

Human Rights Amendment Bill

Government Bill

Explanatory note

General policy statement

The Human Rights Amendment Bill amends the Human Rights Act 1993 (the **Act**). The purposes of the Bill are to enable the establishment of the position of a full-time Disability Rights Commissioner within the Human Rights Commission (the **Commission**) and to make changes to the role and structure of the Commission to strengthen its performance.

Disability Rights Commissioner

New Zealand ratified the United Nations Convention on the Rights of Persons with Disabilities on 25 September 2008. Article 33 of the Convention requires States to, among other matters, “maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention”. With a view to implementing this requirement, the Human Rights Commission has been given a broad role in promoting, protecting, and monitoring the implementation of the Convention.

In light of this role of the Commission in the area of disability rights, a full-time position of Disability Rights Commissioner within the Commission will be established. Creation of this role requires an amendment of the Act. This is because the Act currently enables

Commissioners to perform the Commission's work in a formalised leadership role in 2 areas only: race relations and equal employment opportunities. The Act does not allow the creation of formalised leadership roles in other priority areas, such as disability rights.

Changes to the role and structure of the Commission

The Bill makes changes to the composition, governance arrangements, and functions and powers of the Commission. These changes will enable the Commission to respond better to emerging human rights issues and do so in line with the Government's focus on better results from public services. Strengthening the Commission will also enhance New Zealand's ability to comply with its international human rights obligations, as well as benefit the implementation of domestic human rights legislation.

The changes to the Act include the following:

- the Act currently provides for full-time and part-time Commissioners. This will be changed so that the Act no longer specifies this specific condition for appointment of Commissioners. This change will permit a composition of full-time Commissioners only, but also allows for the appointment of part-time Commissioners where this is considered appropriate, for example, because the most suitable candidate is not available full-time:
- the current number of 3 full-time Commissioners (ie, the Chief Commissioner and 2 specialised Commissioners) and up to 5 part-time Commissioners will be changed to a number of no less than 4, and no more than 5, Commissioners (including the Chief Commissioner):
- the Act will no longer name the Race Relations Commissioner and Equal Employment Opportunities Commissioner. Instead, they will be appointed as Human Rights Commissioners to reflect that Commissioners are first and foremost members of the Commission and operate at all times on behalf of the Commission. To ensure the formalised leadership roles are retained in the areas of race relations and equal employment opportunities and an additional role is created in the area of disability rights, the Act will provide that there must be a Commissioner (other than the Chief Commissioner) appointed to lead the work in

each of these priority areas. No major substantial change of the specialised Commissioner role is intended and in practice these Commissioners can continue to operate as usual. The Chief Commissioner will also be able to designate a Commissioner to lead the work in other priority areas of human rights, after consultation with the Minister of Justice and the Commission. This will ensure that a Commissioner can operate in a formalised leadership role in these other areas where and when this is needed:

- the functions of the Commission will be revised to better reflect its current responsibilities. One change relates to the role of the Commission in the area of international human rights instruments. However, the most important change is the explicit reference to race relations, equal employment opportunities, and disability rights in the primary functions of the Commission. This reflects that these areas of human rights are priority issues for the Commission:
- some changes are made to the functions of the Chief Commissioner to better articulate his or her responsibility for managing the Commission. The functions of the Commissioners appointed or designated to lead the work in priority areas are subject to the Chief Commissioner's management role.

Regulatory impact statement

The Ministry of Justice produced a regulatory impact statement on 28 June 2011 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <http://www.justice.govt.nz/publications/global-publications/r/regulatory-impact-statement-human-rights-amendment-bill>
- <http://www.treasury.govt.nz/publications/information-releases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause and provides that the Bill comes into force on a date appointed by the Governor-General by

Order in Council. The necessity for commencement by Order in Council arises because it is envisaged that the existing part-time Commissioners should be entitled to complete their terms of office and the new arrangements can only come into effect if the total number of Commissioners does not exceed 5.

Clause 3 states that the Bill amends the Human Rights Act 1993 (the **principal Act**).

Part 1

Amendments to Human Rights Act 1993

Clause 4: the designations of Equal Employment Opportunities Commissioner and Race Relations Commissioner disappear in the principal Act as amended by this Bill and accordingly the definitions of those terms are repealed.

