

HOUSE OF REPRESENTATIVES

# Supplementary Order Paper

Tuesday, 27 July 1993

## HUMAN RIGHTS BILL

*Proposed Amendments*

Hon. D. A. M. GRAHAM, in Committee, to move the following amendments:

*Clause 47:* To add, after line 31 on page 36, as subclauses (2) and (3), the following subclauses:

(2) Nothing in section 35 (1) (c) or section 35 (1) (d) of this Act shall prevent the Chief of Defence Force from instituting, under section 57A of the Defence Act 1990, the discharge or release of a member of the regular forces.

(3) Nothing in section 35 (1) (c) or section 35 (1) (d) of this Act shall prevent the Commissioner of Police from instituting, under section 5A of the Police Act 1958, the removal of a member of the Police.

*First Schedule:* To insert in the second column on page 125, as the first of the amendments to the Police Act 1958, the following amendment:

By inserting, after section 5, the following section:

**“5A. Members may be removed for incompatible behaviour—**(1) The Commissioner may institute the removal of a member of the Police from that member’s employment if, following an inquiry under section 12 of this Act into alleged misconduct (in the case of a sworn member of the Police), or following an investigation into alleged serious misconduct (in the case of a non-sworn member of the Police), the Commissioner has reasonable grounds for believing—

“(a) That the member has behaved in a manner which is incompatible with the maintenance of good order and discipline within the Police or which tends to bring the Police into disrepute; and

“(b) That the removal of the member is necessary to maintain good order and discipline within the Police or to avoid bringing the Police into disrepute.

“(2) Subsection (1) of this section applies to behaviour of any kind including, but not limited to, sexual behaviour of a heterosexual, homosexual, lesbian, or bisexual kind.”

*First Schedule:* To insert on page 128, after the item relating to the Sale of Liquor Act 1989, the following items:

1990, No. 28—The Defence  
Act 1990

By inserting, after section 33, the following section:

“33A. **Age requirements**—Nothing in section 35 of the Human Rights Act 1993 shall apply to age requirements relating to recruitment, terms of service, or retirement in respect of service in the Armed Forces.”

By inserting, after section 57, the following heading and section:

*Discharge or Release from Services for Incompatible Behaviour*

“57A. **Members may be discharged or released for incompatible behaviour**—(1) The Chief of Defence Force may institute the discharge or release of a member of the Services if the Chief of Defence Force has reasonable grounds for believing—

“(a) That the member has behaved in a manner which is incompatible with the maintenance of good order and discipline within a Service or which tends to bring a Service into disrepute; and

“(b) That the discharge or release of the member is necessary—

“(i) To maintain good order and discipline; or

“(ii) To avoid prejudice to the reputation of that Service.

“(2) Subsection (1) of this section applies to behaviour of any kind including, but not limited to, sexual behaviour of a heterosexual, homosexual, lesbian, or bisexual kind.”

#### EXPLANATORY NOTE

*Clause 47:* Where an applicant for employment or an employee is qualified for work of any description, it is unlawful, under paragraphs (c) and (d) of clause 35 (1), for an employer, or any person acting or purporting to act on behalf of an employer,—

(a) To terminate the employment of the employee, or subject the employee to any detriment, in circumstances in which the employment of other employees employed on work of that description would not be terminated, or in which other employees employed on work of that description would not be subjected to such detriment; or

(b) To retire the employee, or to require or cause the employee to retire or resign,—

by reason of any of the prohibited grounds of discrimination.

Under the proposed amendments to clause 47, nothing in those paragraphs is—

(a) To prevent the Chief of Defence Force from instituting, under section 57A of the Defence Act 1990, the discharge or release of a member of the regular forces; or

- (b) To prevent the Commissioner of Police from instituting, under section 5A of the Police Act 1958, the removal of a member of the Police.

*First Schedule:* The first of the proposed amendments to the *First Schedule* inserts into the Police Act 1958 a new section 5A.

*Subsection (1)* of the new section provides for the removal of a member of the Police from that member's employment if, following an inquiry under section 12 of the Police Act 1958 into alleged misconduct (in the case of a sworn member of the Police), or following an investigation into alleged serious misconduct (in the case of a non-sworn member of the Police), the Commissioner of Police has reasonable grounds for believing—

- (a) The member has behaved in a manner which is incompatible with the maintenance of good order and discipline within the Police or which tends to bring the Police into disrepute; and
- (b) That the removal of the member is necessary to maintain good order and discipline within the Police or to avoid bringing the Police into disrepute.

*Subsection (2)* of the new section provides that *subsection (1)* applies to behaviour of any kind including, but not limited to, sexual behaviour of a heterosexual, homosexual, lesbian, or bisexual kind.

The second of the proposed amendments to the *First Schedule* inserts into the Defence Act 1990 a new section 33A (which is based on section 16 (3A) of the Human Rights Commission Act 1977) and a new section 57A.

The new section 33A provides that nothing in section 35 of the Human Rights Act 1993 (which relates to employment) shall apply to age requirements relating to recruitment, terms of service, or retirement in respect of service in the Armed Forces.

*Subsection (1)* of the new section 57A provides for the discharge or release of a member of the Services if the Chief of Defence Force has reasonable grounds for believing—

- (a) That the member has behaved in a manner which is incompatible with the maintenance of good order and discipline within a Service or which tends to bring a Service into disrepute; and
- (b) That the discharge or release of the member is necessary—
- (i) To maintain good order and discipline; or
  - (ii) To avoid prejudice to the reputation of that Service.

*Subsection (2)* of the new section 57A provides that *subsection (1)* applies to behaviour of any kind including, but not limited to, sexual behaviour of a heterosexual, homosexual, lesbian, or bisexual kind.