



New South Wales

Anti-Discrimination (Sexuality) Amendment Bill 2002

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This PUBLIC BILL, originated in the LEGISLATIVE COUNCIL and, having this day passed, is now ready for presentation to the LEGISLATIVE ASSEMBLY for its concurrence.

Legislative Council

Clerk of the Parliaments.



New South Wales

Anti-Discrimination (Sexuality) Amendment Bill 2002

Act No , 2002

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

The Legislature of New South Wales enacts:	1
1 Short title	2
This Act may be cited as the <i>Anti-Discrimination (Sexuality) Amendment Act 2002</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 in the manner set out in Schedule 1.	9 10

Schedule 1 Amendments

(Section 3)

[1] Section 4 Definitions

Omit the definition of *homosexual*.

[2] Part 4C

Omit the Part. Insert instead:

Part 4C Discrimination on the ground of sexuality

Division 1 General

49ZF What constitutes discrimination on the ground of sexuality

- (1) A person (*the perpetrator*) discriminates against another person (*the aggrieved person*) on the ground of sexuality if, on the ground of the aggrieved person's sexuality or the sexuality of a relative or associate of the aggrieved person, the perpetrator:
 - (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 he or she did not think has that particular sexuality or who does not have such a relative or associate who he or she thinks has that particular sexuality, or
 - (b) requires the aggrieved person to comply with a requirement or condition with which a substantially higher proportion of persons who do not have the aggrieved person's sexuality, or who do not have such a relative or associate who has that sexuality, comply or are able to comply, being a 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.
- (2) For the purposes of subsection (1) (a), something is done on the ground of a person's sexuality if it is done on the ground of the person's sexuality, a characteristic that appertains

generally to persons having that sexuality or a characteristic that is generally imputed to persons having that sexuality. 1
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Division 2 Discrimination in work 3

49ZG Discrimination against applicants and employees 4

- (1) It is unlawful for an employer to discriminate against a person on the ground of sexuality: 5
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- (a) in the arrangements the employer makes for the purpose of determining who should be offered employment, or 7
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 - (b) in determining who should be offered employment, or 9
 - (c) in the terms on which employment is offered. 10
- (2) It is unlawful for an employer to discriminate against an employee on the ground of sexuality: 11
12
- (a) in the terms or conditions of employment that are afforded to the employee, or 13
14
 - (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 15
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 - (c) by dismissing the employee or subjecting the employee to any other detriment. 19
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- (3) This section does not apply to employment: 21
- (a) for the purposes of a private household, or 22
 - (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 23
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25
 - (c) by a private educational authority. 26
- (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 *Corporations Act* of the Commonwealth. 27
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49ZH Discrimination against commission agents 32

- (1) It is unlawful for a principal to discriminate against a person on the ground of sexuality: 33
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(a)	in the arrangements the principal makes for the purpose of determining who should be engaged as a commission agent, or	1 2 3
(b)	in determining who should be engaged as a commission agent, or	4 5
(c)	in the terms on which the principal engages the person as a commission agent.	6 7
(2)	It is unlawful for a principal to discriminate against a commission agent on the ground of sexuality:	8 9
(a)	in the terms or conditions that are afforded to the commission agent, or	10 11
(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	12 13 14 15 16
(c)	by terminating the commission agent's engagement or subjecting the commission agent to any other detriment.	17 18 19
49ZI	Discrimination against contract workers	20
	It is unlawful for a principal to discriminate against a contract worker on the ground of sexuality:	21 22
(a)	in the terms on which the contract worker is allowed to work, or	23 24
(b)	by not allowing the contract worker to work or continue to work, or	25 26
(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	27 28 29
(d)	by subjecting the contract worker to any other detriment.	30 31
49ZJ	Partnerships	32
(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 a person on the ground of sexuality:	33 34 35 36

(a)	in the arrangements made for the purpose of determining who should be offered a position as partner in the firm, or	1 2 3
(b)	in determining who should be offered a position as partner in the firm, or	4 5
(c)	in the terms on which the person is offered a position as partner in the firm.	6 7
(2)	It is unlawful for a firm consisting of 6 or more partners to discriminate against a partner on the ground of sexuality:	8 9
(a)	by denying the partner access, or limiting the partner's access, to any benefit arising from membership of the firm, or	10 11 12
(b)	by expelling the partner from the firm, or	13
(c)	by subjecting the partner to any other detriment.	14
49ZK	Discrimination by local government councillors	15
	It is unlawful for any member or members of a council of a local government area when acting (whether alone or together) in the course of the member's or members' official functions to discriminate against another member of the council on the ground of sexuality.	16 17 18 19 20
49ZL	Industrial organisations	21
(1)	It is unlawful for an industrial organisation to discriminate against a person on the ground of sexuality:	22 23
(a)	by refusing or failing to accept the person's application for membership, or	24 25
(b)	in the terms on which it is prepared to admit the person to membership.	26 27
(2)	It is unlawful for an industrial organisation to discriminate against a member of the organisation on the ground of sexuality:	28 29 30
(a)	by denying the person access, or limiting the person's access, to any benefit provided by the organisation, or	31 32
(b)	by depriving the person of membership or varying the terms of that membership, or	33 34
(c)	by subjecting the person to any other detriment.	35