Clause 5: subclause (2) adds 3 further primary functions to the existing functions of the Commission. These further primary functions are found in *new section 5(1)(c), (d), and (e)*. *Subclause (3)* amends section 5(2) by breaking out existing paragraph (c) into *new section 5(2)(c) and (ca)*. *New section 5(2)(c)* now makes explicit, which is not currently so, that the Commission may make statements commenting on the position of the Government in relation to matters that may affect or infringe human rights. *Subclause (4)* repeals section 5(2)(k)(iii) but that provision reappears as *new section 5(2)(ka)* (inserted by *subclause (5)*) with some changes: the Commission's report is made not only to the Prime Minister but also the to the Minister responsible, and the report is not confined to proposed legislation but is expanded to include existing legislation and any administrative provision. *Subclause (5)* inserts *new sections 5(2)(ka) to (kc)*: the functions set out in *new sections 5(2)(kb) and (kc)* are new. *Subclause (6)* inserts *new section 5(2)(n)*, which confers on the Commission functions in relation to equal employment opportunities. This is a consequence of the recasting of the position of the Equal Employment Opportunities Commissioner (which is discussed below). The functions (of the Equal Employment Opportunities Commissioner) that currently appear in section 17(c) to (f) are restated in *new section 5(2)(n)* as functions of the Commission (section 17 is repealed by *clause 13*).

Clause 6: this clause amends section 8, which relates to the membership of the Commission. It repeals section 8(1) and substitutes *new subsections (1) to (1B)*. The changes to membership of the Commission are the following:

- the distinction between full-time and part-time Commissioners is dropped:
- the Commission consists of the Chief Commissioner and 3 or 4 other Commissioners:
- the separate offices of Equal Employment Opportunities Commissioner and Race Relations Commissioner are dropped but there must be appointed a Commissioner to lead the work of the Commission in each of the priority areas of disability rights, equal employment opportunities (including pay equity), and race relations.

Under the existing law, the Commissioners are appointed under the Crown Entities Act 2004. This will continue to be the case: this Bill alters the composition of the Commission but is not intended to affect the appointment of Commissioners except to the extent that there must be appointed a Commissioner to lead the work of the Commission in each priority area. Although the current number of Commissioners exceeds the proposed maximum number of 5, the terms of office of some of those Commissioners will have expired before the change in composition of the Commission occurs.

Clause 7: section 10(2) allows the Race Relations Commissioner to call a special meeting of the Commission and is repealed as a consequence of removal of references to that office.

Clause 8: section 11(2) is amended to remove a reference to section 14, which is repealed by *clause 10*.

Clauses 9 and 10: these clauses repeal sections 13 and 14, which relate to criteria for the appointment of the Race Relations Commissioner and the Equal Employment Opportunities Commissioner respectively and will therefore be redundant. *Clause 9* substitutes a *new section 13* stipulating further criteria for the appointment of a person as Commissioner to lead the work of the Commission in a priority area. Those criteria reflect generally the specific criteria currently contained in sections 13 and 14.

Clause 11 repeals section 15 and substitutes *new section 15* setting out the functions of the Chief Commissioner. This is in part a restate-

ment of existing section 15. *New section 15* differs from its predecessor in the following respects:

- *new paragraph (a)* reflects the function of a Commissioner leading the work of the Commission in a priority area to lead discussions of the Commission in that area:
- *new paragraphs (c) and (d)* insert new functions:
- with the designations of Equal Employment Opportunities Commissioner and Race Relations Commissioner disappearing, existing paragraphs (d) and (e) become redundant:
- existing paragraph (c) becomes *new paragraph (e)*.

Clause 12: this clause repeals section 16 and substitutes *new section 16*. The repeal of existing sections 16 and 17 (*see clause 13*) follows from the changes in the composition of the Commission. The particular functions of the Race Relations Commissioner (existing section 16) and the Equal Employment Opportunities Commissioner (existing section 17) are expressed more generally in *new section 16* as a statement of the additional functions of a Commissioner who is appointed to lead the work of the Commission in a priority area.

Clause 13: this clause repeals section 17 (*see the discussion above for clause 12*).

Clause 14: there has been some doubt as to whether the Commission, in the exercise of its inquiry function, must necessarily obtain an evidence order under section 126A. *New section 126A(5)*, added by this clause, makes it clear that that is not the case.

Clause 15: this clause makes a number of consequential changes to section 140.

Clause 16: this clause repeals section 141A, which becomes redundant following the changes to the composition of the Commission made by this Bill.

Part 2 **Miscellaneous**

Clause 17 is a transitional provision.

