

Western Australia

Equal Opportunity (Members of Parliament) Amendment Bill 2010

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Western Australia

LEGISLATIVE ASSEMBLY

(Introduced by Mr Whitely, MLA)

**Equal Opportunity (Members of Parliament)
Amendment Bill 2010**

A Bill for

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

The Parliament of Western Australia enacts as follows:

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1 **1. Short title**

2 This is the *Equal Opportunity (Members of Parliament)*
3 *Amendment Act 2010*.

4 **2. Commencement**

5 This Act comes into operation as follows:

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

9 **3. The Act amended**

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

12 **4. Section 24 amended**

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

14 “

15 (2A) Without limiting subsection (1), it is unlawful for a
16 member of Parliament to harass sexually —

- 17 (a) an officer appointed to assist the member of
18 Parliament; or
19 (b) an officer appointed to assist another member
20 of Parliament; or
21 (c) an officer or member of the staff of Parliament;
22 or
23 (d) any other person who in the course of
24 employment performs duties at the Parliament
25 or at a place where either House, or a
26 committee of either or both Houses, meets.

27 (2B) Subsection (2A) does not apply in relation to anything
28 said or done by a member of Parliament in the course
29 of parliamentary proceedings.

30 ”.

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

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

3 “ subsections (1) and (2) ”.

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

5 “

6 (3A) A person shall, for the purposes of subsection (2A), be
7 taken to harass sexually a person referred to in
8 subsection (2A)(a), (b), (c) or (d) if the first-mentioned
9 person makes an unwelcome sexual advance, or an
10 unwelcome request for sexual favours, to the other
11 person, or engages in other unwelcome conduct of a
12 sexual nature in relation to the other person.

13 ”.

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

16 “ subsection (3) or (3A) ”.

17 **5. Section 83B inserted**

18 After section 83A the following section is inserted —

19 “

20 **83B. Manner of dealing with complaints of sexual**
21 **harassment against members of Parliament**

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

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

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

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- 1 (c) on the appropriate authority giving the
2 Commissioner written notice that a complaint is
3 to be dealt with under paragraph (b) —
4 (i) no action can be taken under sections 84
5 to 93 in relation to the complaint; and
6 (ii) the Commissioner shall give the
7 complainant and the respondent written
8 notice that the complaint will be dealt
9 with by the appropriate authority;
- 10 (d) on the appropriate authority giving the
11 Commissioner written notice that a complaint is
12 not going to be dealt with under paragraph (b),
13 the Commissioner may proceed to deal with the
14 complaint under this Act;
- 15 (e) a notice has to be given under paragraph (c)
16 or (d) by the appropriate authority no later than
17 one month after the referral of a complaint to
18 the appropriate authority;
- 19 (f) if a complaint is to be dealt with under
20 paragraph (b), the Commissioner may at the
21 request of the appropriate authority —
22 (i) assist the authority in investigating the
23 complaint; or
24 (ii) endeavour to resolve the complaint by
25 conciliation;
- 26 (g) if the Commissioner is to act under
27 paragraph (f), the appropriate authority shall
28 give the complainant and the respondent
29 written notice that the Commissioner is to
30 so act;
- 31 (h) if, acting under paragraph (f), the
32 Commissioner endeavours to resolve a
33 complaint by conciliation but is not successful,
34 the Commissioner may make recommendations

-
- 1 to the appropriate authority regarding resolution
2 of the complaint;
- 3 (i) if, after investigating a complaint under
4 paragraph (b), the appropriate authority
5 considers that the complaint can be dealt with
6 under this Act without impinging on
7 parliamentary privilege, the appropriate
8 authority shall remit the complaint to the
9 Commissioner, and, in that case, the
10 Commissioner may proceed to deal with the
11 complaint under this Act;
- 12 (j) if a complaint is remitted to the Commissioner
13 under paragraph (i), the Commissioner shall
14 give the complainant and respondent written
15 notice that the complaint is to be dealt with by
16 the Commissioner;
- 17 (k) the appropriate authority shall give the
18 complainant and the Commissioner written
19 notice of the manner in which the appropriate
20 authority has dealt with a complaint under
21 paragraph (b).
- 22 (2) Despite subsection (1)(c)(i) and any other law, for the
23 purposes of investigating a complaint under
24 subsection (1)(b) an appropriate authority has the same
25 powers and immunities as are conferred on the
26 Commissioner by this Act in relation to the
27 investigation of a complaint by the Commissioner.
- 28 (3) Despite subsection (1)(c)(i), sections 91(2) and 92
29 apply if the Commissioner is endeavouring to resolve a
30 complaint by conciliation under subsection (1)(f)(ii).
- 31 (4) In this section —
32 **“appropriate authority”** in relation to a complaint
33 against a member of the Legislative Council means —
34 (a) the President of the Legislative Council; or

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- 1 (b) if the person who is President is not available to
2 deal with the matter —
- 3 (i) the Chairman of Committees of the
4 Legislative Council; or
- 5 (ii) if the person who is Chairman of
6 Committees is not available to deal with
7 the matter —a member of the
8 Legislative Council who is not the
9 respondent and who is appointed by the
10 Legislative Council to deal with the
11 complaint;
- 12 **“appropriate authority”** in relation to a complaint
13 against a member of the Legislative Assembly
14 means —
- 15 (a) the Speaker of the Legislative Assembly; or
- 16 (b) if the person who is Speaker is not available to
17 deal with the matter —
- 18 (i) the Deputy Speaker of the Legislative
19 Assembly; or
- 20 (ii) if the person who is Deputy Speaker is
21 not available to deal with the matter —a
22 member of the Legislative Assembly
23 who is not the respondent and who is
24 appointed by the Legislative Assembly
25 to deal with the complaint.
- 26 (5) For the purposes of subsection (4) a person is not
27 available to deal with a matter if the person —
- 28 (a) is absent or unable for the time being to
29 perform the duties of office; or
- 30 (b) is the respondent; or

1 (c) declines to deal with the matter on the grounds
2 that it would be inappropriate for the person to
3 do so.
4 ”.

5 **6. Section 165 amended**

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

8 “ Commissioner or an appropriate authority has ”.

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

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

11 “ Commissioner, an appropriate authority, ”;

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

13 “ or of an appropriate authority ”.

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

15 “

16 (3) In this section —

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

19 ”.

20 **7. Section 166 amended**

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

22 (a) by inserting before “or a” —

23 “ or an appropriate authority ”;

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

25 “ or of an appropriate authority ”;

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

27 “ Commissioner or appropriate authority. ”.

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

3 “ Commissioner or an appropriate authority, ”.

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

5 “

6 (3) In this section —

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

9

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