

EQUAL OPPORTUNITY (MEMBERS OF PARLIAMENT) AMENDMENT BILL 2010

Second Reading

MR M.P. WHITELEY (Bassendean) [4.19 pm]: I move —

That the bill be now read a second time.

The Equal Opportunity (Members of Parliament) Amendment Bill 2010 seeks to amend the Equal Opportunity Act 1984 by extending the coverage of that act to people who are employed to work at Parliament House, and to people who are carrying out duties at Parliament House, so that they will be given protection under the Equal Opportunity Act 1984 if they are subjected to sexual harassment by a member of Parliament.

Western Australia was among the first states to introduce legislation to provide antidiscrimination laws to protect citizens. The Equal Opportunity Act 1984 defined sexual harassment, and for the first time made it unlawful to sexually harass another person in the workplace. The act initially provided that it was unlawful for a person who was the employer or the potential employer or a fellow employee or potential employee to sexually harass another person in relation to employment. It did not offer protection to persons who work together but do not share a common employer. The Equal Opportunity Amendment Act 1992 expanded the provisions for sexual harassment in the workplace. It was thought that those changes would resolve the problems of people working together in the same workplace but having different employers. At the time it was intended that those changes would also apply to members of Parliament. This bill will make it absolutely clear that members of Parliament are not exempt from sexual harassment provisions.

The commonwealth Sex Discrimination Act 1984 provides protection to employees of federal government members, but that act obviously does not cover state government employees. When the states were enacting legislation to deal with discrimination in the workforce, including sexual harassment, some states enacted legislation that outlawed sexual harassment by simply stating “a person must not sexually harass another person”, as in the case of Queensland. Other states enacted equal opportunity legislation. These acts, as were ours, were prescriptive on employment relationships. Those other states have already amended their legislation to cover sexual harassment by members of Parliament.

In June 1994, the New South Wales Minister for Police resigned his cabinet position and later his position in the party due to allegations of sexual harassment against two staff members. The New South Wales government amended its legislation in 1997 to include sexual harassment as a separate ground of discrimination. It is now unlawful for members of Parliament to engage in sexual harassment in the workplace in New South Wales. The South Australian government legislation, which is very similar to our Equal Opportunity Act, amended its legislation in 1997 to specifically add members of Parliament.

It is time for us to update our legislation, as has been done in other states. Sexual harassment is unacceptable, and sexual harassment by members of Parliament must also be unlawful. It is time for this Parliament to support the extension of sexual harassment laws to include all circumstances of sexual harassment by members of Parliament. It is simply not good enough for us to say that we find sexual harassment in the workplace unacceptable while we ourselves are not subject to the very legislation that this Parliament imposed upon the rest of the state.

The Equal Opportunity (Members of Parliament) Amendment Bill 2010 amends the Equal Opportunity Act 1984 to extend that act to include sexual harassment by members of Parliament. Specifically section 24 of the Equal Opportunity Act, covering sexual harassment in employment, will be amended. 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 Parliament or minister of the Crown; an officer appointed to assist another member of Parliament or minister of the Crown; an officer or member of the staff of Parliament; or any person who in the course of employment performs duties at 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.

The bill provides that proposed section 24(2A) does not limit section 24(1) of the act. This is done to ensure that the act does not have a limiting effect on the type of conduct by members of Parliament that is covered by the Equal Opportunity Act. While extending the act to cover sexual harassment by members of Parliament, the amendments seek to protect parliamentary privilege. Parliamentary privilege is a basic constitutional principle that ensures that members of Parliament are not inhibited by executive government from raising issues in taking action in the interests of the people. Proposed section 24(2B) will provide that proposed subsection (2A) does not apply in relation to anything said or done by a member of Parliament in the course of parliamentary proceedings.

