



New South Wales

Crimes and Anti-Discrimination Legislation Amendment (Vilification) Bill 2016

Explanatory note

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

Overview of Bill

The object of this Bill is to make amendments to the *Crimes Act 1900* and the *Anti-Discrimination Act 1977* in relation to racial, transgender, homosexual and HIV/AIDS vilification. This Bill has been prepared in response to the report of the Legislative Council Standing Committee on Law and Justice entitled *Racial vilification law in New South Wales*.

The Bill deals with the following:

- (a) moves the offence of serious racial, transgender, homosexual or HIV/AIDS vilification by means of threat or incitement of physical harm into the *Crimes Act 1900* from the *Anti-Discrimination Act 1977*,
- (b) in doing so, removes the requirement that the Attorney General must give consent to a prosecution for that offence,
- (c) extends the time within which prosecutions for such offences may be commenced to not later than 12 months from the date when the offence was alleged to have been committed (rather than 6 months, which is the limitation period that currently applies under the *Criminal Procedure Act 1986*),
- (d) brings together into a new Part (proposed Part 4H) all the provisions of the *Anti-Discrimination Act 1977* dealing with racial, transgender, homosexual and HIV/AIDS vilification and makes those provisions consistent,
- (e) clarifies that unlawful vilification under the *Anti-Discrimination Act 1977* occurs when a person, by a public act, intentionally or recklessly promotes (rather than incites) hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on racial, transgender, homosexual and HIV/AIDS grounds,

- (f) clarifies which public acts constitute such unlawful vilification,
- (g) provides that the proposed Part applies whether or not the person or members of the group vilified have the characteristic that was the ground for the promotion of hatred, contempt or ridicule concerned,
- (h) provides that the President of the Anti-Discrimination Board, after accepting a vilification complaint under the *Anti-Discrimination Act 1977*, is to refer the complaint to the Commissioner of Police if the President considers that the offence of serious racial, transgender, homosexual or HIV/AIDS vilification may have been committed (rather than investigating the complaint first and then referring such a complaint to the Attorney General).

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 Crimes Act 1900 No 40

Schedule 1 inserts proposed Division 15C (proposed section 91N) into Part 3 of the *Crimes Act 1900* to give effect to the objectives outlined in paragraphs (a)–(c) above.

Schedule 2 Amendment of Anti-Discrimination Act 1977 No 48

Schedule 2 [5] inserts proposed Part 4H (proposed sections 50AA and 50AB) into the *Anti-Discrimination Act 1977* to give effect to the objectives outlined in paragraphs (d)–(g) above.

Schedule 2 [12] inserts proposed section 94D into the *Anti-Discrimination Act 1977* to give effect to the objective outlined in paragraph (h) above.

Schedule 2 [14] amends Schedule 1 to the *Anti-Discrimination Act 1977* to enable regulations of a savings or transitional nature consequent on the enactment of any Act that amends that Act to be made.

Schedule 2 [1]–[4], [6]–[11] and [13] make consequential amendments.