



ANALYSIS

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1983, No. 56

An Act to amend the Human Rights Commission Act 1977

[6 December 1983]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the Human Rights Commission Amendment Act 1983, and shall be read together with and deemed part of the Human Rights Commission Act 1977 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 1st day of February 1984.

2. Functions and powers of Commission—Section 5 of the principal Act is hereby amended by repealing subsection (4), and substituting the following subsection:

“(4) The powers and functions of the Race Relations Conciliator under the Race Relations Act 1971 shall be vested in the Commission, but shall be exercised by the Race Relations Conciliator and his Deputy and officers and employees unless—

“(a) In the case of the powers under section 17 (2) of that Act—

“(i) To determine that proceedings should be taken under section 38 of this Act; or

“(ii) To take proceedings under section 38 of this Act,—

the Commission determines that either or both of those powers shall be exercised by the Proceedings Commissioner; or

“(b) In the case of any other power or function, the Commission determines to exercise that power or function itself.”

3. Powers relating to declaratory judgments—The principal Act is hereby amended by inserting, after section 5, the following section:

“5A. (1) If at any time it appears to the Commission that it may be desirable to obtain a declaratory judgment or order of the High Court in accordance with the Declaratory Judgments Act 1908, it may refer the matter to the Proceedings Commissioner for the purpose of deciding whether proceedings under that Act should be instituted.

“(2) In respect of any matter referred to him under subsection (1) of this section, the Proceedings Commissioner shall, notwithstanding anything to the contrary in the Declaratory Judgments Act 1908 or any other enactment or rule of law, have sufficient standing to institute proceedings under that Act whether or not the matter is one within his own functions and powers under this Act.”

4. Membership of Commission—(1) Section 7 (1) of the principal Act is hereby amended by repealing paragraph (d), and substituting the following paragraph:

“(d) Not more than 4 other Human Rights Commissioners.”

(2) Section 7 of the principal Act is hereby amended by inserting, after subsection (2), the following subsection:

“(2A) The Governor-General shall, on the recommendation of the Minister, appoint one of the Commissioners appointed under paragraph (a) or paragraph (d) of subsection (1) of this section as Proceedings Commissioner.”

(3) Section 7 of the principal Act is hereby further amended by inserting, after subsection (5), the following subsection:

“(5A) Any Judge who is for the time being holding office as a member of the Commission under paragraph (a) or paragraph (d) of subsection (1) of this section may at any time decline to

participate in, or withdraw from participation in, any particular function or activity of the Commission if he considers it incompatible with his judicial office.”

(4) Section 2 of the principal Act is hereby amended by inserting, after the definition of the term “Minister”, the following definition:

“ ‘Proceedings Commissioner’ means the Proceedings Commissioner appointed under section 7 (2A) of this Act.”.

5. Appointment of Judge as member not to affect tenure, etc.—The principal Act is hereby amended by inserting, after section 7, the following section:

“7A. The appointment of a Judge as a member of the Commission, or service by a Judge as a member of the Commission, does not affect his tenure of his judicial office or his rank, title, status, precedence, salary, annual or other allowances or other rights or privileges as a Judge (including those in relation to superannuation) and, for all purposes, his service as a member shall be taken to be service as a Judge.”

6. Vacation of office—Section 9 of the principal Act is hereby amended by inserting, after subsection (3), the following subsection:

“(3A) Subsections (2) and (3) of this section do not apply (except in the event of the death of the Commissioner) to a Commissioner who is a Judge; but nothing in this subsection shall limit the application of those subsections to a Commissioner who ceases to be a Judge during his term of office as a Commissioner.”

7. Superannuation or retiring allowances of Commissioners and staff—The principal Act is hereby amended by repealing section 14, and substituting the following section:

“14. (1) For the purpose of providing a superannuation fund or retiring allowance for any of the officers or employees appointed under this Act or for any Commissioners, sums by way of subsidy may from time to time be paid into any scheme under the National Provident Fund Act 1950 containing provision for employer subsidy or into any other employer-subsidised scheme approved by the Minister of Finance for the purposes of this section.

“(2) Notwithstanding anything in this Act, any person who immediately before becoming an officer or employee of the Commission or a Commissioner (whether before or after the

commencement of this Act) is a contributor to the Government Superannuation Fund shall be deemed to be, for the purposes of the Government Superannuation Fund Act 1956, employed in the Government service so long as he continues to be an officer or employee of the Commission or to hold office as a Commissioner; and that Act shall apply to him in all respects as if his service as such an officer or employee or as a Commissioner were Government service.

