



New South Wales

Anti-Discrimination Amendment (Heterosexual Discrimination) Bill 2024

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Anti-Discrimination Act 1977* to—

- (a) provide that discrimination against a person on the ground of the person's heterosexuality is unlawful, and
- (b) prescribe certain work and other arrangements in which discrimination against a person on the ground of the person's heterosexuality is unlawful, and
- (c) provide that heterosexual vilification, by certain public acts, is unlawful.

Outline of provisions

Clause 1 sets out the name, also called the short title, of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 **Amendment of Anti-Discrimination Act 1977 No 48**

Schedule 1 inserts proposed Part 4D into the *Anti-Discrimination Act 1977*.

Proposed Division 1—

- (a) defines what constitutes discrimination on the ground of heterosexuality, and

- (b) makes clear that a reference in the part to homosexuality includes a reference to the person's being thought to be a heterosexual person, whether the person is in fact a heterosexual person or not.

Proposed Division 2 prescribes certain conduct and circumstances constituting discrimination on the ground of a person's homosexuality (*heterosexual discrimination*) for the following—

- (a) employers,
- (b) commission agents,
- (c) contract workers,
- (d) partnerships,
- (e) local government councillors,
- (f) industrial organisations,
- (g) qualifying bodies,
- (h) employment agencies.

Proposed Division 3 prescribes certain circumstances and conduct constituting heterosexual discrimination for the following—

- (a) certain educational authorities,
- (b) a person who provides, for payment or not, goods or services to another person,
- (c) certain accommodation,
- (d) registered clubs.

Proposed Division 4 provides that heterosexual vilification by a public act is unlawful. The proposed division also defines *public act* to include certain communications and conduct.

However, proposed section 49ZTP(2) makes clear that the following is not unlawful—

- (a) a fair report of a public act,
- (b) certain matter subject to a defence of absolute privilege,
- (c) public acts done reasonably and in good faith in certain circumstances, including for religious instruction and scientific and research purposes.



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New South Wales

Anti-Discrimination Amendment (Heterosexual Discrimination) Bill 2024

No. _____, 2024

A Bill for

An Act to amend the *Anti-Discrimination Act 1977* to prohibit discrimination against a person on the ground of the person's homosexuality; and for related purposes.

The Legislature of New South Wales enacts—

1

1 Name of Act

2

This Act is the *Anti-Discrimination Amendment (Heterosexual Discrimination) Act 2024*.

4

2 Commencement

5

This Act commences on the date of assent to this Act.

6

Schedule 1	Amendment of Anti-Discrimination Act 1977 No 48	1
		2
Part 4D		3
Insert after Part 4C—		4
Part 4D	Discrimination on the ground of homosexuality	5
Division 1	General	6
49ZTA	Interpretation	7
	A reference in this part to a person’s homosexuality includes a reference to the person’s being thought to be a heterosexual person, whether the person is in fact a heterosexual person or not.	8 9 10
49ZTB	What constitutes discrimination on the ground of homosexuality	11
(1)	A person (<i>the perpetrator</i>) discriminates against another person (<i>the aggrieved person</i>) on the ground of homosexuality if the perpetrator—	12 13
(a)	on the ground of the aggrieved person’s homosexuality or the homosexuality of a relative or associate of the aggrieved person, treats the aggrieved person less favourably than in the same circumstances, or in circumstances that are not materially different, the perpetrator treats or would treat a person who the perpetrator did not think was a heterosexual person or who does not have such a relative or associate who the perpetrator thinks was a heterosexual person, or	14 15 16 17 18 19 20
(b)	requires the aggrieved person to comply with a requirement or condition—	21 22
(i)	that a substantially higher proportion of persons who are not heterosexual persons, or who do not have a relative or associate who is a heterosexual person, comply or are able to comply with, and	23 24 25 26
(ii)	that is not a reasonable requirement having regard to the circumstances of the case and with which the aggrieved person does not or is not able to comply.	27 28 29
(2)	For subsection (1)(a), something is done on the ground of a person’s homosexuality if it is done on the ground of—	30 31
(a)	the person’s homosexuality, or	32
(b)	a characteristic that relates generally to heterosexual persons, or	33
(c)	a characteristic generally imputed to heterosexual persons.	34
Division 2	Discrimination in work	35
49ZTC	Discrimination against applicants and employees	36
(1)	It is unlawful for an employer to discriminate against a person on the ground of homosexuality—	37 38
(a)	in the arrangements the employer makes for the purpose of deciding who should be offered employment, or	39 40
(b)	in deciding who should be offered employment, or	41
(c)	in the terms on which the employer offers employment.	42

