

Western Australia

Equal Opportunity Amendment Bill 2008

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Western Australia

LEGISLATIVE ASSEMBLY

Equal Opportunity Amendment Bill 2008

A Bill for

An Act to amend the *Equal Opportunity Act 1984*.

The Parliament of Western Australia enacts as follows:

s. 1

1. Short title

This is the *Equal Opportunity Amendment Act 2008*.

2. Commencement

This Act comes into operation as follows:

- 5
- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
 - (b) the rest of the Act — on the day after that day.

3. The Act amended

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

4. Section 24 amended

- (1) After section 24(2) the following subsections are inserted —

“

- 15 (2A) Without limiting subsection (1), it is unlawful for a member of Parliament to harass sexually —
- (a) an officer appointed to assist the member of Parliament; or
 - (b) an officer appointed to assist another member of Parliament; or
 - 20 (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
 - 25 committee of either or both Houses, meets.
- (2B) Subsection (2A) does not apply in relation to anything said or done by a member of Parliament in the course of parliamentary proceedings.

”.

30 Note: The heading to section 24 will be altered by adding “**and of staff**”.

(2) Section 24(3) is amended by deleting “this section” and inserting instead —

“ subsections (1) and (2) ”.

(3) After section 24(3) the following subsection is inserted —

“

(3A) A person shall, for the purposes of subsection (2A), be taken to harass sexually a person referred to in subsection (2A)(a), (b), (c) or (d) if the first-mentioned person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person, or engages in other unwelcome conduct of a sexual nature in relation to the other person.

”.

(4) Section 24(4) is amended by deleting “subsection (3)” and inserting instead —

“ subsection (3) or (3A) ”.

5. Section 83B inserted

After section 83A the following section is inserted —

“

83B. Manner of dealing with complaints of sexual harassment against members of Parliament

(1) If a complaint alleging that a member of Parliament committed a contravention of section 24 is lodged with the Commissioner, the following provisions apply —

(a) the Commissioner shall refer the complaint to the appropriate authority;

(b) if the appropriate authority is of the opinion that dealing with the complaint under this Act could impinge on parliamentary privilege, the appropriate authority may investigate and deal with the complaint in a manner that the appropriate authority thinks fit;

- 5
- (c) on the appropriate authority giving the Commissioner written notice that a complaint is to be dealt with under paragraph (b) —
- (i) no action can be taken under sections 84 to 93 in relation to the complaint; and
- (ii) the Commissioner shall give the complainant and the respondent written notice that the complaint will be dealt with by the appropriate authority;
- 10
- (d) on the appropriate authority giving the Commissioner written notice that a complaint is not going to be dealt with under paragraph (b), the Commissioner may proceed to deal with the complaint under this Act;
- 15
- (e) a notice has to be given under paragraph (c) or (d) by the appropriate authority no later than one month after the referral of a complaint to the appropriate authority;
- 20
- (f) if a complaint is to be dealt with under paragraph (b), the Commissioner may at the request of the appropriate authority —
- (i) assist the authority in investigating the complaint; or
- (ii) endeavour to resolve the complaint by conciliation;
- 25
- (g) if the Commissioner is to act under paragraph (f), the appropriate authority shall give the complainant and the respondent written notice that the Commissioner is to so act;
- 30
- (h) if, acting under paragraph (f), the Commissioner endeavours to resolve a complaint by conciliation but is not successful, the Commissioner may make recommendations

to the appropriate authority regarding resolution of the complaint;

- 5
- (i) if, after investigating a complaint under paragraph (b), the appropriate authority considers that the complaint can be dealt with under this Act without impinging on parliamentary privilege, the appropriate authority shall remit the complaint to the Commissioner, and, in that case, the
- 10
- Commissioner may proceed to deal with the complaint under this Act;
- (j) if a complaint is remitted to the Commissioner under paragraph (i), the Commissioner shall give the complainant and respondent written notice that the complaint is to be dealt with by the Commissioner;
- 15
- (k) the appropriate authority shall give the complainant and the Commissioner written notice of the manner in which the appropriate authority has dealt with a complaint under paragraph (b).
- 20
- (2) Despite subsection (1)(c)(i) and any other law, for the purposes of investigating a complaint under subsection (1)(b) an appropriate authority has the same powers and immunities as are conferred on the Commissioner by this Act in relation to the investigation of a complaint by the Commissioner.
- 25
- (3) Despite subsection (1)(c)(i), sections 91(2) and 92 apply if the Commissioner is endeavouring to resolve a complaint by conciliation under subsection (1)(f)(ii).
- 30

(4) In this section —

“appropriate authority” in relation to a complaint against a member of the Legislative Council means —

- 5 (a) the President of the Legislative Council; or
- (b) if the person who is President is not available to deal with the matter —
- 10 (i) the Chairman of Committees of the Legislative Council; or
- (ii) if the person who is Chairman of Committees is not available to deal with the matter — a member of the Legislative Council who is not the respondent and who is appointed by
- 15 the Legislative Council to deal with the complaint;

“appropriate authority” in relation to a complaint against a member of the Legislative Assembly means —

- 20 (a) the Speaker of the Legislative Assembly; or
- (b) if the person who is Speaker is not available to deal with the matter —
- (i) the Chairman of Committees of the Legislative Assembly; or
- 25 (ii) if the person who is Chairman of Committees is not available to deal with the matter — a member of the Legislative Assembly who is not the respondent and who is appointed by
- 30 the Legislative Assembly to deal with the complaint.

- (5) For the purposes of subsection (4) a person is not available to deal with a matter if the person —
- (a) is absent or unable for the time being to perform the duties of office; or
 - (b) is the respondent; or
 - (c) declines to deal with the matter on the grounds that it would be inappropriate for the person to do so.

”.

10 **6. Section 165 amended**

- (1) Section 165(1) is amended by deleting “Commissioner has” and inserting instead —

“ Commissioner or an appropriate authority has ”.

- (2) Section 165(2)(a) is amended as follows:

- 15 (a) by deleting “Commissioner,” and inserting instead —

“ Commissioner, an appropriate authority, ”;

- (b) by inserting before “or pursuant” —

“ or of an appropriate authority ”.

- (3) After section 165(2) the following subsection is inserted —

20 “

- (3) In this section —

“**appropriate authority**” has the meaning given in section 83B(4).

”.

25 **7. Section 166 amended**

- (1) Section 166(1) is amended as follows:

- (a) by inserting before “or a” —

“ or an appropriate authority ”;

s. 7

(b) by inserting before “or pursuant” —

“ or of an appropriate authority ”;

(c) by deleting “Commissioner.” and inserting instead —

“ Commissioner or appropriate authority. ”.

5 (2) Section 166(2)(b) is amended by deleting “Commissioner,” and inserting instead —

“ Commissioner or an appropriate authority, ”.

(3) After section 166(2) the following subsection is inserted —

“

10 (3) In this section —

“**appropriate authority**” has the meaning given in section 83B(4).

”.