Hon Simon Power

Human Rights Amendment Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Human Rights Amendment Act **2011**.
- 2 Commencement**
This Act comes into force on a date appointed by the Governor-General by Order in Council. 5
- 3 Principal Act amended**
This Act amends the Human Rights Act 1993.

Part 1
Amendments to Human Rights Act 1993

- 4 Interpretation** 10
 - (1) The definition of **Chief Commissioner** in section 2(1) is amended by omitting “under section 8(1)(a)”.
 - (2) The definitions of **Equal Employment Opportunities Commissioner** and **Race Relations Commissioner** in section 2(1) are repealed. 15
- 5 Functions of Commission**
 - (1) Section 5(1)(b) is amended by omitting “society.” and substituting “society; and”.
 - (2) Section 5(1) is amended by adding the following paragraphs:
 - “(c) to promote racial equality and cultural diversity; and 20
 - “(d) to promote equal employment opportunities (including pay equity); and
 - “(e) to promote and protect the full and equal enjoyment of human rights by persons with disabilities.”
 - (3) Section 5(2) is amended by repealing paragraph (c) and substituting the following paragraphs: 25

- “(c) to make public statements in relation to any matter that may affect or infringe human rights (whether or not those human rights are affirmed in New Zealand domestic human rights law or international human rights law), including statements commenting on the position of the Government in relation to that matter: 5
- “(ca) to make public statements promoting an understanding of, and compliance with, this Act or the New Zealand Bill of Rights Act 1990 (for example, statements promoting understanding of measures to ensure equality, of indirect discrimination, or of institutions and procedures under this Act for dealing with complaints of unlawful discrimination):” 10
- (4) Section 5(2)(k)(iii) is repealed.
- (5) Section 5(2) is amended by inserting the following paragraphs after paragraph (k): 15
- “(ka) to report to the Prime Minister and the Minister responsible on any existing or proposed legislation (including subordinate legislation), administrative provision, or policy of the Government that the Commission considers may affect human rights: 20
- “(kb) to promote the development of new international instruments on human rights:
- “(kc) to promote and monitor compliance by New Zealand with, and the reporting by New Zealand on, the implementation of international instruments on human rights ratified by New Zealand.” 25
- (6) Section 5(2) is amended by inserting the following paragraph after paragraph (m):
- “(n) to exercise the following functions in relation to equal employment opportunities: 30
- “(i) to evaluate, through the use of benchmarks developed by the Commission, the roles that legislation, guidelines, and voluntary codes of practice play in facilitating and promoting best practice in equal employment opportunities: 35
- “(ii) to lead the development of guidelines and voluntary codes of practice to facilitate and promote best practice in equal employment opportunities

(including codes that identify related rights and obligations in legislation) in accordance with paragraph (e):

- “(iii) to monitor and analyse progress in improving equal employment opportunities in New Zealand and to report to the Minister on the results of that monitoring and analysis: 5
- “(iv) to liaise with, and complement the work of, any trust or body that has as one of its purposes the promotion of equal employment opportunities.” 10

6 Membership of Commission

Section 8 is amended by repealing subsection (1) and substituting the following subsections:

- “(1) The Commission consists of the following Human Rights Commissioners: 15
 - “(a) the Chief Commissioner; and
 - “(b) not less than 3 and not more than 4 other Commissioners.
- “(1A) There must be a Commissioner, other than the Chief Commissioner, appointed to lead the work of the Commission in each of the following priority areas: 20
 - “(a) disability rights:
 - “(b) equal employment opportunities (including pay equity):
 - “(c) race relations.
- “(1B) A Commissioner must lead the work of the Commission in any other priority area that is designated by the Chief Commissioner, and the Chief Commissioner may designate an area of work as a priority area only after consultation with the Minister and the other Commissioners.” 25

7 Section 10(2) and (3) repealed 30

Section 10(2) and (3) are repealed.

8 Criteria for appointment

Section 11(2) is amended by omitting “or section 14”.

