

[AS REPORTED FROM THE STATUTES REVISION COMMITTEE]

House of Representatives, 8 November 1983.

Words struck out are shown with black rule at beginning and after last line; words inserted are shown with single rule before first line and after last line.

Hon. Mr McLay

HUMAN RIGHTS COMMISSION AMENDMENT

ANALYSIS

Title	11. Procedure after investigation
1. Short Title and commencement	12. Civil proceedings
2. Functions and powers of Commission	13. Damages
3. Powers relating to declaratory judgments	14. Monetary limits on remedies that Tribunal may grant
4. Membership of Commission	15. Enforcement
5. Appointment of Judge as member not to affect tenure, etc.	16. New sections substituted
6. Vacation of office	70. Procedure after investigation
7. Superannuation or retiring allowances of Commissioners and staff	71. Jurisdiction of Arbitration Court
8. Discrimination by subterfuge	17. Charitable instruments
9. Commission may approve special programmes	18. Transitional provisions
10. Measures to ensure equality	19. Measures to ensure equality
	20. Procedure after investigation
	21. Repeals

A BILL INTITULED

An Act to amend the Human Rights Commission Act 1977

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 a date to be appointed by the Governor-General by Order in Council.

*1977, No. 49

Amendments: 1981, No. 127; 1982, No. 77

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— 5

“(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 10

“(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 15

“(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: 20

“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. 25

“(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.” 30 35

4. Membership of Commission—(1) 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.” 40

(2) 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 5 (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.”

(3) Section 2 of the principal Act is hereby amended by 10 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.”.

15 **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 20 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.”

25 **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 30 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 35 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 40 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
5 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
10 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
15 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
20 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
25 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
30 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
35 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”
40 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— 5

“(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 10

“(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 15

“(ii) Declines to take proceedings.”

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

Struck Out

20

(4) The said section 38 is hereby further amended by inserting, after subsection (5), the following subsection:

“(5A) In any proceedings before the Equal Opportunities Tribunal, or in a District Court or the High Court in relation to any such proceedings, the Proceedings Commissioner may appear and be heard as if he were a party to the proceedings.” 25

(5) 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).” 30

New

12A. Right of Proceedings Commissioner to appear in civil proceedings—The principal Act is hereby amended by inserting, after section 38, the following section: 35

“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 40

New

- 5 “(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 before the Equal
 Opportunities Tribunal,—
whether or not the Proceedings Commissioner is a party to
the proceedings before the Equal Opportunities Tribunal.
- 10 “(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.
- 15 “(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,
20 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
- 25 “(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.
- 30 “(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
35 to which the Proceedings Commissioner is a party.”

13. 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”.

40 (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”.

14. 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”.

15. 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) of this Act and”.

16. 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 that any term of such a settlement has not been complied with, the complainant, having obtained a certificate to this effect from the Commission, 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.”

17. 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:

- 5 “(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—
- 10 “(i) A particular sex; or
- “**(ii)** A particular marital status; or
- “**(iii)** A particular religious or ethical belief; or
- “**(iv)** A particular colour; or
- 15 “**(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.

20 **18. 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

25 as if they had been instituted by him and section 38 of the principal Act (as amended by **section 9** 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

30 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.

35 (3) Notwithstanding the provisions of **section 16** 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

40 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

45 been passed.

19. 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”.

20. 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,—

- 5 “(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.”

21. Repeals—The following enactments are hereby repealed—

- 15 (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.