

**ANTI-DISCRIMINATION (RACIAL VILIFICATION)
AMENDMENT ACT 1989 No. 48**

NEW SOUTH WALES



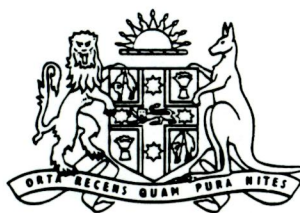
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SCHEDULE 1—AMENDMENTS

**ANTI-DISCRIMINATION (RACIAL VILIFICATION) AMENDMENT
ACT 1989 No. 48**

NEW SOUTH WALES



Act No. 48, 1989

An Act to amend the Anti-Discrimination Act 1977 to render vilification on the ground of race unlawful and to create an offence of serious racial vilification; and for other purposes. [Assented to 17 May 1989]

Anti-Discrimination (Racial Vilification) Amendment 1989

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Anti-Discrimination (Racial Vilification) Amendment Act 1989.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Anti-Discrimination Act 1977 No. 48

3. The Anti-Discrimination Act 1977 is amended as set out in Schedule 1.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Part 2, Division 3A—

After Division 3, insert:

Division 3A—Racial vilification

Definition of “public act”

20B. In this Division, “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 race of the person or members of the group.

Racial vilification unlawful

20C. (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 race of the person or members of the group.

*Anti-Discrimination (Racial Vilification) Amendment 1989*SCHEDULE 1—AMENDMENTS—*continued*

(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 Defamation Act 1974 or which is otherwise subject to a defence of absolute privilege in proceedings for defamation; or
- (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 about and expositions of any act or matter.

Offence of serious racial vilification

20D. (1) A person shall not, by a public act, incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the race of the person or members of the group by means which include—

- (a) threatening physical harm towards, or towards any property of, the person or group of persons; or
- (b) inciting others to threaten physical harm towards, or towards any property of, the person or group of persons.

Maximum penalty:

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

In the case of a corporation—100 penalty units.

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

(2) Section 87 (**Definitions**)—

After the definition of "Court", insert:

"racial vilification complaint" means a complaint in respect of a contravention of section 20C;

"representative body" means a body (whether incorporated or unincorporated) which represents or purports to represent a racial group of people within New South Wales (whether or not the body is authorised to do so by the group concerned) and which has as its primary object the promotion of the interests and welfare of the group;

Anti-Discrimination (Racial Vilification) Amendment 1989

SCHEDULE 1—AMENDMENTS—*continued*

(3) Section 88 (**Making of complaints**)—

Omit section 88 (1), insert instead:

(1) Except as provided by this section, a complaint in writing in respect of any contravention of this Act or the regulations which is alleged to have been committed by a person (other than a contravention in respect of which a specific penalty is imposed) may be lodged with the President by—

- (a) a person on the person's own behalf; or
- (b) a person on the person's own behalf and on behalf of another person or other persons; or
- (c) 2 or more persons on their own behalf; or
- (d) 2 or more persons on their own behalf and on behalf of another person or other persons.

(1A) A racial vilification complaint in writing may be lodged with the President—

- (a) in accordance with subsection (1), but only if the person or persons on whose behalf the complaint is lodged is a member, or are members, of the racial group concerned; or
- (b) by a representative body on behalf of a named person who is a member, or named persons who are members, of the racial group concerned.

(1B) If a racial vilification complaint is lodged by a representative body on behalf of a named person or persons, the body must show that the person or persons has or have consented to the lodging of the complaint.

(1C) Despite any other provision of this Act, the President may require a representative body which has lodged a racial vilification complaint to nominate a person to appear for the representative body in conciliation proceedings concerning the complaint before the President.

(4) Section 89B—

After section 89A, insert:

Prosecution for serious racial vilification

89B. (1) The President—

- (a) after investigating a racial vilification complaint; and
- (b) before endeavouring to resolve the complaint by conciliation.

shall consider whether an offence may have been committed under section 20D in respect of the matter the subject of the complaint.

*Anti-Discrimination (Racial Vilification) Amendment 1989*SCHEDULE 1—AMENDMENTS—*continued*

(2) If the President considers that an offence may have been committed under section 20D, the President shall refer the complaint to the Attorney General.

