

First print



New South Wales

# **Anti-Discrimination Amendment (Carers' Responsibilities) Bill 2000**

## **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* so as to prohibit discrimination against a person on the ground of the person's responsibilities as a carer. Such discrimination will be unlawful only to the extent to which it relates to the person's work.

## 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 a day or days to be appointed by proclamation.

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

## Schedule 1 Amendments

**Schedule 1 [1]** inserts proposed Part 4B (Discrimination on the ground of a person's responsibilities as a carer) into the *Anti-Discrimination Act 1977*. The Part makes it unlawful to discriminate against a person, in the circumstances relating to work described in the Part, on the ground of the person's responsibilities as a carer.

Part 4B follows the pattern established in the Act for the other forms of discrimination that are made unlawful by the Act's provisions.

## Part 4B Discrimination on the ground of a person's responsibilities as a carer

### Division 1 General

Proposed section 49S defines *responsibilities as a carer* as a person's responsibility to care for or support a dependent child or another immediate family member who is in need of care or support.

Proposed section 49T states what constitutes discrimination on the ground of a person's responsibilities as a carer. It includes direct and indirect discrimination.

Proposed section 49U states what constitutes unjustifiable hardship (which is relevant to the exception set out in proposed sections 49V, 49W, 49X, 49Y and 49ZA).

## **Division 2      Discrimination in work**

Proposed section 49V renders it unlawful for an employer to discriminate against an employee or an applicant for employment on the ground of the employee's or applicant's responsibilities as a carer. The proposed section does not apply in relation to employment within a private household or where the number of persons employed does not exceed 5.

The proposed section will require an employer to accommodate the needs of persons with responsibilities as a carer, unless such accommodation would cause the employer an unjustifiable hardship. In addition, the employer will be permitted to decline to hire, or to dismiss an employee, if the employee is unable to perform the "inherent requirements" of the job because of his or her responsibilities as a carer. Analogous exceptions are provided in proposed sections 49W, 49X, 49Y and 49ZA. This is the same model as has been adopted in Part 4A (Discrimination on the ground of disability).

Proposed section 49W renders it unlawful for a principal to discriminate against a commission agent or a prospective commission agent on the ground of his or her responsibilities as a carer.

Proposed section 49X renders it unlawful for a principal to discriminate against a contract worker on the ground of the worker's responsibilities as a carer.

Proposed section 49Y renders it unlawful for a firm consisting of 6 or more partners, or persons proposing to form a firm consisting of 6 or more partners, to discriminate against a partner or prospective partner on the ground of his or her responsibilities as a carer.

Proposed section 49Z renders it unlawful for local government councillors to discriminate against another councillor on the ground of the councillor's responsibilities as a carer.

Proposed section 49ZA renders it unlawful for an industrial organisation to discriminate against a member of such an organisation, or an applicant for membership of such an organisation, on the ground of his or her responsibilities as a carer.

Proposed section 49ZB renders it unlawful for an authority or body that is empowered to confer, renew or extend a professional, trade or other occupational qualification to discriminate on the ground of his or her responsibilities as a carer against a person who holds or seeks to hold that qualification.

Proposed section 49ZC renders it unlawful for an employment agency to discriminate against a person who seeks the services of the agency on the ground of the person's responsibilities as a carer.

Explanatory note

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**Schedule 1 [2]** and **[3]** provide for the making of savings and transitional regulations, consequent on the enactment of the proposed Act.

**Schedule 1 [4]** inserts savings and transitional provisions that make it clear that the provisions relating to discrimination on the ground of a person's responsibilities as a carer do not apply to acts occurring before the provisions come into force.

First print



New South Wales

# Anti-Discrimination Amendment (Carers' Responsibilities) Bill 2000

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New South Wales

# **Anti-Discrimination Amendment (Carers' Responsibilities) Bill 2000**

No. , 2000

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## **A Bill for**

An Act to amend the *Anti-Discrimination Act 1977* so as to prohibit discrimination on the ground of a person's responsibilities as a carer; and for other purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Anti-Discrimination Amendment (Carers' Responsibilities) Act 2000</i> .	3 4
<b>2 Commencement</b>	5
This Act commences on a day or days to be appointed by proclamation.	6 7
<b>3 Amendment of Anti-Discrimination Act 1977 No 48</b>	8
The <i>Anti-Discrimination Act 1977</i> is amended as set out in Schedule 1.	9

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**Schedule 1 Amendments**

1

(Section 3)

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**[1] Part 4B (sections 49S–49ZC)**

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Insert after section 49R:

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**Part 4B Discrimination on the ground of a person's responsibilities as a carer**

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**Division 1 General**

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**49S Meaning of "responsibilities as a carer"**

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(1) A reference in this Part to a person's *responsibilities as a carer* is a reference to the person's responsibilities to care for or support:

