

FIRST PRINT

ANTI-DISCRIMINATION (AMENDMENT) BILL 1991

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 so as to make it unlawful for persons to discriminate against others on the ground of their age. Although Part 4E of the Act (which makes it unlawful to compulsorily retire certain persons on the ground of age) will be consequentially repealed, the substance of that Part will be incorporated in proposed Part 4D.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the proposed Act to commence on 1 January 1992.

Clause 3 gives effect to the Schedule of amendments to the Anti-Discrimination Act 1977.

SCHEDULE 1—AMENDMENTS

Schedule 1 (1) inserts in the Act proposed Part 4D. The proposed Part, which deals with discrimination against persons on the ground of their age or their belonging to a particular age group, contains the following provisions:

Division 1—General

Proposed section 49ZS defines certain expressions used in the Part.

Proposed section 49ZT provides that, except for Division 2 of the proposed Part, the provisions of that Part are to apply to and in respect of all persons as from 1 January 1992. The provisions of Division 2 (which relate to discrimination in work) will apply to most employees in, or seeking employment in, the public sector as from that date and will apply to all other persons employed in, or seeking employment in, the public sector and to all persons employed in, or seeking employment in, the private sector as from 1 January 1993.

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Proposed section 49ZTA specifies the circumstances in which a person discriminates against another person on the ground of the person's age.

Division 2—Discrimination in work

Proposed section 49ZTB will render it unlawful for an employer to discriminate against an employee or an applicant for employment on the ground of age.

Proposed section 49ZTC will render it unlawful for a principal to discriminate against a commission agent or a prospective commission agent on the ground of age.

Proposed section 49ZTD will render it unlawful for a principal to discriminate against a contract worker or prospective contract worker on the ground of age.

Proposed section 49ZTE will render 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 a prospective partner on the ground of age.

Proposed section 49ZTF will render it unlawful for a trade union to discriminate against a member of a trade union or an applicant for membership on the ground of age.

Proposed section 49ZTG will render it unlawful, on the ground of age, for an authority or body which is empowered to confer, extend or renew a professional, trade or other occupational qualification to discriminate against a person who holds or who seeks to hold that qualification.

Proposed section 49ZTH will render it unlawful for an employment agency, on the ground of age, to discriminate against a person who seeks the services of the agency.

Proposed section 49ZTI provides that, except where exceptions are prescribed by the regulations, a provision of any Act or statutory instrument relating to the employment of a person in the public sector which would require the person to retire from that employment on or after reaching a specified age will be of no effect. The proposed section will supersede section 49ZW of the Act (Provision requiring retirement on the basis of age of no effect).

Proposed section 49ZTJ provides that the provisions of Division 2 are not to apply:

- in relation to employment within a private household; or
- if there is a genuine occupational qualification that a person be of a particular age or age group;
- in relation to a person who, because of his or her age, would be unable to perform the work adequately without endangering himself or herself or another person, or would be unable to respond to situations of emergency that should be reasonably anticipated in connection with the employment; or
- to the retirement or dismissal on the ground of age of judicial officers, police officers, officers who may be removed from office only by an address, resolution or other decision of either or both Houses of Parliament and certain officers who may be prescribed by the regulations.

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Division 3—Discrimination in other areas

Proposed section 49ZTK will render it unlawful for an educational authority to discriminate against students or applicants for admission as students on the ground of age. The section will not prevent an educational institution from taking students from above a certain age and will not apply to an educational authority prescribed by the regulations under circumstances so prescribed. The section will not apply to a private educational authority or, in the circumstances prescribed by the regulations, to any other specified, or any other specified kind of, educational authority.

Proposed section 49ZTL will render it unlawful for a person to discriminate against another person on the grounds of age in the provision of goods and services. The section will also render it unlawful to discriminate against a person in providing goods or services because the person is accompanied by a child. The proposed section will not prevent discrimination on the ground of age in relation to the charging of a fee or fare or where the terms or conditions on which persons are issued tickets or are allowed admission to any place are genuine and reasonable.

Proposed section 49ZTM will render it unlawful for a person to discriminate in the provision of accommodation on the ground of age. It will also be unlawful to discriminate against a person in the provision of accommodation on the ground that the person proposes to share the accommodation with a child. The section will be subject to certain exceptions. One exception will be for an organisation which, for no profit, provides accommodation for members of a particular age group. Another exception will allow accommodation to be provided for recreational purposes to a particular age group. The section will not apply to accommodation that is the principal place of residence of the owner of the accommodation.