(3) The President may only make such a referral within 28 days after receipt of the complaint.

(4) On making the referral, the President shall, by notification in writing addressed to the complainant, advise the complainant of—

- (a) the making of the referral; and
- (b) the rights of the complainant under section 91 (1).

(5) Despite section 96, the Tribunal may stay an inquiry into the complaint until the conclusion of proceedings for the alleged offence under section 20D.

(5) Section 91 (**Reference of complaint to Tribunal at requirement of complainant**)—

Section 91 (1)—

After “section”, insert “89B (4) or”.

(6) Section 113 (**Order or other decision of the Tribunal**)—

(a) After section 113 (b) (iii), insert:

(iia) in respect of a racial vilification complaint, order the respondent to publish an apology in respect of the matter the subject of the complaint or order the respondent to publish a retraction in respect of the matter (or order both) and, as part of the order, give directions concerning the time, form, extent and manner of publication of the apology or retraction (or both);

(iib) in respect of a racial vilification complaint, order the respondent to develop and implement a program or policy aimed at eliminating unlawful discrimination;

(b) At the end of section 113, insert:

(2) The power of the Tribunal to award damages to a complainant shall, in the case of a racial vilification complaint lodged by a representative body, be taken to be a power to award damages to the person or persons on behalf of whom the complaint is lodged and not to include a power to award damages to the representative body.

Anti-Discrimination (Racial Vilification) Amendment 1989

SCHEDULE 1—AMENDMENTS—*continued*

(3) In making an order for damages under this section concerning a racial vilification complaint lodged on behalf of a person or persons, the Tribunal—

- (a) except as provided by paragraph (b), may make such order as it thinks fit as to the application of those damages for the benefit of the person or persons; and
- (b) shall not, if 2 or more complaints are made in respect of the same public act of the respondent and those complaints are found to be substantiated, make an order or orders that would cause the respondent to pay more than \$40,000 in the aggregate in respect of that public act.

(7) Section 116 (**Compliance with order of the Tribunal**)—

Omit “or (iii)”, insert instead “, (iii), (iiia) or (iiib)”.

(8) Section 125—

Omit the section, insert instead:

Proceedings for offences

125. Proceedings for an offence against this Act or the regulations shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

[*Minister's second reading speech made in—
Legislative Assembly on 3 May 1989
Legislative Council on 10 May 1989*]

ANTI-DISCRIMINATION (RACIAL VILIFICATION) AMENDMENT BILL 1989

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Anti-Discrimination Act 1977 to enact provisions relating to racial vilification. Racial vilification is expressed to occur when a person, by a public act, incites hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the race of the person or members of the group, subject to certain qualifications.

The Bill—

- (a) makes it unlawful for a person to vilify another person or a group of persons on the ground of race and, consequently, enables a complaint to be made under the Principal Act concerning the racial vilification; and
- (b) enables a person to be prosecuted for an offence in a serious case of racial vilification involving threatened violence (including inciting others to threaten violence); and
- (c) provides for the making, under the Principal Act, of racial vilification complaints.

Clause 1 specifies 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 gives effect to the Schedule of amendments to the Principal Act.

SCHEDULE 1—AMENDMENTS

Schedule 1 (1) inserts a new Division 3A into Part 2 of the Principal Act. The proposed Division contains sections 20B–20D.

Anti-Discrimination (Racial Vilification) Amendment 1989

Definition of "public act"

Proposed section 20B defines the term "public act" for the purposes of the new Division. "Public act" includes spoken and written communications to the public, actions and gestures observable by the public, the wearing or displaying in public of signs and emblems and the distribution of matter to the public with knowledge that the matter vilifies a person or group on the ground of race.

Racial vilification unlawful

Proposed section 20C makes it unlawful for a person to engage in racial vilification. The proposed section is subject to a number of exceptions, including the fair reporting of acts of racial vilification, the communication or publication of matter subject to a defence of absolute privilege in proceedings for defamation and a public act done reasonably and in good faith in the public interest. The proposed section will enable complaints to be made to the President of the Anti-Discrimination Board. Those complaints may then be dealt with in accordance with the procedures set out in the Principal Act for dealing with complaints relating to other forms of unlawful discrimination.