“(3) Subject to the Government Superannuation Fund Act 1956, nothing in subsection (2) of this section shall entitle any such person to become a contributor to the Government Superannuation Fund after he has once ceased to be a contributor.

“(4) For the purposes of applying the Government Superannuation Fund Act 1956, in accordance with subsection (2) of this section, to a person who is in the service of the Commission, whether as an officer or employee or as a Commissioner, and is a contributor to the Government Superannuation Fund, the term ‘controlling authority’, in relation to any such person, means the Commission.”

8. Discrimination by subterfuge—Section 27 of the principal Act is hereby amended by inserting, after the words “this Act” in both places where they appear, the words “or of sections 3 to 6 of the Race Relations Act 1971”.

9. Commission may approve special programmes—Section 28 (1) (a) of the principal Act is hereby amended by omitting the word “particular” in the first place where it appears.

10. Measures to ensure equality—Section 29 of the principal Act is hereby amended by repealing paragraph (a), and substituting the following paragraph:

“(a) It is done or omitted in good faith for the purpose of assisting or advancing persons or groups of persons, being in each case persons of a particular colour, race, or ethnic or national origin; and”.

11. Procedure after investigation—The principal Act is hereby amended by repealing section 37, and substituting the following section:

“37. (1) Where the Commission, after making any investigation under this Part of this Act, is of the opinion—

“(a) In the case of a complaint, that the complaint has substance, it shall use its best endeavours to secure a settlement between any parties concerned and, if it considers it appropriate, a satisfactory assurance against the repetition of any act or omission that was the subject-matter of the investigation or the doing of further acts or omissions of a similar kind by the person concerned; or

“(b) In any other case, that the matter ought to be proceeded with, it shall use its best endeavours to secure such an assurance as aforesaid.

“(2) If the Commission is unable to secure such a settlement and assurance, or, as the case may be, such an assurance as aforesaid, or if it appears that the act or omission was done in contravention of such an assurance given on a previous occasion, or that any term of such a settlement has not been complied with, it may refer the matter to the Proceedings Commissioner for the purpose of deciding whether proceedings under section 38 of this Act should be instituted against the person against whom the complaint was made or in respect of whom the investigation was conducted.

“(3) Where a matter is referred to the Proceedings Commissioner under subsection (2) of this section, it shall, subject to subsection (4) of this section, be for the Proceedings Commissioner to determine, in his discretion, both whether a matter justifies the institution of proceedings under section 38 of this Act and whether proceedings should be instituted under section 38 of this Act in respect of that matter.

“(4) The Proceedings Commissioner shall not take proceedings against a person referred to in subsection (2) of this section unless he has given that person an opportunity to be heard.”

12. Civil proceedings—(1) Section 38 of the principal Act is hereby amended by omitting the word “Commission” wherever it appears in subsections (1) to (3), and substituting in each case the words “Proceedings Commissioner”.

(2) The said section 38 is hereby further amended by repealing subsection (4), and substituting the following subsection:

“(4) Notwithstanding subsection (1) of this section, the aggrieved person (if any) may himself bring proceedings before the Equal Opportunities Tribunal if he wishes to do so, and—

“(a) The Commission or the Proceedings Commissioner is of the opinion that the complaint does not have substance or that the matter ought not to be proceeded with; or

“(b) In a case where the Proceedings Commissioner would be entitled to bring proceedings, the Proceedings Commissioner—

“(i) Agrees to the aggrieved person bringing proceedings; or

“(ii) Declines to take proceedings.”

(3) The said section 38 is hereby further amended by omitting from subsection (5) the word “Commission”, and substituting the words “Proceedings Commissioner”.

(4) The said section 38 is hereby further amended by omitting the second sentence in subsection (7), and substituting the following sentence: “Where the Proceedings Commissioner is the plaintiff any costs awarded against him shall be paid by the Commission and the Commission shall not be entitled to be indemnified by the aggrieved person (if any).”

13. Right of Proceedings Commissioner to appear in civil proceedings—The principal Act is hereby amended by inserting, after section 38, the following section:

“38A. (1) The Proceedings Commissioner may appear and be heard, in person or by a barrister or solicitor,—

“(a) In any proceedings before the Equal Opportunities Tribunal; and

“(b) In any proceedings in—

“(i) A District Court; or

“(ii) The High Court; or

“(iii) The Court of Appeal,—

in relation to any proceedings that are or have been before the Equal Opportunities Tribunal,—

whether or not the Proceedings Commissioner is or was a party to the proceedings before the Equal Opportunities Tribunal.

