



New South Wales

Anti-Discrimination Amendment (Religious Tolerance) Bill 2005

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 promote religious tolerance.

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 60 days after the date of assent.

Clause 3 is a formal provision that gives effect to the amendments to the *Anti-Discrimination Act 1977* set out in Schedule 1.

Schedule 1 Amendments

Schedule 1 [1] inserts proposed Part 4H (proposed sections 49ZZA–49ZZC) in the *Anti-Discrimination Act 1977* (the *principal Act*). The amendment provides that religious vilification is unlawful. The amendment also creates a criminal offence of serious religious vilification with a maximum penalty of 50 penalty units or 6 months

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imprisonment or both in the case of an individual and 100 penalty units in the case of a corporation.

Schedule 1 [2] and [3] make consequential amendments. These amendments allow for a complaint of religious vilification to be lodged with the President of the Anti-Discrimination Board. Such a complaint may be resolved by way of conciliation by the President of the Board or may be referred to the Administrative Decisions Tribunal (the *Tribunal*). The Tribunal may take action including dismissing the complaint, awarding damages up to \$40,000, enjoining the respondent from continuing or repeating any conduct rendered unlawful by the principal Act or requiring the respondent to publish an apology.

Schedule 1 [4] and [5] insert savings and transitional provisions consequential on the enactment of the proposed Act.



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Anti-Discrimination Amendment (Religious Tolerance) Bill 2005

No. , 2005

A Bill for

An Act to amend the *Anti-Discrimination Act 1977* to promote religious tolerance;
and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Anti-Discrimination Amendment (Religious Tolerance) Act 2005</i> .	3 4
2 Commencement	5
This Act commences 60 days after the date of assent.	6
3 Amendment of Anti-Discrimination Act 1977 No 48	7
The <i>Anti-Discrimination Act 1977</i> is amended as set out in Schedule 1.	8

Schedule 1 Amendments

(Section 3)

[1] Part 4H

Insert after Part 4G:

Part 4H Religious vilification

49ZZA Definitions

In this Part:

public act includes:

- (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, and
- (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
- (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 severe ridicule of, a person or group of persons on the ground of the religious belief or activity of the person or members of the group.

religious belief or activity means:

- (a) holding a religious belief or view and includes not holding a religious belief or view, and
- (b) engaging in a religious activity, and includes not engaging in or refusing to engage in a religious activity.

49ZZB Religious vilification unlawful

- (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 religious belief or activity of the person or members of the group.
- (2) Nothing in this section renders unlawful:
 - (a) a fair report of a public act referred to in subsection (1), or

(b)	a communication or the distribution or dissemination of any matter comprising a publication referred to in Division 3 of Part 3 of the <i>Defamation Act 1974</i> or which is otherwise subject to a defence of absolute privilege in proceedings for defamation, or	1 2 3 4 5
(c)	a public act, done reasonably and in good faith, for academic, artistic, scientific or research purposes or for other purposes in the public interest, including discussion or debate and expositions of any act or matter.	6 7 8 9
49ZZC	Offence of serious religious vilification	10
(1)	A person must not, by public act, incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the religious belief or activity of the person or members of the group by means which include:	11 12 13 14
(a)	threatening physical harm towards, or towards any property of, the person or group of persons, or	15 16
(b)	inciting others to threaten physical harm towards, or towards any property of, the person or group of persons.	17 18
	Maximum penalty:	19
	In the case of an individual—50 penalty units or imprisonment for 6 months, or both.	20 21
	In the case of a corporation—100 penalty units.	22
(2)	A person is not to be prosecuted for an offence under this section unless the Attorney General has consented to the prosecution.	23 24
[2]	Section 87 Definitions	25
	Omit “or 49ZXB” from the definition of <i>vilification complaint</i> .	26
	Insert instead “, 49ZXB or 49ZZB”.	27
[3]	Section 89B Prosecution for serious vilification	28
	Omit “or 49ZXC” wherever occurring from section 89B (1), (2) and (5).	29
	Insert instead “, 49ZXC or 49ZZC”.	30
[4]	Schedule 1 Savings and transitional provisions	31
	Insert at the end of clause 1 (1):	32
	<i>Anti-Discrimination Amendment (Religious Tolerance) Act 2005</i>	33

[5] Schedule 1, Part 6	1
Insert at the end of the Schedule:	2
Part 6 Anti-Discrimination Amendment (Religious Tolerance) Act 2005	3
	4
17 Operation of amendment	5
(1) The amendments made by the amending Act do not apply in respect of anything done or omitted to be done before the commencement of Schedule 1 to the amending Act.	6
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(2) This Act continues to apply to anything done or omitted to be done before the commencement of Schedule 1 to the amending Act as if the amendments made by the amending Act had not been enacted.	9
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(3) In this clause:	13
<i>the amending Act</i> means the <i>Anti-Discrimination Amendment (Religious Tolerance) Act 2005</i> .	14
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