Offence of serious racial vilification

Proposed section 20D provides that racial vilification involving threatened violence (including inciting others to threaten violence) constitutes a summary offence, punishable, in the case of an individual, by a maximum penalty of 10 penalty units or imprisonment for 6 months, or both, and, in the case of a corporation, by a maximum penalty of 100 penalty units. A person may only be prosecuted for the offence with the Attorney General's consent.

Schedule 1 (8) replaces section 125 (Recovery of penalties) with a new section as a consequence of the proposed penalty of imprisonment for the offence.

Complaints by representative bodies

Schedule 1 (2) amends section 87 to define the terms "racial vilification complaint" and "representative body".

Schedule 1 (3) amends section 88 to enable a body which represents a racial group to lodge a racial vilification complaint on behalf of one or more named persons who are members of that racial group. Such a complaint may only be lodged with the consent of the person or persons.

Prosecution for serious racial vilification

Schedule 1 (4) inserts a new section 89B. The new section requires the President of the Anti-Discrimination Board to refer a complaint to the Attorney General if, after investigating the complaint, the President considers that the offence of serious racial vilification may have been committed. The President is required to notify the complainant of the referral and the complainant retains the right to require the President to refer the complaint to the Equal Opportunity Tribunal. The Tribunal may delay holding an inquiry into the complaint until any proceedings for the alleged offence of serious racial vilification have been completed.

Schedule 1 (5) amends section 91 as a consequence of the insertion of proposed section 89B.

Anti-Discrimination (Racial Vilification) Amendment 1989

Orders of the Tribunal

Schedule 1 (6) amends section 113 to enable the Tribunal, after holding an inquiry into a racial vilification complaint, to order a respondent to publish an apology or retraction. The Tribunal may also order a respondent to develop and implement a program aimed at eliminating unlawful discrimination. These orders are in addition to those currently provided for in section 113.

In the case of a racial vilification complaint by a representative body, the Tribunal may award damages under section 113 to the person or persons on behalf of whom the complaint is lodged. The Tribunal may not award damages to the representative body which lodged the complaint.

Schedule 1 (7) amends section 116 as a consequence of the amendment to section 113.