(2)	It is unlawful for an employer to discriminate against an employee on the ground of homosexuality—	1
		2
(a)	in the terms or conditions of employment that the employer affords the employee, or	3
		4
(b)	by denying or limiting the employee's access to—	5
(i)	opportunities for promotion, transfer or training, or	6
(ii)	other benefits associated with employment, or	7
(c)	by dismissing the employee, or	8
(d)	by subjecting the employee to another detriment.	9
(3)	Subsections (1) and (2) do not apply to employment—	10
(a)	for a private household, or	11
(b)	if the number of persons employed by the employer, other than persons employed within the employer's private household, is not more than 5, or	12
		13
		14
(c)	by a private educational authority.	15
(4)	For subsection (3)(b), a corporation is the employer of the employees of another corporation which, in relation to the first corporation, is a related body corporate within the meaning of the <i>Corporations Act 2001</i> of the Commonwealth.	16
		17
		18
		19
49ZTD	Discrimination against commission agents	20
(1)	It is unlawful for a principal to discriminate against a person on the ground of homosexuality—	21
		22
(a)	in the arrangements the principal makes for the purpose of deciding who should be engaged as a commission agent, or	23
		24
(b)	in deciding who should be engaged as a commission agent, or	25
(c)	in the terms on which the principal engages the person as a commission agent.	26
		27
(2)	It is unlawful for a principal to discriminate against a commission agent on the ground of homosexuality—	28
		29
(a)	in the terms or conditions which the principal affords the person as a commission agent, or	30
		31
(b)	by denying or limiting the commission agent's access to—	32
(i)	opportunities for promotion, transfer or training, or	33
(ii)	other benefits associated with the person's position as a commission agent, or	34
		35
(c)	by terminating the commission agent's engagement, or	36
(d)	by subjecting the commission agent to another detriment.	37
49ZTE	Discrimination against contract workers	38
	It is unlawful for a principal to discriminate against a contract worker on the ground of homosexuality—	39
		40
(a)	in the terms on which the principal allows the contract worker to work, or	41
		42
(b)	by not allowing the contract worker to work or continue to work, or	43

(c)	by denying or limiting the contract worker's access to a benefit associated with the work for which the contract with the worker's employer is made, or	1 2 3
(d)	by subjecting the contract worker to another detriment.	4
49ZTF	Partnerships	5
(1)	It is unlawful for a firm consisting of 6 or more partners, or for 1 or more of 6 or more persons proposing to form themselves into a partnership, to discriminate against a person on the ground of heterosexuality—	6 7 8
(a)	in the arrangements made for the purpose of deciding who should be offered a position as partner in the firm, or	9 10
(b)	in deciding who should be offered a position as partner in the firm, or	11
(c)	in the terms on which the person is offered a position as partner in the firm.	12 13
(2)	It is unlawful for a firm consisting of 6 or more partners to discriminate against a partner on the ground of heterosexuality—	14 15
(a)	by denying or limiting the partner's access to a benefit arising from membership of the firm, or	16 17
(b)	by expelling the partner from the firm, or	18
(c)	by subjecting the partner to another detriment.	19
49ZTG	Discrimination by local government councillors	20
	It is unlawful for a member of a council of a local government area, when exercising the member's official functions, to discriminate against another member of the council on the ground of heterosexuality.	21 22 23
49ZTH	Industrial organisations	24
(1)	It is unlawful for an industrial organisation to discriminate against a person who is not a member of the industrial organisation on the ground of heterosexuality—	25 26 27
(a)	by refusing or failing to accept the person's application for membership, or	28 29
(b)	in the terms on which it is prepared to admit the person to membership.	30
(2)	It is unlawful for an industrial organisation to discriminate against a person who is a member of the industrial organisation on the ground of heterosexuality—	31 32 33
(a)	by denying or limiting the person's access to a benefit provided by the industrial organisation, or	34 35
(b)	by depriving the person of membership or varying the terms of the person's membership, or	36 37
(c)	by subjecting the person to another detriment.	38
49ZTI	Qualifying bodies	39
	It is unlawful for an authority or body that is empowered to confer, renew or extend an authorisation or qualification that is needed for or facilitates the practice of a profession, the carrying on of a trade or the engaging in of an occupation to discriminate against a person on the ground of heterosexuality—	40 41 42 43
(a)	by refusing or failing to confer, renew or extend the authorisation or qualification, or	44 45