Proposed section 49ZTN will render it unlawful for a registered club, on the ground of age, to discriminate against persons of or above the age of 18 years who apply for membership of the club and against members of the club in relation to the provision of benefits.

Division 4—Exceptions to the Part

The provisions of Division 4 contain exceptions relating to the legal capacity, legal rights and obligations and welfare of children (proposed section 49ZTO), the testamentary disposition of gifts (proposed section 49ZTP), superannuation (proposed section 49ZTQ), insurance (proposed section 49ZTR) and participation in sporting activities (proposed section 49ZTS). Proposed section 49ZTT will ensure that it will not be unlawful to discriminate on the ground of age where the discrimination is designed to cater for the special needs of particular age groups.

Division 5—Miscellaneous

Proposed section 49ZTV will require the Minister to prepare, within 2 years after the commencement of proposed Part 4D, a report on the laws and kinds of instruments, conduct and practices that have the effect of discriminating against persons because of their age or the fact that they belong to a particular age group. The report will be required to include recommendations as to whether or not those laws should be amended or repealed, those kinds of instruments should be amended or annulled and those kinds of conduct or practices should be prohibited or restricted. The Minister will be required to lay the report before both Houses of Parliament.

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Schedule 1 (2) and (3) contain amendments that are consequential on the amendment effected by Schedule 1 (1).

Schedule 1 (2) will repeal Part 4E of the Act (**Compulsory retirement from employment on the ground of age**) which deals with discrimination on the ground of age in public sector employment. The provisions of Part 4E will be subsumed in the proposed Part 4D.

Schedule 1 (3) amends section 59 of the Act (**Establishments providing housing accommodation etc. for aged persons**) by repealing and replacing section 59 (2).

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TABLE OF PROVISIONS

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SCHEDULE 1—AMENDMENTS

ANTI-DISCRIMINATION (AMENDMENT) BILL 1991

NEW SOUTH WALES



No. , 1991

A BILL FOR

An Act to amend the Anti-Discrimination Act 1977 for the purpose of rendering unlawful, in certain circumstances, discrimination on the ground of a person's age; and for other purposes.

Anti-Discrimination (Amendment) 1991

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Anti-Discrimination (Amendment) Act 1991.

Commencement

2. This Act commences on 1 January 1992.

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 4D:

After Part 4C, insert:

**PART 4D—DISCRIMINATION ON THE GROUND
OF AGE**

Division 1—General

Definitions

49ZS. (1) In this Part:

“**award or agreement**” means an award or agreement within the meaning of the Industrial Arbitration Act 1940;

“**child**” means a person under 18 years of age;

“**public authority**” means a body, incorporated or unincorporated, established or constituted by or under an Act for a public purpose, but does not include the council of a city, municipality or shire or a county council.

(2) In this Part, a reference to a person being employed or engaged, or seeking employment or an engagement, in the public sector is a reference to a person being employed or engaged, or seeking employment or engagement:

(a) in the Public Service or the Education Teaching Service; or

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SCHEDULE 1—AMENDMENTS—*continued*

- (b) in the Police Service otherwise than as a police officer;
or
 - (c) in the service of a public authority,
- or to holding or applying for a statutory office.

(3) In the operation of this Part in relation to the retirement of employees, commission agents or contract workers or of any class of them, the meaning of retirement may vary according to the particular circumstances. However, the regulations may make provision as to circumstances that are to constitute retirement for the purposes of this Part or to circumstances that are not to constitute retirement for those purposes, or both.

Application of Part

49ZT. (1) This Part (Division 2 excepted) applies to and in respect of all persons from and including 1 January 1992.

(2) Division 2 applies:

- (a) in relation to persons (not being persons referred to in paragraph (b)) who are employed or engaged, or who are seeking employment or engagement, in the public sector or by a county council or a city, municipal or shire council and in relation to the employers or prospective employers of those persons—from and including 1 January 1992; and
- (b) in relation to persons who are employed or engaged, or who are seeking employment or engagement:
 - (i) in the public sector in fire fighting or fire prevention; or
 - (ii) in a State coal mine under the Electricity Commission Act 1950,

and in relation to the employers or prospective employers of those persons—from and including 1 January 1993; and

- (c) in relation to all persons who are employed or engaged, or who are seeking employment or engagement, in any other form of employment and in relation to the employers or prospective employers of those persons—from and including 1 January 1993.

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SCHEDULE 1—AMENDMENTS—*continued*

(2) Division 2 applies irrespective of any compulsory retirement age fixed by an award or agreement, whether made before, on or after 1 January 1992 and so applies despite section 54.