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(a) any child or step-child of the person (whether or not under the age of 18 years) who is:

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(i) wholly or substantially dependent on the person, or

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(ii) in need of care or support, or

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(b) any child or adult who is in need of care or support and:

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(i) of whom the person is guardian, or

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(ii) for whom the person has parental responsibility under a law of the Commonwealth or this State, or

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(iii) in relation to whom the person is an authorised carer within the meaning of the *Children and Young Persons (Care and Protection) Act 1998*, or

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(c) any immediate family member of the person who is in need of care or support, being one of the following:

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(i) a spouse or former spouse of the person or of a spouse or former spouse of the person,

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(ii) a grandchild or step-grandchild of the person or of a spouse or former spouse of the person,

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- (iii) a parent or step-parent of the person or of a spouse or former spouse of the person, 1
  - (iv) a grandparent or step-grandparent of the person or of a spouse or former spouse of the person, 2
  - (v) a brother or sister, or step-brother or sister, of the person or of a spouse or former spouse of the person. 3
- (2) A reference in this Part to a person's responsibilities is a reference to responsibilities: 4
- (a) that the person has, or 5
  - (b) that the person is thought to have (whether or not the person in fact has the responsibilities), or 6
  - (c) that the person had in the past, or is thought to have had in the past (whether or not the person in fact had the responsibilities), or 7
  - (d) that the person will have in the future, or that it is thought a person will have in the future (whether or not the person in fact will have the responsibilities). 8
- (3) In this section: 9
- de facto relationship*** has the same meaning as in the *Property (Relationships) Act 1984*. 10
- spouse*** of a person means: 11
- (a) the husband or wife of a person, or 12
  - (b) the other party to a de facto relationship with a person. 13
- step-child*** or ***step-grandchild*** of a person means: 14
- (a) a child or grandchild of the spouse or former spouse of the person, or 15
  - (b) a step-child or step-grandchild of the spouse or former spouse of the person (being a child or grandchild of the spouse's former spouse). 16
- (4) A reference in this section to a child, step-child, grandchild, step-grandchild, parent, step-parent, grandparent, step-grandparent, brother, sister, step-brother or step-sister of a person or of a spouse or former spouse of a person: 17

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(a)	includes a reference to persons whose relationship arises because of adoption, guardianship or fostering or because of the allocation of parental responsibility under a law of the Commonwealth or this State, and	1 2 3 4
(b)	includes a reference to persons whose relationship arises because of the birth of a child whose parents are not married to each other and are not parties to a de facto relationship with each other, and	5 6 7 8
(c)	in relation a reference to a brother or sister, includes a reference to a half-brother or half-sister.	9 10
<b>49T</b>	<b>What constitutes discrimination on the ground of a person's responsibilities as a carer</b>	11 12
(1)	A person ( <i>the perpetrator</i> ) discriminates against another person ( <i>the aggrieved person</i> ) on the ground of the aggrieved person's responsibilities as a carer if, on the ground of the aggrieved person having responsibilities as a carer, the perpetrator:	13 14 15 16 17
(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 does not have those responsibilities, or	18 19 20 21
(b)	requires the aggrieved person to comply with a requirement or condition with which a substantially higher proportion of persons who do not have such responsibilities comply or are able to comply, being a requirement that 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.	22 23 24 25 26 27 28
(2)	For the purposes of subsection (1) (a), something is done on the ground of a person's responsibilities as a carer if it is done on the ground of the person having responsibilities as a carer, a characteristic that appertains generally to persons who have responsibilities as a carer or a characteristic that is generally imputed to persons who have responsibilities as a carer.	29 30 31 32 33 34

<b>49U</b>	<b>What constitutes unjustifiable hardship</b>	1
	In determining what constitutes unjustifiable hardship for the purposes of this Part, all relevant circumstances of the particular case are to be taken into account, including:	2
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	(a) the nature of the benefit or detriment likely to accrue to or be suffered by any persons concerned, and	5
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	(b) the effect of the relevant responsibilities as a carer of a person concerned, and	7
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	(c) the financial circumstances of and the estimated amount of expenditure required to be made by the person claiming unjustifiable hardship.	9
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		11
<b>Division 2</b>	<b>Discrimination in work</b>	12
<b>49V</b>	<b>Discrimination against applicants and employees</b>	13
	(1) It is unlawful for an employer to discriminate against a person on the ground of the person's responsibilities as a carer:	14
		15
	(a) in the arrangements the employer makes for the purpose of determining who should be offered employment, or	16
		17
	(b) in determining who should be offered employment, or	18
	(c) in the terms on which the employer offers employment.	19
	(2) It is unlawful for an employer to discriminate against an employee on the ground of the employee's responsibilities as a carer:	20
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	(a) in the terms or conditions of employment that the employer affords the employee, or	23
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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	25
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	(c) by dismissing the employee, or	29
	(d) by subjecting the employee to any other detriment.	30
	(3) Subsections (1) and (2) do not apply to employment:	31
	(a) for the purposes of a private household, or	32

