

EXPLANATORY MEMORANDUM

EQUAL OPPORTUNITY AMENDMENT BILL 2008

This Bill introduces amendments to the *Equal Opportunity Act* to deal with sexual harassment by Members of Parliament.

1. Short Title

This clause cites the short title of the Act – *Equal Opportunity Amendment Act 2008*.

2. Commencement

Sections 1 and 2 of the Act are to come into operation on the day on which the Act receives Royal Assent with the remaining sections to come into operation the day after that.

3. The Act amended

This provides that the amendments in the Act are to the *Equal Opportunity Act 1984*.

4. Section 24 amended

Persons that it is unlawful for MPs to sexually harass

Under section 24(2A), it is unlawful for a Member of Parliament to harass sexually –

- (a) An officer to appointed to assist the member of the Parliament; or
- (b) An officer appointed to assist another member of Parliament; or
- (c) An officer or member of the staff of Parliament; or
- (d) 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 House meets.

The Act provides that section 24(2A) does not limit section 24(1) of the Act. This is to ensure that the Act does not have a limiting effect on the type of conduct by MP's that is covered by the *Equal Opportunity Act*.

Parliamentary proceedings

Section 24(2B) provides that subsection (2A) does not apply in relation to anything said or done by a member of Parliament in the course of parliamentary proceedings.

Conduct constituting sexual harassment

Section 24(3A) prescribes the conduct by an MP that constitutes sexual harassment. It provides that an MP will harass a person (being one of the persons referred to in 24(2A)(a) to (d) above), where the MP:

- Makes an unwelcome sexual advance; or
- Makes an unwelcome request for sexual favours; or
- Engages in other unwelcome conduct of a sexual nature.

5. Section 83B inserted

Section 83B sets out the process for dealing with complaints of sexual harassment made against MPs. This provision is based upon section 93AA of the *Equal Opportunity Act 1984 (South Australia)*. The process is as follows:

- The Equal Opportunity Commissioner receives a complaint under section 24 of the *Equal Opportunity Act* about an MP;
- The Commissioner refers the complaint to the appropriate authority;
- The appropriate authority forms an opinion about whether dealing with the complaint under the Act could impinge on parliamentary privilege. The appropriate authority is required to give the Commissioner written notice of its decision no later than one month after the complaint is referred to it.

Procedure in the case that the complaint could impinge upon parliamentary privilege

- Where the appropriate authority forms the opinion that dealing with the complaint could impinge on parliamentary privilege, the appropriate authority may investigate and deal with the complaint in the manner that it thinks is appropriate.
- In such a case, no action can be taken under sections 84 and 93 in relation to the complaint. This means that the Commissioner is not able to investigate the complaint or refer the complaint to the State Administrative Tribunal. The Commissioner is also required to give the complainant and the respondent (the person that the complaint has been made about) written notice that the complaint will be dealt with by the appropriate authority.
- When dealing with complaints, the Equal Opportunity Commissioner may, if requested by the appropriate authority:
 - Assist the authority in investigating the complaint; or
 - Endeavour to resolve the complaint by conciliation;

The complainant and respondent must be given written notice that the Commissioner is to act in this way.

- If the Commissioner is not successful in resolving the dispute by conciliation, the Commissioner may make recommendations to the appropriate authority regarding resolution of the complaint.
- If after investigation, the appropriate authority considers that the complaint could be dealt with under the Act without impinging upon parliamentary privilege, the appropriate authority is required to remit the complaint to the Commissioner. The Commissioner then deals with the complaint under the *Equal Opportunity Act* in the normal way.
- The appropriate authority is required to give written notice that it is remitting the complaint to be dealt with by the Commissioner.

Procedure in the case that the complaint would not impinge upon parliamentary privilege

- If the appropriate authority forms the opinion that parliamentary privilege would not be impinged in dealing with the complaint, the Commissioner is to deal with the complaint under the *Equal Opportunity Act* in the usual way.

Under subsection (2), for the purposes of investigating a complaint, the appropriate authority has the same powers as are conferred on the Equal Opportunity Commissioner by the Act.

“Appropriate authority” is defined in subsection (3). In relation to a complaint against a member of the Legislative Council, it means the President of the Legislative Council. Provision is also made for who is to act in circumstances where the President is not available.

In relation to a complaint against a member of the Legislative Assembly, the appropriate authority is the Speaker of the Legislative Assembly. Provision is also made for who is to act in circumstances where the Speaker is not available.

A person is “not available” if the person:

- Is absent or unable for the time being to perform the duties of office;
- Is the respondent, that is, the person about whom the complaint is made; or
- If the person declines to deal with the manner because it would be inappropriate for the person to do so.

6. Section 165 amended

An amendment to make reference to “the appropriate authority” in section 165 of the *Equal Opportunity Act*.

7. Section 166

An amendment to make reference to “the appropriate authority” in section 166 of the *Equal Opportunity Act*.