



**EQUAL OPPORTUNITY (SEXUAL HARASSMENT) AMENDMENT ACT
1997**

No. 47 of 1997

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ELIZABETHAE II REGINAE

A.D. 1997

No. 47 of 1997

An Act to amend the Equal Opportunity Act 1984.

[Assented to 31 July 1997]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Equal Opportunity (Sexual Harassment) Amendment Act 1997*.

(2) The *Equal Opportunity Act 1984* is referred to in this Act as "the principal Act".

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Amendment of s. 5—Interpretation

3. Section 5 of the principal Act is amended—

(a) by inserting after the definition of "the Commissioner" in subsection (1) the following definitions:

"council" means a council established under the *Local Government Act 1934*;

"court" includes a tribunal;;

(b) by inserting after the definition of "introduction agency" in subsection (1) the following definition:

"judicial officer" means a member of a court or tribunal;;

(c) by inserting after the definition of "the panel" in subsection (1) the following definition:

"parliamentary proceedings" means proceedings before—

(a) the House of Assembly or the Legislative Council; or

(b) a committee of either House or of both Houses;.

Amendment of s. 87—Sexual harassment

4. Section 87 of the principal Act is amended by inserting after subsection (6) the following subsections:

(6a) It is unlawful for a judicial officer to subject to sexual harassment a non-judicial officer, or a member of the staff, of a court of which the judicial officer is a member.

(6b) Subsection (6a) does not apply in relation to anything said or done by a judicial officer in court or in chambers in the exercise, or purported exercise, of judicial powers or functions or in the discharge, or purported discharge, of judicial duties.

(6c) It is unlawful for a member of Parliament to subject to sexual harassment—

- (a) a member of his or her staff; or
- (b) a member of the staff of another member of Parliament; or
- (c) an officer or member of the staff of the Parliament; or
- (d) any other person who in the course of employment performs duties at Parliament House.

(6d) Subsection (6c) does not apply in relation to anything said or done by a member of Parliament in the course of parliamentary proceedings.

(6e) It is unlawful for a member of a council to subject to sexual harassment an officer or employee of the council.

Insertion of s. 93AA

5. The following section is inserted after section 93 of the principal Act:

Manner of dealing with complaints of sexual harassment by judicial officers and members of Parliament

93AA. (1) If a complaint alleging that a judicial officer or a member of Parliament has acted in contravention of section 87 is lodged with the Commissioner, the following provisions apply:

- (a) the Commissioner must 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 judicial independence or parliamentary privilege, as the case may be, the appropriate authority will investigate and may deal with the matter in such manner as the appropriate authority thinks fit;
- (c) on the appropriate authority giving the Commissioner written notice that a complaint is to be dealt with under paragraph (b)—
 - (i) no further action can be taken under any other provision of this Act on the complaint; and
 - (ii) the Commissioner must notify the complainant and the respondent written notice that the complaint will be dealt with by the appropriate authority;

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- (d) on the appropriate authority giving the Commissioner written notice that a complaint will not be dealt with under paragraph (b), the Commissioner may proceed to deal with the complaint under this Act;
- (e) a notice must 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;
- (f) the Commissioner may at the request of the appropriate authority—
 - (i) assist the authority in investigating a complaint that is to be dealt with under paragraph (b); or
 - (ii) attempt to resolve the subject matter of such a complaint by conciliation;
- (g) if the Commissioner is to act under paragraph (f), the appropriate authority must give the complainant and the respondent written notice that the Commissioner is to so act;
- (h) if the Commissioner attempts to resolve the subject matter of a complaint by conciliation but is not successful in that attempt, the Commissioner may make recommendations to the appropriate authority regarding resolution of the matter;
- (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 judicial independence or parliamentary privilege (as the case may be), the appropriate authority must remit the complaint to the Commissioner, and, in that case, the 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 must give the complainant and respondent written notice that the complaint is to be dealt with by the Commissioner;
- (k) the appropriate authority must give the complainant and the Commissioner written notice of the manner in which the appropriate authority has dealt with a complaint under paragraph (b).

(2) For the purposes of investigating a complaint that is to be dealt with by the appropriate authority under this section, the authority has the same investigative powers as are conferred on the Commissioner by section 94 in relation to the investigation of a complaint by the Commissioner.

(3) For the purposes of conciliating a complaint under this section, the Commissioner has the same powers as are conferred on the Commissioner by section 95 in relation to the conduct of conciliation proceedings under that section.

(4) No personal liability attaches to the appropriate authority for an act or omission in good faith and in the exercise, or purported exercise, or the discharge, or purported discharge, of powers or duties under this section.

(5) A liability that would, but for subsection (4), lie against the appropriate authority lies instead against the Crown.

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(6) The Minister must, as soon as practicable after the second anniversary of the commencement of this section, cause an examination to be made of the operation of this section and prepare and complete a report of the results of that examination within six months after the second anniversary of that commencement.

(7) The Minister must, within 12 sitting days after the report is completed, cause copies of the report to be laid before each House of Parliament.

(8) In this section—

"appropriate authority" means—

- (a) in relation to a complaint against a judicial officer—
 - (i) the Chief Justice; or
 - (ii) if the Chief Justice is the respondent or considers it inappropriate that he or she should deal with the matter—the most senior puisne judge of the Supreme Court who is not the respondent, is available to deal with the matter and does not consider it inappropriate that he or she should deal with the matter;
- (b) in relation to a complaint against a member of the House of Assembly—
 - (i) the Speaker of the House of Assembly; or
 - (ii) if the Speaker is absent or unable for the time being to perform the duties of office, or is the respondent or considers it inappropriate that he or she should deal with the matter—the Deputy Speaker of the House of Assembly; or
 - (iii) if the Deputy Speaker is absent or unable for the time being to perform the duties of office, or is the respondent or considers it inappropriate that he or she should deal with the matter—a member of the House of Assembly who is not the respondent in the matter and who is appointed by the House of Assembly to deal with the complaint;
- (c) in relation to a complaint against a member of the Legislative Council—
 - (i) the President of the Legislative Council; or
 - (ii) if the President is absent or unable for the time being to perform the duties of office, or is the respondent or considers it inappropriate that he or she should deal with the matter—the member of the Legislative Council for the time being appointed by the Legislative Council to deal with such a complaint; or

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- (iii) if that member is absent or unable for the time being to perform the duties of office, or is the respondent or considers it inappropriate that he or she should deal with the matter—a member of the Legislative Council who is not the respondent and who is appointed by the Legislative Council to deal with the complaint.

Amendment of s. 93A—Institution of inquiries

6. Section 93A of the principal Act is amended by inserting after subsection (2) the following subsection:

(3) This section does not apply in relation to an alleged contravention of section 87 by a judicial officer or a member of Parliament.

Amendment of s. 94—Investigations

7. Section 94 of the principal Act is amended by inserting after subsection (6) the following subsection:

(7) This section does not empower the Commissioner to require the production of any books, papers or documents relating to—

- (a) parliamentary proceedings; or
- (b) the exercise, or purported exercise, of judicial powers or functions, or the discharge, or purported discharge, of judicial duties, by a judicial officer in court or in chambers.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

E. J. NEAL Governor