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(b)	if the number of persons employed by the employer, disregarding any persons employed within the employer's private household, does not exceed 5.	1 2 3
(4)	Nothing in subsection (1) (b) or (2) (c) renders unlawful discrimination by an employer against a person on the ground of the person's responsibilities as a carer if taking into account the person's past training, qualifications and experience relevant to the particular employment and, if the person is already employed by the employer, the person's performance as an employee, and all other relevant factors that it is reasonable to take into account, the person because of his or her responsibilities as a carer:	4 5 6 7 8 9 10 11 12
(a)	would be unable to carry out the inherent requirements of the particular employment, or	13 14
(b)	would, in order to carry out those requirements, require arrangements that are not required by persons without those responsibilities as a carer and the making of which would impose an unjustifiable hardship on the employer.	15 16 17 18 19
(5)	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 firstmentioned corporation, is a related body corporate within the meaning of the <i>Corporations Law</i> .	20 21 22 23 24
<b>49W</b>	<b>Discrimination against commission agents</b>	25
(1)	It is unlawful for a principal to discriminate against a person on the ground of the person's responsibilities as a carer:	26 27
(a)	in the arrangements the principal makes for the purpose of determining who should be engaged as a commission agent, or	28 29 30
(b)	in determining who should be engaged as a commission agent, or	31 32
(c)	in the terms on which the principal engages the person as a commission agent.	33 34
(2)	It is unlawful for a principal to discriminate against a commission agent on the ground of his or her responsibilities as a carer:	35 36 37

Schedule 1 Amendments

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(a)	in the terms or conditions that the principal affords him or her as a commission agent, or	1 2
(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	3 4 5 6 7
(c)	by terminating the commission agent's engagement, or	8
(d)	by subjecting the commission agent to any other detriment.	9 10
(3)	Nothing in subsection (1) (b) or (2) (c) renders unlawful discrimination by a principal against a person on the ground of the person's responsibilities as a carer if taking into account the person's past training, qualifications and experience relevant to engagement as a commission agent and, if the person is already engaged by the principal as a commission agent, the person's performance as a commission agent, and all other relevant factors that it is reasonable to take into account, the person because of his or her responsibilities as a carer:	11 12 13 14 15 16 17 18 19
(a)	would be unable to carry out the inherent requirements of a commission agent, or	20 21
(b)	would, in order to carry out those requirements, require arrangements that are not required by persons without those responsibilities as a carer and the making of which would impose an unjustifiable hardship on the principal.	22 23 24 25
<b>49X</b>	<b>Discrimination against contract workers</b>	26
(1)	It is unlawful for a principal to discriminate against a contract worker on the ground of his or her responsibilities as a carer:	27 28
(a)	in the terms on which the principal allows the contract worker to work, or	29 30
(b)	by not allowing the contract worker to work or continue to work, or	31 32
(c)	by denying the contract worker access, or limiting the contract worker's access, to any benefit associated with the work in respect of which the contract with his or her employer is made, or	33 34 35 36
(d)	by subjecting the contract worker to any other detriment.	37

- (2) Nothing in subsection (1) (b) renders unlawful discrimination by a principal against a contract worker on the ground of the contract worker's responsibilities as a carer if taking into account the contract worker's past training, qualifications and experience relevant to working as a contract worker and, if the contract worker is already working for the principal as a contract worker, the worker's performance as a contract worker, and all other relevant factors that it is reasonable to take into account, the contract worker because of his or her responsibilities as a carer:
- (a) would be unable to carry out the inherent requirements of a contract worker, or
  - (b) would, in order to carry out those requirements, require arrangements that are not required by persons without those responsibilities as a carer and the making of which would impose an unjustifiable hardship on the principal.
- 49Y Partnerships**
- (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 his or her responsibilities as a carer:
- (a) in the arrangements made for the purpose of determining who should be offered a position as partner in the firm, or
  - (b) in determining who should be offered a position as partner in the firm, or
  - (c) in the terms on which the person is offered a position as partner in the firm.
- (2) It is unlawful for a firm consisting of 6 or more partners to discriminate against a partner on the ground of his or her responsibilities as a carer:
- (a) by denying the partner access, or limiting the partner's access, to any benefit arising from membership of the firm, or
  - (b) by expelling the partner from the firm, or
  - (c) by subjecting the partner to any other detriment.

