

2006

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

HUMAN RIGHTS COMMISSION AMENDMENT BILL 2006

EXPLANATORY STATEMENT

Circulated by the authority of
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OVERVIEW

The *Human Rights Commission Act 2005* (the Act) establishes the Human Rights Commission (the HRC) as a statutory oversight agency for the ACT. The members of the HRC work together in a collegiate manner and decide how the HRC will carry out its statutory functions. The members of the HRC include specialist commissioners who are (subject to any contrary decision by the HRC) responsible for dealing with complaints, inquiries, preparation of advice and community education in relation to particular areas of expertise.

Originally the Act provided for the HRC to have a president who was the member responsible for conciliating complaints on behalf of the HRC and who was responsible for the day-to-day administration of the HRC.

Prior to beginning the operation of the HRC, the Government has decided, as a Budget measure, to remove the position of president from the HRC structure. As a result the separation of conciliation from consideration of each complaint will be a matter of administration within the HRC, rather than being done by way of statutory separation in the roles of HRC members. Similarly, routine administration including arranging meetings and dealing with differences of opinion will be handled by the members of the HRC collectively.

The amendments are to remove references to the president from the Act. Some restructuring of provisions is also done, as necessary, to accommodate the new approach.

SUMMARY OF CLAUSES

Clause 1 sets out the name of the Act.

Clause 2 provides for commencement of the new Act on the same day as the substantive provisions of the Act.

Clause 3 specifies that the Bill amends the Act.

Clause 4 omits section 12(1)(a) of the Act, which provided that the president was a member of the Human Rights Commission (the HRC). As a result the members of the HRC are

- the disability and community services commissioner;
- the discrimination commissioner;
- the children and young people commissioner;
- the health services commissioner; and
- the human rights commissioner.

Clause 5 omits section 12(3) of the Act as it prevented a person from being both the president and a commissioner in the HRC. As there will no longer be a position of president of the HRC, the provision is not needed.

Clause 6 omits division 3.2 of the Act. All of the provisions in division 3.2 related to the position of president. They provided for appointment of the president and for the functions to be exercised by the president on behalf of the HRC.

Clause 7 substitutes a new section 26 for the existing section 26. The existing section, which was inserted during debate in order to separate the position of human rights commissioner from the position of discrimination commissioner, does not explain how the human rights commissioner is to be appointed. The new section 26 provides for the human rights commissioner to be appointed by the Executive in the same way as the other members of the HRC.

Clause 8 substitutes a new section 28 for the previous section 28 to ensure that the provisions in division 3.7 of the Act about ending the appointments of HRC members will apply to the human rights commissioner. The reference to the president is removed from the provision as there will not be any appointment to the position of president for the provisions of division 3.7 to act on.

Clause 9 substitutes new subsection 30(3) and 30(4) for the previous provisions. Section 30 sets out requirements for the timing of HRC meetings. With the removal of the position of president the provisions about the president calling meetings are replaced by provisions allowing any member of the HRC to call a meeting as long as he or she has the agreement of at least one other member. A member who calls a meeting must give the other members reasonable notice of the time and place for the meeting.

Clause 10 omits section 31 of the Act, which provided for the president to preside at meetings of the HRC. Members will be free to decide among themselves how meetings are to be run.

Clause 11 omits sub-section 33(2), which provided for the president to have a casting vote if a decision required a majority and the votes were otherwise equal. Members of the HRC will be free to determine how to progress issues where opinions are evenly split. However, the situation is unlikely to arise with a small, uneven number of members appointed to the HRC.

Clause 12 omits sub-section 50(2) to remove the provision preventing the president from considering complaints on behalf of the HRC. This is necessary as a result of the removal of the position of president.

Clause 13 substitutes a new section 55 for the previous provision. Section 55 describes what conciliation is for the purpose of the Act. The new provision removes references to the president, who would have been responsible for conciliation of complaints on behalf of the HRC. It also clarifies the role of the HRC as a neutral third party in conciliations, assisting the parties to complaints to reach a resolution of the issues between them.

Clause 14 inserts a new section 56 in place of the previous provision to remove the reference to the president. The new provision says that the HRC can delegate the function of conciliating complaints to a member of the staff of the HRC or a consultant engaged by the HR.

The HRC could also decide that a particular Commissioner will participate in conciliation on behalf of the HRC, subject to the requirement in section 61 that conciliation of a complaint must be kept separate from the consideration of that complaint. This means that if a Commissioner is or has been involved in consideration of the complaint, he or she may not be involved in conciliation of the same complaint. The new section 56 makes it clear that, subject to that requirement, staff of the HRC can act as conciliators and that the HRC can engage specialist conciliators where appropriate.

Clause 15 and **Clause 16** amend section 61(2) of the Act to remove references to the president.

Clause 17 inserts a new sub-section 62(3) for the previous provision in order to remove the reference to the president. Sub-section 62(3) deals with the HRC giving copies of any conciliated agreements to the parties and, if the complaint was about discrimination, to the discrimination tribunal.

Clause 18 replaced the previous section 63 with a new provision in order to remove reference to the president and set out how the HRC can use a conciliation agreement.

Clause 19 inserts a new sub-section 65(2) in place of the previous provision in order to remove references to the president as a separate role within the HRC.

Clause 20 inserts a new sub-section 66(1)(a)(i) in place of the previous provision in order to substitute a reference to the HRC for a reference to “the conciliator”.

That term has been omitted from the Act in order to make it clear that it is the HRC that is responsible for conciliating complaints, as an independent third party.

Clause 21 and **Clause 22** omit references to the president from section 99 and 100 respectively.

Clause 23 omits the definition of “conciliator” from the dictionary for the Act. That term has been omitted from the Act in order to make it clear that it is the HRC that is responsible for conciliating complaints, as an independent third party.

Clause 24 omits the definition of “president” from the dictionary for the Act, as the position no longer exists within the Act.

Clause 25 replaced references to the president with references to the HRC in a number of sections of the Act to reflect that there is no position of president within the HRC.