

Equal Opportunity Amendment Bill 2006

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Western Australia

LEGISLATIVE ASSEMBLY

Equal Opportunity Amendment Bill 2006

A Bill for

An Act to amend the *Equal Opportunity Act 1984* and for related purposes.

The Parliament of Western Australia enacts as follows:

s. 1

1. Short title

This is the *Equal Opportunity Amendment Act 2006*.

2. Commencement

This Act comes into operation on the day on which it receives the Royal Assent.

3. The Act amended

The amendments in this Act are to the *Equal Opportunity Act 1984**.

[* *Reprint 4 as at 1 April 2005.*

For subsequent amendments see Western Australian Legislation Information Tables for 2005, Table 1, and Acts Nos. 18 of 2005 and 28 and 29 of 2006.]

4. Long title amended

The long title is amended by deleting “grounds.” and inserting instead —

“
grounds, and in respect of racially offensive behaviour.”

5. Section 3 amended

After section 3(b) the following paragraph is inserted —

“
(ba) to eliminate, so far as is possible, racially offensive behaviour in public;
”

6. Section 4 amended

Section 4(1) is amended as follows:

- (a) in paragraph (a) of the definition of “complaint” by deleting “representative” and inserting instead —
“ group ”;

- (b) by deleting the definition of “representative complaint”;
- (c) by inserting in the appropriate alphabetical position —

“

5 “**group complaint**” means a complaint lodged under
 section 83(1)(a) or (b) or (1a) by a person on
 behalf of the person and other persons or by 2 or
 more persons on behalf of themselves and other
 persons, but does not include such a complaint
10 after it has been amended by the Tribunal under
 section 116(b);

”.

7. Part III heading replaced

The heading to Part III is repealed and the following heading is inserted instead —

15 “

**Part III — Racial discrimination, harassment
 and offensive behaviour**

”.

8. Part 3 Division 3B inserted

20 After section 49D the following Division is inserted —

“

Division 3B — Racially offensive behaviour

49E. Racially offensive behaviour

25 (1) It is unlawful for a person to do any act, otherwise than
 in private, that is reasonably likely to offend, insult,
 humiliate or intimidate another person on the ground
 of —

- (a) the race; or
- (b) a characteristic that appertains generally to
30 persons of the race; or

s. 8

- (c) a characteristic that is generally imputed to persons of the race,

of that other person or of a relative or associate of that other person.

- 5 (2) Conduct is taken not to occur in private if it —
 - (a) consists of any form of communication with the public or a section of the public; or
 - (b) occurs in a public place or in the sight or hearing of people who are in a public place.

- 10 (3) In subsection (2) —

“public place” includes a place to which the public or a section of the public has access, or is expressly or impliedly permitted to have access, whether on payment or not.

15 **49F. Exceptions**

Nothing in section 49E renders it unlawful to do an act reasonably and in good faith —

- (a) in the performance, exhibition or distribution of an artistic work; or
- 20 (b) in the course of a statement, publication, discussion or debate made or held for —
 - (i) a genuine academic, artistic or scientific purpose; or
 - (ii) any other genuine purpose in the public interest;

25

or

- (c) in making or publishing —
 - (i) a fair and accurate report of; or

(ii) a fair comment that is an expression of a genuine belief held by the person making the comment in relation to, an event or matter of public interest.

5

”.

9. Section 80 amended

Section 80 is amended as follows:

(a) by deleting “age eliminating” and inserting instead —
“ age, eliminating ”;

10

(b) after “accommodation,” by inserting —

“

eliminating, as far as possible, racially offensive behaviour in public,

”;

15

(c) in paragraph (a) by deleting “discrimination or sexual or racial harassment” and inserting instead —

“

discrimination, sexual or racial harassment or racially offensive behaviour

20

”;

(d) after paragraph (b)(ii) by inserting —

“

(ia) elimination of racially offensive behaviour in public; and

25

”;

(e) in paragraph (e) by deleting “harassment;” and inserting instead —

“

harassment, and means of eliminating racially offensive behaviour in public; and

30

”;

s. 10

- (f) after each of paragraphs (a), (b)(i), (b), (c), (d), (f), (fa) and (g)(i) and (ii) by inserting —
“ and ”.