<p>(3) Nothing in subsection (1) (b) or (2) (b) renders unlawful discrimination by one person against another person on the ground of the person's responsibilities as a carer if taking into account the person's past training, qualifications and experience relevant to the proposed partnership or the partnership and, if the other person is already a partner, the other person's performance as a partner, and all other relevant factors that it is reasonable to take into account, the other person because of his or her responsibilities as a carer:</p> <p>(a) would be unable to carry out the inherent requirements of a partner in the proposed partnership or the partnership, or</p> <p>(b) would, in order to carry out those requirements, require arrangements that are not required by persons without those responsibilities as a carer and the making of which would impose an unjustifiable hardship on the other partners.</p> <p><b>49Z Discrimination by local government councillors</b></p> <p>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 his, her or their official functions to discriminate against another member of the council on the ground of his or her responsibilities as a carer.</p> <p><b>49ZA Industrial organisations</b></p> <p>(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 his or her responsibilities as a carer:</p> <p>(a) by refusing or failing to accept the person's application for membership, or</p> <p>(b) in the terms on which it is prepared to admit the person to membership.</p> <p>(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 his or her responsibilities as a carer:</p> <p>(a) by denying the person access, or limiting the person's access, to any benefit provided by the organisation, or</p>	<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>29</p> <p>30</p> <p>31</p> <p>32</p> <p>33</p> <p>34</p> <p>35</p> <p>36</p> <p>37</p>
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(b)	by depriving the person of membership or varying the terms of the person's membership, or	1 2
(c)	by subjecting the person to any other detriment.	3
(3)	Nothing in subsection (2) (a) renders it unlawful to discriminate against a person on the ground of the person's responsibilities as a carer where, because of the person's responsibilities as a carer, the person requires the benefit to be provided in a special manner and the benefit cannot be provided in that manner by the industrial organisation without unjustifiable hardship to it.	4 5 6 7 8 9
<b>49ZB</b>	<b>Qualifying bodies</b>	10
(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 his or her responsibilities as a carer:	11 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
(2)	Nothing in subsection (1) (a) or (c) renders unlawful discrimination by an authority or body against a person on the ground of the person's responsibilities as a carer if taking into account:	24 25 26 27
(a)	the person's past training, qualifications and experience relevant to the particular profession, trade or occupation, and	28 29 30
(b)	if the person is already a member of the profession, carrying on the trade or engaged in the occupation, the person's performance in the profession, trade or occupation, and	31 32 33 34
(c)	all other relevant factors that it is reasonable to take into account,	35 36



the person because of his or her responsibilities as a carer 1  
would be unable to carry out the inherent requirements of the 2  
profession, trade or occupation. 3

**49ZC Employment agencies** 4

- (1) It is unlawful for an employment agency to discriminate against 5  
a person on the ground of his or her responsibilities as a carer: 6
- (a) by refusing to provide the person with any of its 7  
services, or 8
  - (b) in the terms on which it offers to provide the person 9  
with any of its services, or 10
  - (c) in the manner in which it provides the person with any 11  
of its services. 12
- (2) Nothing in this section renders unlawful discrimination by an 13  
employment agency against a person on the ground of the 14  
person's responsibilities as a carer if, taking into account the 15  
person's past training, qualifications and experience relevant to 16  
the particular work sought, and all other relevant factors that it 17  
is reasonable to take into account, the person because of his or 18  
her responsibilities as a carer would be unable to carry out the 19  
inherent requirements of the work sought. 20

**[2] Schedule 1 Savings and transitional provisions** 21

Omit clause 1 (1). Insert instead: 22

- (1) The regulations may include provisions of a savings or 23  
transitional nature consequent on the enactment of the 24  
following Acts: 25

*Anti-Discrimination (Amendment) Act 1994* 26

*Anti-Discrimination Amendment (Carers' Responsibilities) Act* 27  
*2000* 28

**[3] Schedule 1, clause 1 (2)** 29

Omit "that Act". Insert instead "the Act concerned". 30

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<b>[4] Schedule 1, Part 4</b>	1
Insert after Part 3:	2
<b>Part 4 Anti-Discrimination Amendment (Carers' Responsibilities) Act 2000</b>	3
	4
<b>13 Operation of amendment</b>	5
(1) Part 4B does not apply to or in respect of anything done or omitted to be done before the commencement of Schedule 1 [1] to the amending Act.	6 7 8
(2) This Act continues to apply to anything done or omitted to be done before the commencement of Schedule 1 [1] to the amending Act as if Part 4B had not been enacted. In particular, the insertion of Part 4B by the amending Act does not affect any complaint lodged on a ground of unlawful discrimination before the commencement of Schedule 1 [1] to the amending Act.	9 10 11 12 13 14 15
(3) In this clause:	16
<i>the amending Act</i> means the <i>Anti-Discrimination Amendment (Carers' Responsibilities) Act 2000</i> .	17 18