“(2) Where, pursuant to subsection (1) of this section, the Proceedings Commissioner appears in any proceedings of a kind described in that subsection, he shall, unless those proceedings are by way of appeal, have the right to adduce evidence and the right to cross-examine witnesses.

“(3) Where, pursuant to subsection (1) of this section, the Proceedings Commissioner, not being a party to any proceedings before the Tribunal, appears in those proceedings or in any proceedings in any Court in relation to those proceedings, the Tribunal or the Court, as the case may be, may make such order as it thinks fit—

“(a) As to the payment by any party to the proceedings before the Tribunal or the Court of the costs incurred by the Proceedings Commissioner in so doing; or

“(b) As to the payment by the Proceedings Commissioner of any costs incurred by any of the parties to the proceedings before the Tribunal or the Court by reason of the appearance of the Proceedings Commissioner.

“(4) Costs ordered to be paid by the Proceedings Commissioner shall be paid by the Commission.

“(5) Nothing in this section limits or affects—

“(a) Section 38 (7) of this Act; or

“(b) Any power of a Court to award costs in any proceedings to which the Proceedings Commissioner is a party.”

14. Damages—(1) Section 40 (1) of the principal Act is hereby amended by omitting from the proviso the expression “\$1,000”, and substituting the expression “\$2,000”.

(2) Section 40 (2) of the principal Act is hereby amended by omitting the word “Commission” in both places where it appears, and substituting in each case the words “Proceedings Commissioner”.

15. Monetary limits on remedies that Tribunal may grant—Section 41 of the principal Act is hereby amended by omitting from the proviso the word “Commission”, and substituting the words “Proceedings Commissioner”.

16. Enforcement—Section 61 (1) of the principal Act is hereby amended by inserting, before the words “An order for the award of damages”, the words “An order for the award of costs made by the Tribunal under section 38 (7) or section 38A (3) of this Act and”.

17. New sections substituted—The principal Act is hereby amended by repealing sections 70 and 71, and substituting the following sections:

“70. **Procedure after investigation**—(1) Subject to section 69 (2) of this Act, where, after making any investigation under this Part of this Act, the Commission is of the opinion that the complaint has substance, it shall use its best endeavours to secure a settlement between the parties concerned.

“(2) If the Commission is unable to secure such a settlement or if it appears to the Commission that any term of such a settlement has not been complied with, it may refer the matter to the Proceedings Commissioner.

“(3) If the Proceedings Commissioner is satisfied—

“(a) That the complaint has substance; and

“(b) That every endeavour has been made by the Commission to secure a settlement between the parties concerned,—

he shall, if the complainant so requests, issue to the complainant a certificate to that effect.

“(4) If the Proceedings Commissioner is satisfied that any term of a settlement between the parties concerned has not been complied with, he shall, if the complainant so requests, issue to the complainant a certificate to that effect.

“(5) The complainant, having obtained a certificate under subsection (3) or subsection (4) of this section in respect of any matter, may take proceedings in respect of that matter before the Arbitration Court.

“71. **Jurisdiction of Arbitration Court**—(1) The Arbitration Court shall have jurisdiction to hear and determine any proceedings taken under section 70 of this Act and the provisions of the Industrial Relations Act 1973, and in particular sections 47 to 62 of that Act, shall have effect accordingly, with the necessary modifications, notwithstanding that the organisation in respect of which the complaint is made is not registered, or is not eligible to register, under the Industrial Relations Act 1973.

“(2) The Commission may, in any proceedings taken under section 70 of this Act, be given an opportunity to be heard either in person or by a person authorised in that behalf by the Commission, whether or not that person is a barrister or a solicitor, but shall not be a party to, or join or be joined in, the proceedings.

“(3) Every person commits an offence against this Act and is liable on summary conviction to a fine not exceeding \$1,000 who—

“(a) Refuses or fails to comply with a decision or order of the Arbitration Court made in the exercise of the jurisdiction conferred on that Court by subsection (1) of this section; or

“(b) Obstructs the carrying out of any such decision or order.”