Proposed section 83B establishes the mechanism for dealing with complaints against members of Parliament. It 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. The provision is based upon section 93AA of the South Australian Equal Opportunity Act 1984. The process is as follows: the equal opportunity commission receives a complaint about a member of Parliament, 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. The Speaker or the President, as the case maybe, forms an opinion about whether dealing with the complaint could impinge upon parliamentary privilege. If the opinion is that it could, then they investigate and deal with the complaint in a manner that they think is appropriate. They are also able to request the Commissioner for Equal Opportunity to assist in dealing with the complaint. If after investigation it appears to the Speaker or the President that the complaint would not impinge upon parliamentary privilege, they are able to remit it to the commissioner and 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. The Commissioner for Equal Opportunity is also able to refer complaints to the State Administrative Tribunal, which is empowered to make orders, including that the respondent is to pay the complainant damages of up to \$40 000.

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

People who make application under the Equal Opportunity Act 1984 are treated confidentially and with respect. They have provisions to protect them, such as those set out under part V, "Other unlawful acts". I refer to the section on victimisation that makes it unlawful for a person to subject or threaten to subject another person to any detriment on the grounds that the victimised person intends to make an application or proposes to assert his or her rights under the Equal Opportunity Act.

When a member of Parliament sexually harasses a person, there is a greater public interest. This robs those who are sexually harassed in the workplace by a member of Parliament of the opportunity to consider their options without the intrusion of the media. Sexual harassment is a serious matter that can have detrimental effects on the wellbeing of the person harassed. Media attention and any efforts to either protect or damage the public reputation of the member of Parliament involved can intensify this damage. When there is no opportunity for a private conciliation process through which the member can accept responsibility while protecting the victim from public scrutiny, the damage can be multiplied manyfold.

I believe that this legislation would provide protections for both those sexually harassed by members of Parliament and for members of Parliament who are wrongly accused. There would, in my view, be a justifiable suspicion of rumours and allegations that the alleged victims did not report sexual harassment. Parliament House is a gossip and rumour factory unlike any other. To put it bluntly, there would be a fair process and therefore an expectation on those making allegations to either put up or shut up. There will also be legislative protections that prevent official complaints getting into the public sphere.

I believe the overarching principle in this bill is that we should be subject to the same laws and have the same rights and obligations as the rest of the citizens of this state. If we allow this loophole to continue, it makes a mockery of assault. There is no good reason that we should expect to remain outside the law. I hope that members of this house can clearly understand the discriminatory situation that currently exists and recognise that we as members of Parliament can no longer continue to be outside the law. I believe in equal opportunity for all Australians, and members opposite profess to believe this to; in fact, it is principle number five of the Liberal Party philosophy. I implore members to stand up for this principle and put an end to the discrimination that currently exists.

Before I finish I want to acknowledge the courage and the skills of my constituent Karry Smith. I had never met or even heard of Karry Smith until she walked into my electorate office in August 2009. I recognised her as a familiar face around Parliament, but in all honesty I can say that I had no idea that she was a high-profile victim of sexual harassment at Parliament House. Karry was very obviously still suffering emotionally from not so much the original harassment but from feeling re-victimised and being deserted by her former friends and colleagues. I know now that by publicly advocating for changes to the equal opportunity legislation and raising her own personal circumstances so publicly, Karry has subjected herself again to public scrutiny. However, the fear of having the media intrude once again in her life is, for her, far outweighed by the fear that someone else will have to endure the very same treatment that she and her family endured. Karry is a skilled, persistent, loyal and experienced advocate and parliamentary researcher. She did the research that formed the backbone of this second reading speech. She came to me, her local member, out of desperation with nowhere else to turn.

Karry, with my support and that of my electorate office staff—I thank them for their confidentiality in this very sensitive matter—tried a number of strategies, notably writing to the Premier in November to help get resolution. When that proved fruitless she suggested that together we advocate for changes to ensure that parliamentary staffers have the same opportunity as workers elsewhere to address sexual harassment in the workplace.

I am here today introducing this bill because Karry Smith was sexually harassed and then abandoned by those she had loyally served. I am introducing this bill today because Karry Smith had the courage to stand up and make sure that no-one else has to go through what she has been through. Karry, I know you are listening. I commend you and this bill to the house.

Debate adjourned, on motion by **Mr A.J. Simpson (Parliamentary Secretary)**.