

N. S. W.

ANTI-DISCRIMINATION BILL, 1976

EXPLANATORY NOTE

THE objects of this Bill are to render unlawful discrimination on the grounds of race, sex, marital status, age, religious or political conviction, physical handicap or condition, mental disability and homosexuality in certain circumstances and to promote equality of opportunity between all persons.

Part I contains preliminary provisions relating to the short title, commencement, division in parts and interpretation of the proposed Act. The Part provides that the proposed Act binds the Crown.

Part II relates to racial discrimination. In relation to work, the Part renders unlawful discrimination on the ground of race between employers and employees or applicants for employment, principals and commission agents, principals and contract workers, partners of a firm and their fellow partners or prospective partners, trade unions and members or applicants for membership of trade unions, qualifying bodies and persons seeking to have or having qualifications conferred on them by those qualifying bodies and employment agencies and persons seeking employment.

The Part does not apply to work in respect of which being a member of a particular race is a genuine occupational qualification, employment intended to provide a person with training in skills to be exercised outside New South Wales or the employment on a ship or aircraft of a person who was engaged for that employment outside New South Wales.

In relation to other areas, the Part renders unlawful discrimination on the ground of race in education, in the use of public places, vehicles and associated facilities, in the provision of goods and services and in access to accommodation.

Nothing in the Part applies to the provision of services required to meet the special needs of persons of a particular race or the selection, by reference only to their nationality, place of birth or length of residence, of persons for national sporting bodies.

Part III relates to sex discrimination. In relation to work, the Part renders unlawful discrimination on the ground of sex in circumstances which are almost identical with those dealt with in Part II in relation to racial discrimination.

The Part does not apply to work in respect of which being a member of a particular sex is a genuine occupational qualification.

In relation to other areas, the Part renders unlawful discrimination on the ground of sex in education, in access to places (other than clubs) where liquor is sold, in the provision of goods and services and in access to accommodation.

Nothing in the Part applies to privileges granted to a woman in connection with pregnancy or childbirth, to rates of salary, superannuation and insurance or to participation in sporting activities.

Part IV relates to discrimination on the ground of marital status. In relation to work, the Part renders unlawful discrimination on the ground of marital status in circumstances which are almost identical with those dealt with in Part II in relation to racial discrimination.

The Part does not apply in respect of a job which is one of two to be held by a married couple.

In relation to other areas, the Part renders unlawful discrimination on the ground of marital status in the provision of services and in access to accommodation.

Nothing in the Part applies to rates of salary or superannuation.

Part V relates to discrimination on the grounds of age, religious or political conviction, physical handicap or condition, mental disability or homosexuality.

The Part provides for the making of regulations to specify the circumstances in which discrimination on a ground referred to in the Part is unlawful or is not unlawful.

Part VI provides that certain other acts are unlawful. These acts include the victimisation of a person involved in the enforcement of the proposed Act, the publication of certain advertisements and the aiding of unlawful acts. Principals and employers are made liable for the acts of their agents and employees in certain circumstances.

Part VII provides for a number of general exceptions from Parts II to V. The exceptions relate to acts done in compliance with other Acts or orders of a court or the Anti-Discrimination Board, the provisions of deeds, wills and other instruments conferring charitable benefits, the practice of religious bodies and the activities of registered clubs and voluntary associations.

Part VIII creates the office of Counsellor for Equal Opportunity and makes provision with respect to his appointment, term of office, vacation of office, removal from office and remuneration.

Part IX provides for the constitution of the Anti-Discrimination Board. The Part provides for the appointment of the 3 members who comprise the Board, their term of office, vacation of office, removal from office and remuneration. The Part provides also for the appointment of a member as President of the Board and for the appointment of an acting President and alternate members. The President of the Board shall be a judge of the District Court of New South Wales, a member of the Workers' Compensation Commission of New South Wales or a person who is qualified for appointment as such a judge or member.

Part X specifies the powers, authorities, duties and functions of the Counsellor for Equal Opportunity and the Anti-Discrimination Board.

The functions of the Counsellor relate to the investigation and settlement of complaints of unlawful discriminatory conduct and the reference of certain of those complaints to the Board.

The functions of the Board relate to the holding of inquiries into and the determination of complaints. The Board's functions extend to enable it to inquire into and determine complaints made by one or more persons as the representative or representatives of a class of persons. In determining a complaint, the Board may award damages not exceeding \$20,000 or order a person whose conduct is the subject of the complaint to refrain from doing any act or performing any course of conduct or to do an act or perform a course of conduct by way of redress.

An appeal lies from any order or decision of the Board to the Supreme Court of New South Wales.

Other functions of the Board relate to the development of human rights programmes and policies.

Part XI provides for a number of miscellaneous matters including the conferring of power on the Minister to grant exemption from the provisions of the proposed Act for periods not exceeding 5 years and the amendment of the Defamation Act, 1974, to provide a defence of absolute privilege in respect of publication to or by the Counsellor, the Board or their officers of reports made for the purpose of the execution or administration of the proposed Act.