18. Charitable instruments—(1) Section 91 of the principal Act is hereby amended by repealing subsection (1) (as amended by section 3 of the Human Rights Commission Amendment Act 1982), and substituting the following subsection:

“(1) Nothing in this Act shall apply—

“(a) To any provision contained in an existing or future charitable instrument where that provision confers benefits, or enables benefits to be conferred, on persons of—

“(i) A particular sex; or

“(ii) A particular marital status; or

“(iii) A particular religious or ethical belief; or

“(iv) A particular colour; or

“(v) A particular race; or

“(vi) A particular ethnic or national origin; or

“(b) To any act done in order to comply with any provision described in paragraph (a) of this subsection.”

(2) Section 3 of the Human Rights Commission Amendment Act 1982 is hereby consequentially repealed.

19. Transitional provisions—(1) Any proceedings which have been taken under section 38 of the principal Act by the Commission and which, at the commencement of this Act, are pending before the Equal Opportunities Tribunal may be continued and completed by the Proceedings Commissioner as if they had been instituted by him and section 38 of the principal Act (as amended by section 12 of this Act) shall apply accordingly with all necessary modifications.

(2) Any proceedings which have been taken under the principal Act by the Commission and which, at the commencement of this Act, are pending before a District Court or the High Court may be continued and completed by the Proceedings Commissioner as if they had been instituted by him and the provisions of the principal Act shall apply accordingly with all necessary modifications.

(3) Notwithstanding the provisions of section 17 of this Act, where, at the commencement of this Act, proceedings are pending before the Arbitration Court in respect of any matter which has been referred to the Arbitration Court under section 70 of the principal Act, those proceedings may be continued and completed by the Proceedings Commissioner as if they had been instituted by him, and the provisions of section 71 of the principal Act shall apply accordingly with all necessary modifications as if this Act (other than this section and the provisions relating to the Proceedings Commissioner) had not been passed.

20. Measures to ensure equality—Section 9 of the Race Relations Act 1971 is hereby amended by repealing paragraph (a), and substituting the following paragraph:

“(a) It is done or omitted in good faith for the purpose of assisting or advancing persons or groups of persons, being in each case persons of a particular colour, race, or ethnic or national origin; and”.

21. Procedure after investigation—The Race Relations Act 1971 is hereby amended by repealing section 17, and substituting the following section:

“17. (1) Where the Conciliator, after making any investigation under this Act, is of the opinion—

“(a) In the case of a complaint, that the complaint has substance, he shall use his best endeavours to secure a settlement between any parties concerned and, if he considers it appropriate, a satisfactory assurance against the repetition of any act or omission that was the subject-matter of the investigation or the doing of further acts or omissions of a similar kind by the person concerned; or

“(b) In any other case, that the matter ought to be proceeded with, he shall use his best endeavours to secure such an assurance as aforesaid.

“(2) If the Conciliator is unable to secure such a settlement and assurance, or, as the case may be, such an assurance as aforesaid, or if it appears that the act or omission was done in contravention of such an assurance given on a previous occasion, or that any term of such a settlement has not been complied with, he may take proceedings under section 38 of the Human Rights Commission Act 1977 against the person against whom the complaint was made or in respect of whom the investigation was conducted, and all the provisions of that section and of section 40 of that Act shall apply accordingly with all necessary modifications.

“(3) The Conciliator shall not take proceedings against a person referred to in subsection (2) of this section unless he has given that person an opportunity to be heard.

“(4) Notwithstanding subsections (2) and (3) of this section, the aggrieved person (if any) may himself bring proceedings before the Equal Opportunities Tribunal if he wishes to do so and the Conciliator (or, if the Proceedings Commissioner is exercising the powers of the Conciliator pursuant to section 5 (4) of the Human Rights Commission Act 1977, the Proceedings Commissioner)—

“(a) Is of the opinion that the complaint does not have substance or that the matter ought not to be proceeded with; or

“(b) In any case where the Conciliator (or Proceedings Commissioner) would be entitled to bring proceedings against the person referred to in subsection (2) of this section,—

“(i) Agrees to the aggrieved person so doing; or

“(ii) Declines to take proceedings.

“(5) Where the aggrieved person brings proceedings pursuant to subsection (4) of this section, all the provisions of section 38 (5) to (8) and of section 40 of the Human Rights Commission Act 1977 shall apply accordingly with all necessary modifications.”

22. Repeals—The following enactments are hereby repealed—

(a) So much of the First Schedule to the Human Rights Commission Act 1977 as relates to section 17 of the Race Relations Act 1971:

(b) The Race Relations Amendment Act 1980.

This Act is administered in the Department of Justice