(b)	in the terms on which it is prepared to confer the authorisation or qualification or to renew or extend the authorisation or qualification, or	1
		2
(c)	by withdrawing the authorisation or qualification or varying the terms or conditions upon which it is held.	3
		4
49ZTJ	Employment agencies	5
	It is unlawful for an employment agency to discriminate against a person on the ground of homosexuality—	6
		7
(a)	by refusing to provide the person with its services, or	8
(b)	in the terms on which it offers to provide the person with its services, or	9
(c)	in the way in which it provides the person with its services.	10
Division 3	Discrimination in other areas	11
49ZTK	Education	12
(1)	It is unlawful for an educational authority to discriminate against a person on the ground of homosexuality—	13
		14
(a)	by refusing or failing to accept the person’s application for admission as a student, or	15
		16
(b)	in the terms on which it is prepared to admit the person as a student.	17
(2)	It is unlawful for an educational authority to discriminate against a student on the ground of homosexuality—	18
		19
(a)	by denying or limiting the student’s access to a benefit provided by the educational authority, or	20
		21
(b)	by expelling the student, or	22
(c)	by subjecting the student to another detriment.	23
(3)	Nothing in this section applies to or in relation to a private educational authority.	24
		25
49ZTL	Provision of goods and services	26
	It is unlawful for a person who provides, for payment or not, goods or services to discriminate against another person on the ground of homosexuality—	27
		28
(a)	by refusing to provide the person with the goods or services, or	29
(b)	in the terms on which the person provides the other person with the goods or services.	30
		31
49ZTM	Accommodation	32
(1)	It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of homosexuality—	33
		34
(a)	by refusing the other person’s application for accommodation, or	35
(b)	in the terms on which the person offers the other person accommodation, or	36
		37
(c)	by deferring the other person’s application for accommodation or according the other person a lower order of precedence in a list of applicants for the accommodation.	38
		39
		40
(2)	It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of homosexuality—	41
		42

(a)	by denying or limiting the other person's access to a benefit associated with accommodation occupied by the other person, or	1 2
(b)	by evicting the other person, or	3
(c)	by subjecting the other person to another detriment.	4
(3)	Nothing in this section applies to or in relation to the provision of accommodation in premises if—	5 6
(a)	the person who provides or proposes to provide the accommodation or a near relative of that person resides, and intends to continue to reside, on the premises, and	7 8 9
(b)	the accommodation provided in the premises is for no more than 6 persons.	10 11
49ZTN	Registered clubs	12
(1)	It is unlawful for a registered club to discriminate against a person who is not a member of the registered club on the ground of heterosexuality—	13 14
(a)	by refusing or failing to accept the person's application for membership, or	15 16
(b)	in the terms on which it is prepared to admit the person to membership.	17
(2)	It is unlawful for a registered club to discriminate against a person who is a member of the registered club on the ground of heterosexuality—	18 19
(a)	by denying or limiting the person's access to a benefit provided by the registered club, or	20 21
(b)	by depriving the person of membership or varying the terms of the person's membership, or	22 23
(c)	by subjecting the person to another detriment.	24
Division 4	Heterosexual vilification	25
49ZTO	Definition	26
	In this division—	27
	<i>public act</i> includes—	28
(a)	any form of communication to the public, including speaking, writing, printing, displaying notices, broadcasting, telecasting, screening and playing of recorded material, and	29 30 31
(b)	any conduct, not being a form of communication referred to in paragraph (a), observable by the public, including actions and gestures and the wearing or display of clothing, signs, flags, emblems and insignia, and	32 33 34 35
(c)	the distribution or dissemination of matter to the public with knowledge that the matter promotes or expresses hatred towards, serious contempt for or severe ridicule of a person or group of persons on the ground of the heterosexuality of the person or members of the group.	36 37 38 39
49ZTP	Heterosexual vilification unlawful	40
(1)	It is unlawful for a person, by a public act, to incite hatred towards, serious contempt for or severe ridicule of a person or group of persons on the ground of the heterosexuality of the person or members of the group.	41 42 43
(2)	Nothing in this section renders unlawful—	44

- (a) a fair report of a public act referred to in subsection (1), or 1
- (b) a communication or the distribution or dissemination of matter on an 2
occasion that would be subject to a defence of absolute privilege, 3
whether under the *Defamation Act 2005* or otherwise, in proceedings 4
for defamation, or 5
- (c) a public act, done reasonably and in good faith, for academic, artistic, 6
religious instruction, scientific or research purposes or for other 7
purposes in the public interest, including discussion or debate about and 8
expositions of an act or matter. 9