10. Section 83 amended

5 (1) Section 83(1) is amended as follows:

- (a) after paragraph (a) by inserting —
“ or ”;

- (b) after paragraph (c) by deleting the full stop and inserting instead —

10

“

; or

- (d) in the case of an alleged contravention of section 49E and subject to subsection (3a), a representative body on behalf of one or more named members of the affected racial group.

15

”.

(2) Section 83(3) is amended as follows:

- (a) after “subsection (1)” by inserting —
“ (a) or (b) ”;

20

- (b) by deleting “representative” in both places where it occurs and inserting instead —
“ group ”.

(3) After section 83(3) the following subsection is inserted —

“

25

(3a) A complaint cannot be lodged under subsection (1)(d) unless —

- (a) each person named in the complaint has consented to the complaint being made on his or her behalf; and

30

- (b) the act the subject of the alleged contravention is a matter of genuine concern to the body

because of the way acts of that kind affect, or
may affect, the people the promotion of whose
interests or welfare is the body's primary
purpose.

5

”.

- (4) Section 83(6) is repealed and the following subsection is
inserted instead —

“

- (6) In this section —

10

“affected racial group”, in relation to an alleged
contravention of section 49E, means the class of
persons it is alleged are likely to be offended,
insulted, humiliated or intimidated by the act the
subject of the alleged contravention;

15

“representative body”, in relation to an alleged
contravention of section 49E, means a body
(whether incorporated or not) that has as its
primary purpose the promotion of the interests or
welfare of people who are, or include, members of
the affected racial group;

20

“trade union” means an organisation of employees or
an organisation of employers.

”.

11. Section 89 amended

25

Section 89(1) is amended as follows:

- (a) by deleting “substance or” and inserting instead —
“ substance, ”;
- (b) by deleting “Act,” and inserting instead —

“

30

Act or, in the case of a complaint lodged under
section 83(1)(d), is made in contravention of
section 83(3a),

”.

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12. Section 114 amended

Section 114 is amended by deleting “representative” in both places where it occurs and inserting instead —

“ group ”.

5 **13. Section 115 amended**

(1) Section 115(1) is amended as follows:

(a) by inserting after “permit a complaint” —
“ lodged under section 83(1)(a) or (b) or (1a) ”;

10 (b) by deleting “representative” in both places where it occurs and inserting instead —
“ group ”.

(2) Section 115(2) is amended as follows:

(a) by inserting after “In considering” —
“ under subsection (1) ”;

15 (b) by deleting “representative” in both places where it occurs and inserting instead —
“ group ”.

14. Section 116 amended

Section 116 is amended as follows:

20 (a) by inserting after “Where” —

“
, having considered a complaint under section 115,
”;

25 (b) in paragraphs (a) and (b) by deleting “representative” in each place where it occurs and inserting instead —

“ group ”.

15. Section 117 amended

Section 117 is amended as follows:

- (a) by deleting “representative” in the first place where it occurs and inserting instead —

5 “ group ”;

- (b) by deleting “representative complaint” in the second place where it occurs and inserting instead —

10 “
group complaint or a complaint under
section 83(1)(d)
”.

16. Section 126 amended

- (1) Section 126 is amended as follows:

15 (a) before “The Tribunal” by inserting the subsection designation “(1)”;

- (b) by deleting “a party to an investigation at any time after the lodging of the complaint into which that investigation is held,” and inserting instead —

20 “
the complainant or respondent to a complaint into
which an inquiry is being held,
”.

- (2) At the end of section 126 the following subsection is inserted —

25 “
(2) In this section —
“parties”, in relation to a group complaint or a
complaint lodged under section 83(1)(c) or (d),
includes the persons on whose behalf the
complaint was made.
30 ”.

s. 17

17. Section 127 amended

(1) Section 127(b)(i) is amended as follows:

(a) by deleting “representative” and inserting instead —
“ group ”;

5 (b) by deleting “to the complainant”.

(2) Section 127(b)(iii) is amended as follows:

(a) by deleting “representative” and inserting instead —
“ group ”;

10 (b) by deleting “the complainant;” and inserting instead —
“ reason of the respondent’s conduct; ”.

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