Discrimination on the ground of age

49ZTA. (1) A person discriminates against another person on the ground of age if, on the ground of:

- (a) the age of the other person; or
- (b) a characteristic that appertains generally to persons of the same age or age group as the other person; or
- (c) a characteristic that is generally imputed to persons of the same age or age group as the other person,

the person treats the other person less favourably than in the same circumstances, or in circumstances which are not materially different, the person treats or would treat a person who is not of that age or age group.

(2) A person discriminates against another person on the ground of age if the person requires the other person to comply with a requirement or condition:

- (a) with which a substantially higher proportion of persons of a different age or age group comply or are able to comply; and
- (b) which is not reasonable having regard to the circumstances of the case; and
- (c) with which the other person does not or is not able to comply.

Division 2—Discrimination in work

Discrimination against applicants and employees

49ZTB. (1) It is unlawful for an employer to discriminate against a person on the ground of age:

- (a) in the arrangements the employer makes for the purpose of determining who should be offered employment; or
- (b) in determining who should be offered employment; or
- (c) in the terms on which employment is offered.

SCHEDULE 1—AMENDMENTS—*continued*

(2) It is unlawful for an employer to discriminate against an employee on the ground of age:

- (a) in the terms or conditions of employment that are afforded to the employee; or
- (b) by denying or limiting access to opportunities for promotion, transfer or training, or to any other benefit associated with employment; or
- (c) by:
 - (i) retiring or threatening to retire the employee, or requiring the employee to retire, from employment; or
 - (ii) engaging in conduct with a view to causing the employee to retire from employment; or
 - (iii) dismissing the employee; or
- (d) by subjecting the employee to any other detriment.

Discrimination against commission agents

49ZTC. (1) It is unlawful for a principal to discriminate against a person on the ground of age:

- (a) in the arrangements the principal makes for the purpose of determining who should be engaged as a commission agent; or
- (b) in determining who should be engaged as a commission agent; or
- (c) in the terms on which the principal engages the person as a commission agent.

(2) It is unlawful for a principal to discriminate against a commission agent on the ground of age:

- (a) in the terms or conditions of engagement that are afforded to the commission agent; or
- (b) by denying or limiting access to opportunities for promotion, transfer or training, or to any other benefits associated with the position of commission agent; or
- (c) by:
 - (i) retiring or threatening to retire the commission agent, or requiring the commission agent to retire, from engagement; or

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SCHEDULE 1—AMENDMENTS—*continued*

- (ii) engaging in conduct with a view to causing the commission agent to retire from engagement; or
- (iii) terminating the commission agent's engagement;
or
- (d) by subjecting the commission agent to any other detriment.

Discrimination against contract workers

49ZTD. It is unlawful for a principal to discriminate against a contract worker on the ground of age:

- (a) in the terms on which the contract worker is allowed to work; or
- (b) by not allowing the contract worker to work or continue to work; or
- (c) by denying or limiting access to any benefit associated with the work performed by the contract worker; or
- (d) by:
 - (i) retiring or threatening to retire the contract worker, or requiring the contract worker to retire, from engagement; or
 - (ii) engaging in conduct with a view to causing the contract worker to retire from engagement; or
- (e) by subjecting the contract worker to any other detriment.

Partnerships

49ZTE. (1) It is unlawful for a firm consisting of 6 or more partners, or for one or more of 6 or more persons proposing to form themselves into a partnership, to discriminate against another person on the ground of age:

- (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 other person is offered a position as partner in the firm.

SCHEDULE 1—AMENDMENTS—*continued*

(2) It is unlawful for a firm consisting of 6 or more partners to discriminate against a partner on the ground of age:

- (a) by denying or limiting 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.

Trade unions

49ZTF. (1) It is unlawful for a trade union to discriminate against a person on the ground of age:

- (a) by refusing or failing to accept the person's application for membership of the trade union; or
- (b) in the terms on which it is prepared to admit the person to membership of the trade union.

(2) It is unlawful for a trade union to discriminate against a member of the trade union on the ground of age:

- (a) by denying or limiting access to any benefit provided by the trade union; or
- (b) by depriving the person of membership of the trade union or varying the terms of that membership; or
- (c) by subjecting the person to any other detriment.

Qualifying bodies

49ZTG. (1) It is unlawful for an authority or 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 age:

- (a) by refusing or failing to confer, renew or extend the authorisation or qualification; or
- (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
- (c) by withdrawing the authorisation or qualification or varying the terms or conditions on which it is held.

