

New South Wales

Anti-Discrimination Amendment (Heterosexual Discrimination) Bill 2001

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 make it unlawful for persons to discriminate against others on the ground of their heterosexuality. The Bill inserts provisions that will parallel the existing provisions of the Act dealing with discrimination on the ground of homosexuality.

Outline of provisions

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

Clause 2 provides that the proposed Act will commence 3 months after the date of assent, unless commenced sooner by proclamation.

Clause 3 is a formal provision amending the *Anti-Discrimination Act 1977* in the manner set out in Schedule 1.

Schedule 1 inserts proposed Part 4D in the *Anti-Discrimination Act 1977*. The new Part contains the following provisions:

Proposed section 49ZTB provides that references in the new Part to a person's heterosexuality will cover the situation where a person is thought to be a heterosexual person, whether the person is in fact a heterosexual person or not.

Proposed section 49ZTC specifies the circumstances in which a person discriminates against another person on the ground of heterosexuality. These include treating the other person less favourably than the person would treat someone else not thought to be heterosexual in the same circumstances.

Proposed section 49ZTD makes it unlawful for an employer to discriminate against an employee or applicant for employment on the ground of heterosexuality. The proposed section does not apply in relation to employment within a private household or by a private educational authority, or where there are no more than 5 persons employed by the employer.

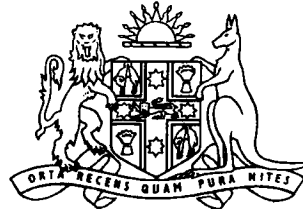
Proposed sections 49ZTE, 49ZTF and 49ZTG make it unlawful to discriminate on the ground of heterosexuality in certain other work-related areas involving commission agents, contract workers and partners in firms consisting of 6 or more partners.

Proposed sections 49ZTH, 49ZTI and 49ZTJ cover certain industrial organisations, qualifying authorities (such as those empowered to confer a trade, professional or occupational qualification) and employment agencies. It will be unlawful for these bodies to discriminate against a person on the ground of heterosexuality.

Proposed section 49ZTK makes it unlawful for an educational authority (but not a private educational authority) to discriminate against students or applicants for admission as students on the ground of heterosexuality.

Proposed sections 49ZTL, 49ZTM and 49ZTN cover discrimination on the ground of heterosexuality in the areas of providing goods, services and accommodation, and in relation to membership of registered clubs.

Proposed section 49ZTO makes it unlawful for a person or body to discriminate against another person in the area of sport.



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New South Wales

Anti-Discrimination Amendment (Heterosexual Discrimination) Bill 2001

No. , 2001

A Bill for

An Act to amend the *Anti-Discrimination Act 1977* to make it unlawful to discriminate against a person on the ground of heterosexuality in certain circumstances.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Anti-Discrimination Amendment (Heterosexual Discrimination) Act 2001</i> .	3 4
2 Commencement	5
This Act commences 3 months after the date of assent, unless commenced sooner by proclamation.	6 7
3 Amendment of Anti-Discrimination Act 1977 No 48	8
The <i>Anti-Discrimination Act 1977</i> is amended as set out in Schedule 1.	9

Schedule 1	Amendment	1
	(Section 3)	2
Part 4D		3
Insert after Part 4C:		4
Part 4D	Discrimination on the ground of heterosexuality	5 6
Division 1	General	7
49ZTB	References to person's heterosexuality	8
	A reference in this Part to a person's heterosexuality 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.	9 10 11 12
49ZTC	What constitutes discrimination on the ground of heterosexuality	13 14
	(1) A person <i>the perpetrator</i> discriminates against another person <i>the aggrieved person</i> on the ground of heterosexuality if, on the ground of the aggrieved person's heterosexuality, the perpetrator:	15 16 17 18
	(a) treats the aggrieved person less favourably than in the same circumstances, or in circumstances which are not materially different, the perpetrator treats or would treat a person who the perpetrator did not think was a heterosexual person, or	19 20 21 22 23
	(b) requires the aggrieved person to comply with a requirement or condition with which a substantially higher proportion of persons who are not heterosexual persons comply or are able to comply, being a	24 25 26 27

requirement which is not reasonable having regard to
the circumstances of the case and with which the
aggrieved person does not or is not able to comply. 1
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- (2) For the purposes of subsection (1) (a), something is done on
the ground of a person's heterosexuality if it is done on the
ground of the person's heterosexuality, a characteristic that
appertains generally to heterosexual persons or a characteristic
that is generally imputed to heterosexual persons. 4
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Division 2 Discrimination in work 9