47ZM	Qualifying bodies	1
	It is unlawful for an authority or a 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 sexuality:	2 3 4 5 6
	(a) by refusing or failing to confer, renew or extend the authorisation or qualification, or	7 8
	(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	9 10 11
	(c) by withdrawing the authorisation or qualification or varying the terms or conditions on which it is held.	12 13
47ZN	Employment agencies	14
	It is unlawful for an employment agency to discriminate against a person on the ground of sexuality:	15 16
	(a) by refusing to provide the person with any of its services, or	17 18
	(b) in the terms on which it offers to provide the person with any of its services, or	19 20
	(c) in the manner in which it provides the person with any of its services.	21 22
Division 3	Discrimination in other areas	23
49ZO	Education	24
	(1) It is unlawful for an educational authority to discriminate against a person on the ground of sexuality:	25 26
	(a) by refusing or failing to accept the person's application for admission as a student, or	27 28
	(b) in the terms on which it is prepared to admit the person as a student.	29 30
	(2) It is unlawful for an educational authority to discriminate against a student on the ground of sexuality:	31 32
	(a) by denying the student access, or limiting the student's access, to any benefit provided by the educational authority, or	33 34 35

(b)	by expelling the student or subjecting the student to any other detriment.	1 2
(3)	Nothing in this section applies to or in respect of a private educational authority.	3 4
49ZP	Provision of goods and services	5
	It is unlawful for a person who provides (whether or not for payment) goods or services to discriminate against another person on the ground of sexuality:	6 7 8
(a)	by refusing to provide the person with those goods or services, or	9 10
(b)	in the terms on which the other person is provided with those goods or services.	11 12
49ZQ	Accommodation	13
(1)	It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of sexuality:	14 15 16
(a)	by refusing the person's application for accommodation, or	17 18
(b)	in the terms on which the principal or agent offers the other person accommodation, or	19 20
(c)	by deferring the other person's application for accommodation or giving the other person a lower order of precedence in any list of applicants for that accommodation.	21 22 23 24
(2)	It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of sexuality:	25 26 27
(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	28 29 30
(b)	by evicting the other person or subjecting the other person to any other detriment.	31 32
(3)	Nothing in this section applies to or in respect of the provision of accommodation in premises if:	33 34
(a)	the person who provides or proposes to provide the accommodation (or a near relative of that person)	35 36

resides, and intends to continue to reside, on those premises, and	1
(b) the accommodation provided in those premises is for no more than 6 persons.	2
49ZR Registered clubs	3
(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 sexuality:	4
(a) by refusing or failing to accept the person's application for membership of the club, or	5
(b) in the terms on which it is prepared to admit the person to membership of the club.	6
(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 sexual preference:	7
(a) by denying the person access, or limiting the person's access, to any benefit provided by the registered club, or	8
(b) by depriving the person of membership or varying the terms of the person's membership, or	9
(c) by subjecting the person to any other detriment.	10
Division 4 Sexual vilification	11
49ZS Definition	12
In this Division, <i>public act</i> includes:	13
(a) any form of communication to the public, including speaking, writing, printing, displaying notices, broadcasting, telecasting, screening and playing of tapes or other recorded material, or	14
(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, or	15
(c) the distribution or dissemination of any matter to the public with knowledge that the matter promotes or expresses hatred towards, serious contempt for, or	16
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severe ridicule of, a person or group of persons on the 1
ground of the sexuality of the person or members of the 2
group. 3

49ZT Sexual vilification unlawful 4

(1) It is unlawful for a person, by a public act, to incite hatred 5
towards, serious contempt for, or severe ridicule of, a person 6
or group of persons on the ground of the sexuality of the 7
person or members of the group. 8

(2) Nothing in this section renders unlawful: 9

(a) a fair report of a public act referred to in subsection (1), 10
or 11

(b) a communication or the distribution or dissemination of 12
any matter comprising a publication referred to in 13
Division 3 of Part 3 of the *Defamation Act 1974* or 14
which is otherwise subject to a defence of absolute 15
privilege in proceedings for defamation, or 16

(c) a public act, done reasonably and in good faith, for 17
academic, artistic, religious instruction, scientific or 18
research purposes or for other purposes in the public 19
interest, including discussion or debate about and 20
expositions of any act or matter. 21

49ZTA Offence of serious sexual vilification 22

(1) A person must not, by a public act, incite hatred towards, 23
serious contempt for, or severe ridicule of, a person or group 24
of persons on the ground of the sexuality of the person or 25
members of the group by means which include: 26

(a) threatening physical harm towards, or towards any 27
property of, the person or group of persons, or 28

(b) inciting others to threaten physical harm towards, or 29
towards any property of, the person or group of persons. 30

Maximum penalty: 31

In the case of an individual—10 penalty units or 32
imprisonment for 6 months, or both. 33

In the case of a corporation—100 penalty units. 34

(2) A person is not to be prosecuted for an offence under this section unless the Attorney General has consented to the prosecution.

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[3] Section 87 Definitions

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Omit “homosexuality” from paragraph (b) of the definition of *representative body*.

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Insert instead “sexuality”.

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