

HOUSE OF REPRESENTATIVES

Supplementary Order Paper

Friday, the 7th Day of October 1977

HUMAN RIGHTS COMMISSION BILL

Proposed Amendments

Hon. Mr THOMSON, in Committee, to move the following amendments:

Clause 6: (a) To omit paragraph (b) of subclause (1) (all the words in lines 43 and 44 on page 6), and substitute the following paragraph:

(b) The Chief Ombudsman or an Ombudsman nominated for the time being as a Human Rights Commissioner by the Chief Ombudsman:

(b) To add to subclause (4) the words “(other than the Commissioner holding office under paragraph (b) of subsection (1) of this section)”.

(c) To add the following subclause:

(5) The Ombudsman who is for the time being holding office as a member of the Commission under paragraph (b) 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 or the Chief Ombudsman considers it incompatible with the function of an Ombudsman or with the office of Ombudsman.

Clause 11: To omit subclause (4), and substitute the following subclause:

(4) Officers and employees appointed under subsection (1) of this section shall be employed on such terms and conditions of employment and shall be paid such salaries and allowances as the Commission from time to time determines in agreement with the State Services Commission or as the Minister from time to time determines in any case where the Commission and the State Services Commission fail to agree.

Clause 22 (9): To omit from line 28 on page 20 the words “any club”, and substitute the words “access to membership of a club or to the provision of services or facilities to members of a club”.

Clause 28 (1): To insert in line 9 on page 24, after the word "same", the words "or substantially similar".

Clause 53: To insert, after subclause (5) on page 41, the following subclauses:

- (5A) In its determination of any appeal, the Court may—
- (a) Confirm, modify, or reverse the order or decision appealed against, or any part of that order or decision:
- (b) Exercise any of the powers that could have been exercised by the Tribunal in the proceedings to which the appeal relates.

(5B) Notwithstanding anything in subsection (5A) of this section, the Court may in any case, instead of determining any appeal, refer to the Tribunal, in accordance with the rules of Court, for further consideration by the Tribunal, the whole or any part of the matter to which the appeal relates.

Clause 57A: To insert, after clause 57, the following clause:

57A. Additional members of Administrative Division of Supreme Court for purposes of Act—(1) For the purpose of the exercise by the Administrative Division of the Supreme Court of its jurisdiction and powers under section 36B or under sections 53 to 57 of this Act, there shall be two additional members of the Division who shall be persons appointed by a Judge of the Division for the purposes of the hearing or appeal from the panel maintained by the Minister under section 39 (4) of this Act.

(2) Before entering upon the exercise of the duties of their office, the additional members shall take an oath before a Judge of the Supreme Court that they will faithfully and impartially perform the duties of their office.

(3) The presence of a Judge of the Administrative Division and of at least one additional member shall be necessary to constitute a sitting of the Court.

(4) The decision of a majority (including the Judge, or, where more than one Judge sits, including a majority of the Judges) of the members present at a sitting of the Court shall be the decision of the Court. If the members present are equally divided in opinion, the decision of the Judge, or of a majority of the Judges, shall be the decision of the Court.

(5) If any question before the Court cannot be decided in accordance with subsection (4) of this section, the question shall be referred to the Court of Appeal for decision in accordance with the practice and procedure of that Court, which for the purpose shall have all the powers of the Court under this Act. The decision of the Court of Appeal in any proceedings under this subsection shall be final and shall take effect and be entered as if it were a decision of the Court under this Act.

(6) There shall be paid to the additional members, out of money appropriated by Parliament for the purpose, remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly as if the Division were a statutory Board within the meaning of that Act.

Clause 62: To add, as subclause (2), the following subclause:

(2) Every person commits an offence against this Act and is liable on summary conviction to a fine not exceeding \$1000 who—

(a) Refuses or fails to comply with a decision or order of the Industrial 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.

Clause 78: To omit subclauses (2) and (3).

First Schedule: (a) To omit so much thereof as relates to the Agricultural Workers Act 1962, the Estate and Gift Duties Act 1968, the Income Tax Act 1976, and the Land Tax Act 1976.

(b) To insert on page 59, after the amendment to section 5 (2) of the Race Relations Act 1971, the following amendment:

By repealing subsection (6) of section 5, and substituting the following subsection:

“(6) For the purposes of this section ‘employer’ includes—

“(a) The employer of an independent contractor; and

“(b) The person for whom work is done by contract workers pursuant to a contract between that person and the person who supplies those contract workers;

and ‘employment’ has a corresponding meaning.”

Second Schedule: To omit so much thereof as relates to the Agricultural Workers (Orchards and Vineyards) Order 1975 (S.R. 1975/142).

EXPLANATORY NOTE

Clause 6: The proposed amendments are designed to clarify the status of the Ombudsman member of the Human Rights Commission and to ensure that there is no conflict between his duties as a Human Rights Commissioner and his duties as an Ombudsman.

Clause 11: The effect of the proposed amendment is to give to the Human Rights Commission, in agreement with the State Services Commission, the function of determining the conditions of service of the staff of the Human Rights Commission. If the two bodies fail to agree, those conditions will be determined by the Minister of Justice. Under the Bill as it stands, those conditions are to be determined by the Minister of Finance.

Clause 22 (9): This subclause (subject to one exception) exempts clubs from clause 22 of this Bill and from section 4 of the Race Relations Act 1971. Both provisions deal with the provision of goods, facilities, and services to the public or to any section of the public. The proposed amendment reduces the width of the exemption so that the application of the provisions to clubs will not be excluded generally but only in respect of access to membership and the provision of services or facilities to members.

Clause 28 (1): This clause deals with victimisation. Under it it is unlawful for any person, on certain specified grounds, to treat or threaten to treat any other person less favourably than he would treat other persons in the same circumstances. Under the proposed amendment victimisation will also occur

if those circumstances are substantially similar. This proposed change parallels changes made elsewhere in the Bill.

Clause 53: The proposed new subclauses spell out the powers that the Administrative Division of the Supreme Court may exercise on an appeal.

Clause 57A: The proposed new clause provides for there to be two additional members of the Administrative Division when that Division exercises its jurisdiction under *clause 36B* or *clauses 53 to 57* of this Bill. These two additional members are to be appointed by a Judge of the Division from the panel maintained by the Minister of Justice under *clause 39 (4)* of the Bill.

Clause 62: The proposed new subclause makes it an offence (punishable on summary conviction by a fine not exceeding \$1000) for any person—

- (a) To refuse or fail to comply with a decision or order of the Industrial Court made in the exercise of the jurisdiction conferred on that Court by the clause; or
- (b) To obstruct the carrying out of any such decision or order.

Clause 78 and the First Schedule: The amendments to the three revenue Acts mentioned in the First Schedule are being omitted as amendments to those three Acts are being dealt with separately by way of individual amending Acts.

The amendment to the Agricultural Workers Act 1962 is being omitted as unnecessary in view of terms of the Agricultural Workers Bill at present before the House.

The new amendment to section 5 of the Race Relations Act 1971 aligns subsection (6) of that section with *subclause (10)* of *clause 14* of the Bill.

Second Schedule: The amendment to the Agricultural Workers (Orchards and Vineyards) Order 1975 is being omitted as the terms of that amendment have already been incorporated in a new order made this year in substitution for the 1975 order.