**ANTI-DISCRIMINATION (RACIAL VILIFICATION)
AMENDMENT BILL 1989**

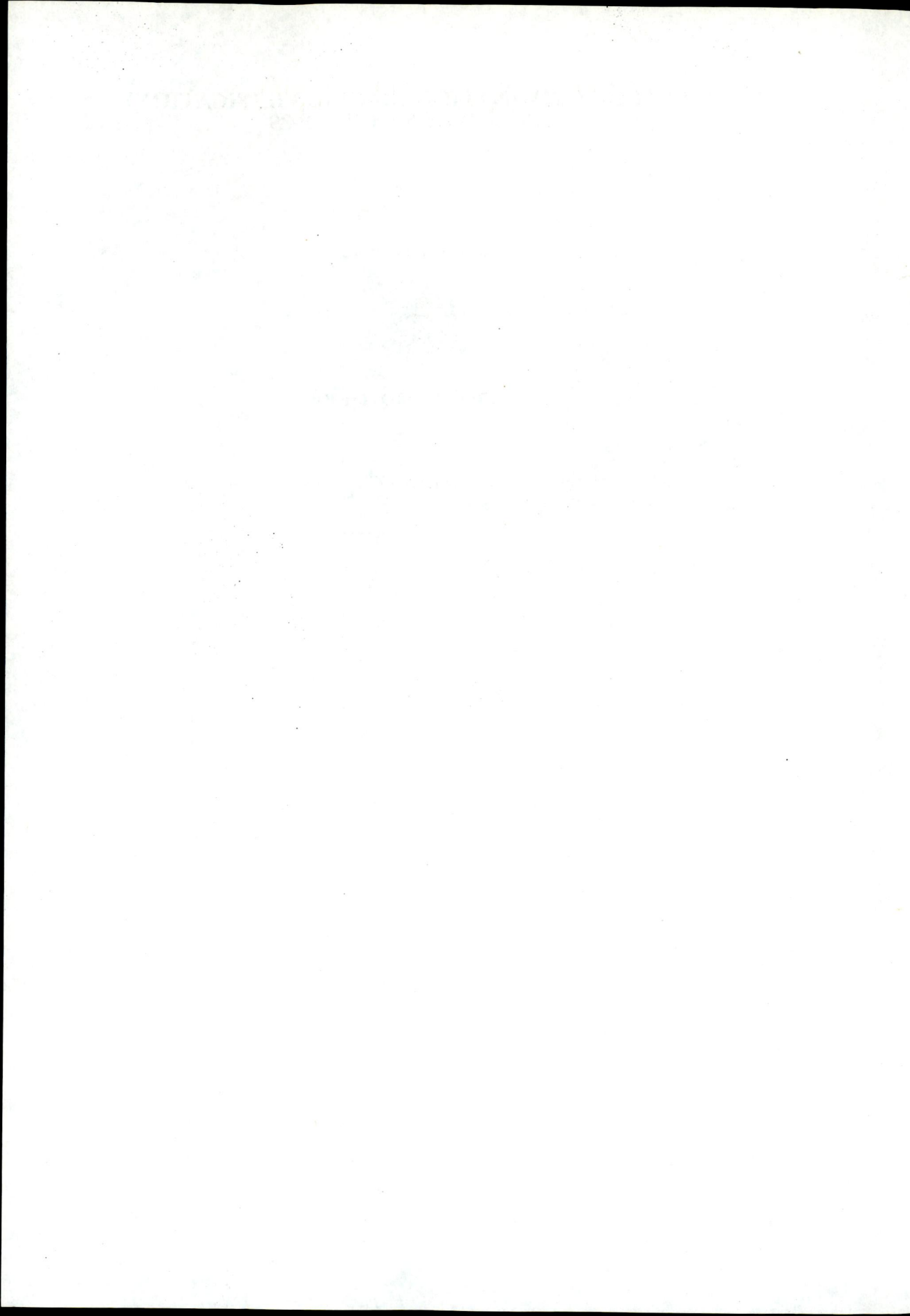
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SCHEDULE 1—AMENDMENTS



**ANTI-DISCRIMINATION (RACIAL VILIFICATION)
AMENDMENT BILL 1989**

NEW SOUTH WALES



No. , 1989

A BILL FOR

An Act to amend the Anti-Discrimination Act 1977 to render vilification on the ground of race unlawful and to create an offence of serious racial vilification; and for other purposes.

*Anti-Discrimination (Racial Vilification) Amendment 1989***The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the Anti-Discrimination (Racial Vilification) Amendment Act 1989.

5 Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Anti-Discrimination Act 1977 No. 48

10 1. 3. The Anti-Discrimination Act 1977 is amended as set out in Schedule

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Part 2, Division 3A—

After Division 3, insert:

15

Division 3A—Racial vilification**Definition of “public act”**

20B. In this Division, “public act” includes—

- 20 (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
- 25 (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
- 30 (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 race of the person or members of the group.

Racial vilification unlawful

35 20C. (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 race of the person or members of the group.

SCHEDULE 1—AMENDMENTS—*continued*

(2) Nothing in this section renders unlawful—

(a) a fair report of a public act referred to in subsection (1);
or

5 (b) a communication or the distribution or dissemination of any matter comprising a publication referred to in Division 3 of Part 3 of the Defamation Act 1974 or which is otherwise subject to a defence of absolute privilege in proceedings for defamation; or

10 (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 about and expositions of any act or matter.

