

EQUAL OPPORTUNITY AMENDMENT BILL 2008

Introduction and First Reading

Bill introduced, on motion by **Mr J.A. McGinty (Attorney General)**, and read a first time.

Explanatory memorandum presented by the Attorney General.

Second Reading

MR J.A. MCGINTY (Fremantle — Attorney General) [12.11 pm]: I move —

That the bill be now read a second time.

The Equal Opportunity Amendment Bill amends the Equal Opportunity Act 1984 to extend coverage of that act to sexual harassment by members of Parliament. The government believes that sexual harassment is unacceptable and that sexual harassment by members of Parliament should be unlawful. Under the bill, proposed section 24(2A) will provide that it is unlawful for a member of Parliament to harass sexually an officer appointed to assist the member of the Parliament; an officer appointed to assist another member of Parliament; an officer or member of the staff of Parliament; or any other person who in the course of employment performs duties at the Parliament or at a place where either house, or a committee of either or both houses, meets. Officers appointed to assist members of Parliament would include electorate officers and research officers.

This bill is not intended to limit the operation of other provisions of the act. Proposed section 24(2A) specifically provides that it does not limit section 24(1) of the act. Proposed section 24(3A) describes the conduct by an MP that constitutes sexual harassment. Under the current Equal Opportunity Act's sexual harassment laws, it is necessary to show that a staff member believed on reasonable grounds that refusing to accept or objecting to the other person's behaviour would disadvantage the staff member in some way in connection with his or her employment or possible employment or that, as a result of the rejection of the advance, the person was disadvantaged in connection with his or her employment or possible work. In other words, the sexual harassment must occur in an employment context. Because there is often no direct employment relationship between MPs and staff, this is difficult to establish. Therefore, under proposed section 24(3A), it is not necessary to establish that the member of Parliament's behaviour would have, or did have, a negative impact upon the harassed person's career.

Proposed section 24(3A) provides that an MP shall be taken to harass a person where the MP makes an unwelcome sexual advance; makes an unwelcome request for sexual favours; or engages in other unwelcome conduct of a sexual nature. This will cover the situation of, for example, somebody who works for a member of a political party who is harassed sexually by a member of another political party.

Parliamentary privilege: The extension of Equal Opportunity Act provisions to cover members of Parliament raises issues of parliamentary privilege. The use of the phrase "parliamentary privilege" is not one that should be construed as being similar to a perk of the office. It is a basic constitutional principle that ensures that members of Parliament are not inhibited by executive government from raising issues and taking action in the interests of the people.

While extending the act to cover sexual harassment by MPs, the amendments seek to protect parliamentary privilege. Proposed section 24(2B) will provide that the new provisions about sexual harassment by MPs do not apply in relation to anything said or done by a member of Parliament in the course of parliamentary proceedings.

Dealing with complaints: The bill also provides a special mechanism, contained in proposed section 83B, for dealing with complaints of sexual harassment made against MPs. The mechanism for dealing with complaints established by the bill ensures that any matters where the investigation of the complaint might raise issues that could impinge upon parliamentary privilege are to be dealt with by the Speaker or the President, rather than by the Commissioner for Equal Opportunity. This provision is based upon section 93AA of the South Australian Equal Opportunity Act 1984. The process is as follows: the equal opportunity commissioner receives a complaint about an MP, and the commissioner refers the complaint to the President, where the complaint involves a member of the Legislative Council, or the Speaker, where the complaint involves a member of the Legislative Assembly.

Procedure in the case that the complaint could impinge upon parliamentary privilege: The Speaker or President, as the case may be, forms an opinion about whether dealing with the complaint could impinge upon parliamentary privilege. If in his opinion it could, he may investigate and deal with the complaint in the manner in which he thinks is appropriate. He is able to request the commissioner to assist in dealing with the complaint. If after investigation it appears to the Speaker or President that the complaint would not impinge upon parliamentary privilege, he is able to remit it to the commissioner.

Procedure in the case that the complaint would not impinge upon parliamentary privilege: If the Speaker or President forms the opinion that parliamentary privilege would not be impinged upon in dealing with the complaint, the commissioner may then deal with the complaint under the act. The commissioner is able to hold compulsory conferences in endeavouring to resolve the complaint by conciliation. She is also able to refer complaints to the State Administrative Tribunal, which is empowered to make orders, including that the respondent pay the complainant damages of up to \$40 000.

Complaints against the Speaker or the President: When the complaint has been made against the Speaker or President, or if the Speaker or President is unable or declines to act in relation to the complaint, the Deputy Speaker or Deputy President, or if unavailable, a member of the Legislative Council, in the case of the President, or Assembly, in the case of the Speaker, is appointed to deal with the complaint instead.

In his opening statement to Parliament this year, the Premier said —

Parliament should be a place in which not only are laws made, but also examples are set for the rest of the community.

Further —

This Parliament should not be cast as a boys' club where the behaviour of sexist yobbos is not just tolerated but is rewarded.

These new amendments will establish that sexist behaviour by members of Parliament is not just unacceptable, but also unlawful.

I commend the bill to the house.

Points of Order

Mr C.J. BARNETT: I question the use of the term “sexist yobbos” in the Attorney General’s second reading speech. I do not think that is proper parliamentary language.

Mr J.A. McGinty: This is not a point of order. You are abusing the processes yet again. You do it as a serial offender.

Mr C.J. BARNETT: That is particularly appropriate, is it not? I make the point that under standing orders a second reading speech is designed to outline the content of the bill; it is not designed to impugn or essentially try to slam members of Parliament. The use of the word “yobbos” is inappropriate and the Attorney General knows that it is.

The DEPUTY SPEAKER: Members, in this instance there is no point of order.

Mr J.A. McGINTY: I raise this point of order because the member for Cottesloe alone, and no other member of this place, is abusing the standing orders by constantly taking debating points under the guise of a breach of standing orders. Repeatedly, on a daily basis at least, he is told that there is no point of order. I request that you, Madam Deputy Speaker, confer with the Speaker on this matter to bring this abuse of parliamentary procedures to an end.

The DEPUTY SPEAKER: Any member in this house has the right to raise points of order. It is noted that the Speaker has asked members to desist from doing so as a debating point. In this instance I note the points made by both members, but there is no point of order and I ask that the business of the house continue.

Debate Resumed

Debate adjourned, on motion by **Mr C.J. Barnett**.