(2) This section does not prevent such an authority or body from imposing a reasonable and appropriate minimum age

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SCHEDULE 1—AMENDMENTS—*continued*

under which an authorisation or qualification will not be conferred.

(3) This section does not prevent such an authority or body from discriminating against a person on the ground of age if, in consequence of the person's age, the person is not, or would not be, able to practise the profession, or carry on or engage in the trade or occupation, adequately or safely.

Employment agencies

49ZTH. It is unlawful for an employment agency to discriminate against a person on the ground of age:

- (a) by refusing to provide the person with any of its services; or
- (b) in the terms of which it offers to provide the person with any of its services; or
- (c) in the manner in which it provides the person with any of its services.

Statutory provisions requiring retirement on the basis of age to be of no effect

49ZTI. (1) A provision of an Act or statutory instrument relating to the employment of a person in the public sector is of no effect if:

- (a) it would require the person to retire from that employment or to vacate office on or after reaching a specified age; and
- (b) it would be unlawful under this Division for the person to be retired or dismissed from employment on the ground of age.

(2) Subsection (1) is subject to such exceptions as are prescribed by the regulations.

(3) This section has effect despite section 54.

(4) For the purposes of this section, "employment" includes engagement as a commission agent or contract worker.

Exceptions

49ZTJ. (1) Nothing in this Division renders unlawful discrimination on the ground of age:

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- (a) in relation to employment within a private household; or
 - (b) in relation to employment for which there is a genuine occupational qualification that a person be of a particular age, or age group; or
 - (c) in relation to the employment of a person if the person is not, or would not be, able on account of age:
 - (i) to perform adequately, and without being personally endangered or endangering other persons, the work genuinely and reasonably required for the employment or position in question; or
 - (ii) to respond adequately to situations of emergency that should reasonably be anticipated in connection with the employment or position in question.
- (2) This Division does not affect the operation of any law that has as its object the protection in employment of persons who are under the age of 18 years.

(3) This Division does not apply to the retirement or dismissal on the ground of age of any of the following persons:

- (a) a judicial officer within the meaning of the Judicial Officers Act 1986;
- (b) a police officer;
- (c) an officer who may be removed from office only as a result of an address, declaration, resolution or other involvement of either or both Houses of Parliament and who is not appointed for a specified term;
- (d) a person who is the holder of an office prescribed by the regulations for the purposes of this section.

Division 3—Discrimination in other areas**Education**

49ZTK. (1) It is unlawful for an educational authority to discriminate against a person on the ground of age:

- (a) by refusing or failing to accept the person's application for admission as a student; or

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SCHEDULE 1—AMENDMENTS—*continued*

(b) in the terms on which it is prepared to admit the person as a student.

(2) It is unlawful for an educational authority to discriminate against a student on the ground of age:

(a) by denying or limiting access to any benefit provided by the educational authority; or

(b) by expelling the student or subjecting the student to any other detriment.

(3) Nothing in this section applies to or in respect of:

(a) the admission of a person to a school, college, university or other institution where the level of education or training sought by the person is provided only for students above a particular age; or

(b) a private educational authority; or

(c) in relation to such circumstances (if any) as may be prescribed by the regulations—any other specified, or any other specified kind of, educational authority.

Provisions of goods and services

49ZTL. (1) It is unlawful for a person who provides, for payment or not, goods or services to discriminate against another person on the ground of age:

(a) by refusing to provide the other person with those goods or services; or

(b) in the terms on which the other person is provided with those goods or services.

(2) It is unlawful for a person who provides, for payment or not, goods or services to refuse or fail to provide the goods or to perform the services to another person on the ground that the other person is accompanied by a child.

(3) This section does not render unlawful discrimination on the ground of age in relation to:

(a) charging a fee or fare; or

(b) the terms or conditions on which a ticket is issued or admission is allowed to any place, where those terms or conditions are imposed on a genuine and reasonable basis.

SCHEDULE 1—AMENDMENTS—*continued***Accommodation**

49ZTM. (1) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of age:

- (a) by refusing the other person's application for accommodation; or
- (b) in the terms on which the principal or agent offers the other person accommodation; or
- (c) by deferring the other person's application for accommodation or according the other person a lower order of precedence in any list of applicants for accommodation.

(2) It is unlawful for a person, whether as principal or agent, to discriminate against a person for whom accommodation has been provided on the ground of age:

- (a) in the terms or conditions on which accommodation is provided; or
- (b) by denying or limiting access to any benefit associated with the accommodation; or
- (c) by evicting the person or subjecting the person to any other detriment.

