Chief Conciliator.

7N provides that the Chief Conciliator is to administer the affairs of the Commission in accordance with its policies and directions.

7O allows the Chief Conciliator to delegate powers and functions.

*Clause 6* provides for the appointment of Deputy Presidents to the Board and requires the President and any Deputy Presidents to have similar qualifications as those required for a Judge.

*Clause 7* is a consequential amendment to the Appointments provision.

*Clause 8* is a consequential amendment to the meetings provision.

*Clause 9* is a consequential amendment to the secrecy provision.

*Clause 10* inserts a new Division 3 of Part II—Educational Activities of the Commission.

A new section 16 provides the Commission will undertake information and educational activities with relation to eliminating discrimination, promoting equality and any other relevant matters under the Act.

*Sub-section 2* requires the Commission to advise the relevant Minister if it becomes aware of any provision of an act which discriminates.

*Sub-section 3* empowers the Commission to undertake research in relation to relevant matters under the Act.

*Clause 11* is a consequential amendment.

*Clause 12* includes a consequential amendment and requires the Commission to assist a complainant in making a complaint.

*Clause 13* inserts new sections 44A and 44C.

A new section 44A allows the Minister, if of the opinion that a matter is an issue of important public policy, to refer the matter directly to the Board for hearing.

A new section 44B provides a special procedure for the processing of a certain class of complaints.

*Sub-section 1* allows the Commission to determine a complaint is an expedited complaint if (i) it is a matter which the Commission believes may be resolved by conciliation and (ii) the complaint relates to a policy decision of the respondent, the implementation of which is alleged to be discriminatory.

The section sets time limits on the Commission's determination of this issue and on the Board in reviewing a decision of the Commission under this section as well as the procedure to be followed by the Board in hearing from the parties.

A new section 44C allows a respondent to apply to the Board to have a matter struck out on certain grounds before the Board begins to hear the matter. Time limitations and procedure to be followed by the Board are also set by this section.

*Clause 14* adds to section 45 that the Commission may decline to entertain a complaint on certain grounds if of the view that it can be more appropriately dealt with in another tribunal or court. The Commission must notify the complainant of such a decision within 60 days.

This clause also requires the Commission to refer a dismissed complaint to the Board if so requested by the Complainant.

45 (5) requires the Chief Conciliator to notify the Commission which must refer a matter to the Board where the Chief Conciliator is of the opinion that the matter cannot be resolved by conciliation or conciliation has been unsuccessful.

45 (5A) requires the Chief conciliator to commence conciliation of an expedited complaint (other than one involving an application under section 45AB) as soon as practicable and if the matter has not been resolved within 30 days, to notify the Commission who must refer the complaint to the Board.

45 (5B) requires the Chief Conciliator to cease to deal with an expedited complaint upon receiving notice of a section 45AB application.

45 (5C) requires the Chief Conciliator to commence conciliation of an expedited complaint as soon as possible after the refusal of a section 45AB application and to notify the Commission which must refer the matter to the Board if conciliation is not completed within 30 days.

45 (5D) provides that where interim relief has been granted under section 45A, the Chief Conciliator must commence conciliation as soon as practicable and if conciliation is not successful within 30 days, he or she must notify the Commission which must refer the matter to the Board.

*Clause 15* inserts new sections 45AA and 45AB.

*Section 45AA* introduces a complaints procedure so that a party to a conciliation, either during or after the completion of, conciliation may make a written complaint to the Commission about any aspect of the conduct of the conciliator. The Commission may investigate the complaint and, if it sees fit, issue a directive to the Conciliator.

*Section 45AB* allows a respondent in an expedited complaint to apply to the Board to have it heard directly by the Board without going through the conciliation process.

The section places time limitations on the making of the application and the Board's determination and outlines the procedure for hearing submissions from the parties on the application.

*Clause 16* amends section 45A by setting out grounds that must be taken into account in the granting of interim relief including: whether the complainant has established a prima facie case; any possible detriment or advantage to the public interest; and, any detriment to the complainant's case if the order is not made.

*Clause 17* is a consequential amendment.

*Clause 18* makes amendments to proceedings before the Board. It provides that in the case of an expedited complaint, the Board must begin to hear the complaint within 30 days but grants a discretion to the President to extend that period by another 30 days.

This clause also amends section 46 by setting out the factors to be taken into account in determining an application for interim relief which are consistent with clause 16.

*Clause 19* provides for the awarding of costs in certain circumstances and strengthens the costs provision.

The section also allows a person to whom payment is to be made under an order as to costs by the Board to enforce the order by filing it free of charge in the appropriate Court.

*Clause 20* is a consequential amendment in relation to offences under the Act.

*Clause 21* is a consequential amendment in relation to the annual report.

*Clause 22* is a consequential amendment in relation to advertising.

*Clause 23* is a consequential amendment in relation to immunity from liability under the Act.

*Clause 24* advises that the section varies section 85 of the **Constitution Act 1975**.

*Clause 25* is a consequential amendment in relation to the regulation making power under the Act

*Clause 26* is a statute law revision amendment.

## **PART 2—TRANSITIONALS**

*Clause 27* is a transitional provision in relation to definitions of "Commission" and "Commissioner" under that Act.

*Clause 28* is a transitional provision in relation to the Board.

*Clause 29* is a transitional provision in relation to the office of the Commissioner which is abolished by this section