49ZTD Discrimination against applicants and employees 10

- (1) It is unlawful for an employer to discriminate against a person
on the ground of heterosexuality: 11
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- (a) in the arrangements the employer makes for the purpose
of determining who should be offered employment, or 13
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 - (b) in determining who should be offered employment, or 15
 - (c) in the terms on which employment is offered. 16
- (2) It is unlawful for an employer to discriminate against an
employee on the ground of heterosexuality: 17
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- (a) in the terms or conditions of employment that are
afforded to the employee, or 19
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 - (b) by denying the employee access, or limiting the
employee's access, to opportunities for promotion,
transfer or training, or to any other benefits associated
with employment, or 21
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 - (c) by dismissing the employee or subjecting the employee
to any other detriment. 25
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- (3) This section does not apply to employment: 27
- (a) for the purposes of a private household, or 28
 - (b) if the number of persons employed by the employer
(disregarding any persons employed within the
employer's private household) does not exceed 5, or 29
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 - (c) by a private educational authority. 32

(4)	For the purposes of subsection (3) (b), a corporation is regarded as the employer of the employees of any other corporation which, with respect to the first-mentioned corporation, is a related body corporate within the meaning of the <i>Corporations Law</i> .	1 2 3 4 5
49ZTE	Discrimination against commission agents	6
(1)	It is unlawful for a principal to discriminate against a person on the ground of heterosexuality:	7 8
(a)	in the arrangements the principal makes for the purpose of determining who should be engaged as a commission agent, or	9 10 11
(b)	in determining who should be engaged as a commission agent, or	12 13
(c)	in the terms on which the principal engages the person as a commission agent.	14 15
(2)	It is unlawful for a principal to discriminate against a commission agent on the ground of heterosexuality:	16 17
(a)	in the terms or conditions that are afforded to the commission agent, or	18 19
(b)	by denying the commission agent access, or limiting the commission agent's access, to opportunities for promotion, transfer or training, or to any other benefits associated with his or her position as a commission agent, or	20 21 22 23 24
(c)	by terminating the commission agent's engagement or subjecting the commission agent to any other detriment.	25 26
49ZTF	Discrimination against contract workers	27
	It is unlawful for a principal to discriminate against a contract worker on the ground of heterosexuality:	28 29
(a)	in the terms on which the contract worker is allowed to work, or	30 31
(b)	by not allowing the contract worker to work or continue to work, or	32 33

(c)	by denying the contract worker access, or limiting the contract worker's access, to any benefit associated with the work performed by the contract worker, or	1 2 3
(d)	by subjecting the contract worker to any other detriment.	4
49ZTG	Partnerships	5
(1)	It is unlawful for a firm consisting of 6 or more partners, or for any one or more of 6 or more persons proposing to form themselves into a partnership, to discriminate against another person on the ground of heterosexuality:	6 7 8 9
(a)	in the arrangements made for the purpose of determining who should be offered a position as partner in the firm, or	10 11 12
(b)	in determining who should be offered a position as partner in the firm, or	13 14
(c)	in the terms on which the other person is offered a position as partner in the firm.	15 16
(2)	It is unlawful for a firm consisting of 6 or more partners to discriminate against a partner on the ground of heterosexuality:	17 18
(a)	by denying the partner access, or limiting the partner's access, to any benefit arising from membership of the firm, or	19 20 21
(b)	by expelling the partner from the firm, or	22
(c)	by subjecting the partner to any other detriment.	23
49ZTH	Industrial organisations	24
(1)	It is unlawful for an industrial organisation to discriminate against a person on the ground of heterosexuality:	25 26
(a)	by refusing or failing to accept the person's application for membership of the organisation, or	27 28
(b)	in the terms on which it is prepared to admit the person to membership of the organisation.	29 30
(2)	It is unlawful for an industrial organisation to discriminate against a member of the organisation on the ground of heterosexuality:	31 32 33