Offence of serious racial vilification

15 20D. (1) A person shall not, by a public act, incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the race of the person or members of the group by means which include—

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

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

Maximum penalty:

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

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

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

(2) Section 87 (**Definitions**)—

30 After the definition of “Court”, insert:

“racial vilification complaint” means a complaint in respect of a contravention of section 20C;

35 “representative body” means a body (whether incorporated or unincorporated) which represents or purports to represent a racial group of people within New South Wales (whether or not the body is authorised to do so by the group concerned) and which has as its primary object the promotion of the interests and welfare of the group;

SCHEDULE 1—AMENDMENTS—*continued*(3) Section 88 (**Making of complaints**)—

Omit section 88 (1), insert instead:

(1) Except as provided by this section, a complaint in writing in respect of any contravention of this Act or the regulations which is alleged to have been committed by a person (other than a contravention in respect of which a specific penalty is imposed) may be lodged with the President by—

- (a) a person on the person's own behalf; or
- (b) a person on the person's own behalf and on behalf of another person or other persons; or
- (c) 2 or more persons on their own behalf; or
- (d) 2 or more persons on their own behalf and on behalf of another person or other persons.

(1A) A racial vilification complaint in writing may be lodged with the President—

- (a) in accordance with subsection (1), but only if the person or persons on whose behalf the complaint is lodged is a member, or are members, of the racial group concerned; or
- (b) by a representative body on behalf of a named person who is a member, or named persons who are members, of the racial group concerned.

(1B) If a racial vilification complaint is lodged by a representative body on behalf of a named person or persons, the body must show that the person or persons has or have consented to the lodging of the complaint.

(1C) Despite any other provision of this Act, the President may require a representative body which has lodged a racial vilification complaint to nominate a person to appear for the representative body in conciliation proceedings concerning the complaint before the President.

(4) Section 89B—

After section 89A, insert:

Prosecution for serious racial vilification

89B. (1) The President—

- (a) after investigating a racial vilification complaint; and
- (b) before endeavouring to resolve the complaint by conciliation,

shall consider whether an offence may have been committed under section 20D in respect of the matter the subject of the complaint.

*Anti-Discrimination (Racial Vilification) Amendment 1989*SCHEDULE 1—AMENDMENTS—*continued*

(2) If the President considers that an offence may have been committed under section 20D, the President shall refer the complaint to the Attorney General.

5 (3) The President may only make such a referral within 28 days after receipt of the complaint.

(4) On making the referral, the President shall, by notification in writing addressed to the complainant, advise the complainant of—

- 10 (a) the making of the referral; and
 (b) the rights of the complainant under section 91 (1).

(5) Despite section 96, the Tribunal may stay an inquiry into the complaint until the conclusion of proceedings for the alleged offence under section 20D.

15 (5) Section 91 (**Reference of complaint to Tribunal at requirement of complainant**)—

Section 91 (1)—

After “section”, insert “89B (4) or”.

(6) Section 113 (**Order or other decision of the Tribunal**)—

20 (a) After section 113 (b) (iii), insert:
 (iiia) in respect of a racial vilification complaint, order the respondent to publish an apology in respect of the matter the subject of the complaint or order the respondent to publish a retraction in respect of the matter (or order both) and, as part of the order, give directions concerning the time, form, extent and manner of publication of the apology or retraction (or both);

25 (iiib) in respect of a racial vilification complaint, order the respondent to develop and implement a program or policy aimed at eliminating unlawful discrimination;

30 (b) At the end of section 113, insert:

35 (2) The power of the Tribunal to award damages to a complainant shall, in the case of a racial vilification complaint lodged by a representative body, be taken to be a power to award damages to the person or persons on behalf of whom the complaint is lodged and not to include a power to award damages to the representative body.

Anti-Discrimination (Racial Vilification) Amendment 1989

SCHEDULE 1—AMENDMENTS—*continued*

(3) In making an order for damages under this section concerning a racial vilification complaint lodged on behalf of a person or persons, the Tribunal—

5 (a) except as provided by paragraph (b), may make such order as it thinks fit as to the application of those damages for the benefit of the person or persons; and

10 (b) shall not, if 2 or more complaints are made in respect of the same public act of the respondent and those complaints are found to be substantiated, make an order or orders that would cause the respondent to pay more than \$40,000 in the aggregate in respect of that public act.

(7) Section 116 (**Compliance with order of the Tribunal**)—

Omit “or (iii)”, insert instead “, (iii), (iia) or (iib)”.

(8) Section 125—

15 Omit the section, insert instead:

Proceedings for offences

125. Proceedings for an offence against this Act or the regulations shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.