- 9 New section 13 substituted**
Section 13 is repealed and the following section substituted:
- “13 Further criteria for appointment of Commissioner appointed to lead Commission work in priority area**
In recommending a person for appointment as a Commissioner appointed to lead the work of the Commission in a priority area under **section 8(1A)**, the Minister must have regard not only to the criteria stated in section 11 but also to the person’s—
- “(a) understanding of the principles and practice of the priority area in question, including its origin and development in New Zealand: 10
 - “(b) appreciation of issues, trends, and developments, in other countries and internationally, affecting the priority area in question, and the relevance of those issues, trends, or developments for New Zealand: 15
 - “(c) ability to perform the functions stated in **section 16**.”
- 10 Section 14 repealed**
Section 14 is repealed.
- 11 New section 15 substituted**
Section 15 is repealed and the following section substituted: 20
- “15 Functions of Chief Commissioner**
The Chief Commissioner has the following functions:
- “(a) to chair the Commission, and lead discussions of the Commission except when it is the function of a Commissioner to do so under **section 16(a)**: 25
 - “(b) to ensure that activities undertaken in the performance of the Commission’s functions are consistent with the strategic direction and other determinations of the Commission under section 7:
 - “(c) to ensure that the Commission is effective and efficient in carrying out its functions: 30
 - “(d) to ensure that the Commission meets its obligations under the Crown Entities Act 2004, the Public Finance Act 1989, and the State Sector Act 1988:
 - “(e) to allocate spheres of responsibility among the Commissioners, and to determine the extent to which Commissioners engage in activities undertaken in the per- 35

formance of the Commission’s functions (except for those stated in section 76), but in each case only after consultation with the Minister:

- “(f) to supervise and liaise with the general manager on matters of administration in relation to the Commission and on the activities undertaken in the performance of the Commission’s functions: 5
- “(g) any other functions, powers, or duties conferred or imposed on him or her by or under this Act or any other enactment.” 10

12 New section 16 substituted

Section 16 is repealed and the following section substituted:

“16 Additional functions of Commissioner appointed or designated to lead work of Commission in priority areas

- “(1) A Commissioner who is appointed or designated to lead the work of the Commission in a priority area under **section 8(1A) or (1B)** has the following additional functions: 15
 - “(a) to lead discussions of the Commission in relation to that priority area of work: 20
 - “(b) to provide advice and leadership on matters in that priority area of work that arise in the course of activities undertaken in the performance of the Commission’s functions, both when engaging in those activities and when consulted: 25
 - “(c) to contribute to the public debate on matters in that priority area of work: 25
 - “(d) any other functions or duties conferred or imposed upon him or her by or under this Act or any other enactment. 30
- “(2) However, the exercise by a Commissioner of the functions stated in **subsection (1)** is subject to directions given by the Chief Commissioner in the exercise of his or her responsibilities under **section 15(b), (c), and (d)**.” 30

13 Section 17 repealed

Section 17 is repealed.

14 Evidence order 35

Section 126A is amended by adding the following subsection:

“(5) For the avoidance of doubt, nothing in this section requires the Commission in the exercise of its inquiry function under section 5(2)(h) to obtain an order under subsection (1).”

15 Delegation of powers by certain Commissioners

- (1) The heading to section 140 is amended by omitting “**certain Commissioners**” and substituting “**Chief Commissioner**”. 5
- (2) Section 140(1) is amended by—
- (a) omitting “or the Race Relations Commissioner”; and
- (b) omitting “any of the Commissioner’s” and substituting “any of the Chief Commissioner’s”. 10
- (3) Section 140(2)(b) is amended by inserting “Chief” before “Commissioner”.
- (4) Section 140(4) is amended by inserting “Chief” before “Commissioner”.
- (5) Section 140(5) is amended by omitting “a Commissioner” and substituting “the Chief Commissioner”. 15

16 Section 141A repealed

- (1) Section 141A is repealed.
- (2) However, section 141A continues to apply, as if had not been repealed by this section, in relation to action undertaken before this section comes into force. 20

Part 2 Miscellaneous

17 Transitional provision

- (1) On the commencement of this Act (**commencement**),— 25
- (a) the Commissioner who immediately before commencement was the Equal Employment Opportunities Commissioner is the Commissioner appointed, as required by **section 8(1A)(b)**, to lead the work of the Commission in the priority area of equal employment opportunities (including pay equity); and 30
- (b) the Commissioner who immediately before commencement was the Race Relations Commissioner is the Commissioner appointed, as required by **section 8(1A)(c)**,

to lead the work of the Commission in the priority area of race relations.

- (2) A reference in any instrument, document, or notice to the Equal Employment Opportunities Commissioner or the Race Relations Commissioner must be read as a reference, respectively, to the person leading the work of the Commission in the priority area of equal employment opportunities (including pay equity) or the person leading the work of the Commission in the priority area of race relations, as the case may be. 5
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