(a)	by denying the person access, or limiting the person's access, to any benefit provided by the organisation, or	1 2
(b)	by depriving the person of membership of the organisation or varying the terms of that membership, or	3 4
(c)	by subjecting the person to any other detriment.	5
(3)	In this section, <i>industrial organisation</i> means an industrial organisation or a non-industrial organisation within the meaning of the <i>Industrial Relations Act 1996</i> or an organisation registered under the <i>Industrial Relations Act 1988</i> of the Commonwealth.	6 7 8 9 10
49ZTI	Qualifying bodies	11
	It is unlawful for an authority or body which is empowered to confer, renew or extend an authorisation or a 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:	12 13 14 15 16
(a)	by refusing or failing to confer, renew or extend the authorisation or qualification, or	17 18
(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	19 20 21
(c)	by withdrawing the authorisation or qualification or varying the terms or conditions on which it is held.	22 23
49ZTJ	Employment agencies	24
	It is unlawful for an employment agency to discriminate against a person on the ground of heterosexuality:	25 26
(a)	by refusing to provide the person with any of its services, or	27 28
(b)	in the terms on which it offers to provide the person with any of its services, or	29 30
(c)	in the manner in which it provides the person with any of its services.	31 32

Division 3	Discrimination in other areas	1
49ZTK	Education	2
	(1) It is unlawful for an educational authority to discriminate against a person on the ground of heterosexuality:	3
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	(a) by refusing or failing to accept the person’s application for admission as a student, or	5
		6
	(b) in the terms on which it is prepared to admit the person as a student.	7
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	(2) It is unlawful for an educational authority to discriminate against a student on the ground of heterosexuality:	9
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	(a) by denying the student access, or limiting the student’s access, to any benefit provided by the educational authority, or	11
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	(b) by expelling the student or subjecting the student to any other detriment.	14
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	(3) Nothing in this section applies to or in respect of a private educational authority.	16
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49ZTL	Provision of goods and services	18
	It is unlawful for a person who, whether or not for payment, provides goods or services to discriminate against another person on the ground of heterosexuality:	19
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	(a) by refusing to provide the other person with those goods or services, or	22
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	(b) in the terms on which the other person is provided with those goods or services.	24
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49ZTM	Accommodation	26
	(1) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of heterosexuality:	27
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	(a) by refusing the other person’s application for accommodation, or	30
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	(b) in the terms on which the principal or agent offers the other person accommodation, or	32
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- (c) by deferring the other person's application for accommodation or according the other person a lower order of precedence in any list of applicants for that accommodation. 1
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- (2) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of homosexuality: 5
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 - (a) by denying the other person access, or limiting the other person's access, to any benefit associated with accommodation occupied by the other person, or 8
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 - (b) by evicting the other person or subjecting the other person to any other detriment. 11
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- (3) Nothing in this section applies to or in respect of the provision of accommodation in premises if: 13
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 - (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, in those premises, and 15
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 - (b) the accommodation provided in those premises is for no more than 6 persons. 19
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- 49ZTN Registered clubs** 21
- (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 homosexuality: 22
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 - (a) by refusing or failing to accept the person's application for membership of the club, or 25
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 - (b) in the terms on which it is prepared to admit the person to membership of the club. 27
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- (2) It is unlawful for a registered club to discriminate against a member of the registered club on the ground of homosexuality: 29
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 - (a) by denying the member access, or limiting the member's access, to any benefit provided by the club, or 31
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 - (b) by depriving the member of membership of the club or varying the terms of that membership, or 33
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 - (c) by subjecting the member to any other detriment. 35

49ZTO Sport

It is unlawful for a person or body to discriminate against another person on the ground of heterosexuality:

- (a) by refusing or failing to select the other person in a sporting team, or
- (b) by excluding the other person from participating in a sporting activity.

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