(3) It is unlawful for a person, whether as principal or agent, to discriminate against another person:

- (a) by refusing the other person's application for accommodation; or
- (b) by deferring the other person's application for accommodation or according the other person a lower order of precedence in any list of applicants for accommodation,

on the ground that the other person proposes to share that accommodation with a child.

(4) Nothing in this section renders unlawful discrimination on the ground of age:

- (a) in relation to the provision of accommodation by an organisation that does not seek to secure a pecuniary profit for its members, where the accommodation is provided only for persons of a particular age group; or

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SCHEDULE 1—AMENDMENTS—*continued*

- (b) in relation to the provision of accommodation for recreational purposes where the use of that accommodation is limited, on a genuine and reasonable basis, to persons of a particular age group; or
- (c) in relation to the provision of accommodation in the principal place of residence of the owner of the accommodation.

Registered clubs

49ZTN. (1) It is unlawful for a registered club to discriminate against a person (not being a child) on the ground of age:

- (a) by refusing or failing to accept the person's application for membership of the club; or
- (b) in the terms on which it is prepared to admit the person to membership of the club.

(2) It is unlawful for a registered club to discriminate against a member of the registered club on the ground of age:

- (a) by denying or limiting access to any benefit provided by the club; or
- (b) by depriving the member of membership of the club or varying the terms of that membership; or
- (c) by subjecting the member to any other detriment.

Division 4—Exceptions to the Part**Legal capacity and welfare of children**

49ZTO. (1) This Part does not apply to a person who is under the age of 15 years.

(2) Nothing in this Part:

- (a) affects the operation of a law that relates to the legal capacity or the legal entitlements, obligations or disqualifications of persons who are under 18 years of age; or
- (b) affects the operation of a law the object of which is to protect the welfare of those persons, including provisions of the criminal law that are designed to protect them.

SCHEDULE 1—AMENDMENTS—*continued***Testamentary disposition of gifts**

49ZTP. Nothing in this Part renders it unlawful for a person to discriminate against another person on the ground of age in disposing of goods, or in providing services, by gift or will or in accordance with the terms of a gift or will.

Superannuation etc.

49ZTQ. Nothing in this Part renders unlawful discrimination against a person on the ground of age in the terms or conditions appertaining to a superannuation or provident fund or scheme.

Provision of insurance

49ZTR. Nothing in this Part renders unlawful discrimination on the ground of age the terms on which any annuity, life assurance policy or accident or insurance policy or any other kind of insurance is offered or may be obtained if:

- (a) those terms:
 - (i) are based on actuarial or statistical data from a source on which it is reasonable to rely or, where there are no such data, on such other data as may be available; and
 - (ii) are reasonable having regard to those data and any other relevant factors; and
- (b) the sources on which those data are based and those relevant factors (if any) are disclosed to the Board.

Sport

49ZTS. (1) Nothing in this Part renders unlawful the exclusion of persons of particular age groups from participation in competitive sporting activity.

(2) Subsection (1) does not apply:

- (a) to the coaching of persons engaged in any sporting activity; or
- (b) to the administration of any sporting activity; or
- (c) to any sporting activity prescribed by the regulations for the purposes of this section.

SCHEDULE 1—AMENDMENTS—*continued***Special needs for the benefit of particular age groups**

49ZTT. Nothing in this Part renders unlawful an act done or omitted to be done for the purpose of providing persons of a particular age or age group with access to facilities or services to meet the special needs of those persons on account of their age or their being in that age group.

Division 5—Miscellaneous**Minister to prepare report on Acts etc. that discriminate against persons on the ground of age**

49ZTV. (1) The Minister must, within 2 years after the commencement of this Part, prepare a report on the laws of New South Wales, and all kinds of instruments, conduct or practices, in so far as they have discriminated or may have the effect of discriminating against persons because of their age or the fact that they belong to a particular age group.

(2) The report must include recommendations from the Minister made after consultation with all relevant Government departments, statutory bodies representing the Crown and other Government agencies as to whether or not the laws referred to in the report should be amended or repealed, the kinds of instruments so referred to should be amended or annulled and the kinds of conduct or practices so referred to should be prohibited or restricted.

(3) The Minister must, within 12 sitting days after the report is completed, cause copies of the report to be laid before each House of Parliament.

- (2) Part 4E (**Compulsory retirement from employment on the ground of age**):

Omit the Part.

- (3) Section 59 (**Establishments providing housing accommodation etc. for aged persons**):

Omit section 59 (2), insert instead:

(2) Nothing in this Act affects any rule or practice of an institution which restricts its admission according to the class, type, sex, race or age of applicants.
