

Introduced by Ms W S Machin, MP

First print



New South Wales

Anti-Discrimination Amendment (Sexual Preference) Bill 1995

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* to make it unlawful for persons to discriminate against others on the ground of their sexual preference. The Bill replaces provisions in the Act dealing specifically with discrimination on the ground of homosexuality with parallel provisions that will deal with all forms of sexual preference discrimination (eg heterosexual, homosexual and bisexual discrimination). The Bill also replaces the provisions in the Act dealing specifically with the vilification of homosexual persons with parallel provisions that will make it unlawful for a person to publicly vilify a person or group of persons on the ground of their sexual preference.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides that the proposed Act will commence 3 months after the date of assent, unless commenced sooner by proclamation.

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

Schedule 1 Amendment of Anti-Discrimination Act 1977

Schedule 1 [2] replaces Part 4C of the Act with a new Part containing the following provisions:

- **Proposed section 49ZF** provides that references in Part 4C to a person's sexual preference will cover the situation where a person is thought to have a particular sexual preference, whether the person has in fact that sexual preference.
- **Proposed section 49ZG** specifies the circumstances in which a person discriminates against another person on the ground of sexual preference. These include treating the other person less favourably than the person would treat someone else not thought to have the other person's sexual preference.
- **Proposed section 49ZH** makes it unlawful for an employer to discriminate against an employee or applicant for employment on the ground of sexual preference. The proposed section does not apply to employment within a private household or by a private educational authority, or where there are no more than 5 persons employed by the employer.
- **Proposed sections 49ZI, 49ZJ, 49ZK and 49ZKA** make it unlawful to discriminate on the ground of sexual preference in certain other work-related areas involving commission agents, contract workers, local government councillors and partners in firms consisting of 6 or more partners.
- **Proposed sections 49ZL, 49ZM and 49ZN** cover certain industrial organisations, qualifying authorities (such as those empowered to confer a trade, professional or occupational qualification) and employment agencies. It will be unlawful for these bodies to discriminate against a person on the ground of sexual preference.

- **Proposed section 49ZO** makes it unlawful for an educational authority (but not a private educational authority) to discriminate against students or applicants for admission as students on the ground of sexual preference.
- **Proposed sections 49ZP, 49ZQ and 49ZR** cover discrimination on the ground of sexual preference in the areas of providing goods, services and accommodation, and in relation to membership of registered clubs.
- **Proposed section 49ZS** restates the existing definition of *public act* for the purposes of the substituted Division 4 of Part 4C which will deal with sexual preference vilification rather than homosexual vilification only.
- **Proposed section 49ZT** modifies the existing section to make it unlawful for a person to publicly incite hatred towards or serious contempt for a person or group of persons on the ground of their sexual preference.
- **Proposed section 49ZTA** modifies the existing offence of serious homosexual vilification (ie vilification involving violence or threats of violence) to cover serious vilification on the ground of sexual preference.

The remainder of **Schedule 1** contains consequential amendments. In particular, these amendments remove references to homosexual vilification complaints because sexual preference vilification complaints resulting from the new Part 4C will be dealt with in the same way as other vilification complaints are currently dealt with under the Act.

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New South Wales

Anti-Discrimination Amendment (Sexual Preference) Bill 1995

No. , 1995

A Bill for

An Act to amend the *Anti-Discrimination Act 1977* to make it unlawful to discriminate against a person on the ground of sexual preference in certain circumstances, and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Anti-Discrimination Amendment (Sexual Preference) Act 1995*.

2 Commencement

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This Act commences 3 months after the date of assent, unless commenced sooner by proclamation.

3 Amendment of Anti-Discrimination Act 1977 No 48

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

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Schedule 1 Amendment of Anti-Discrimination Act 1977

(Section 3)

[1] Section 4 Definitions

Omit the definition of *homosexual*.

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[2] Part 4C

Omit the Part. Insert instead:

Part 4C Discrimination on the ground of sexual preference

Division 1 General

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49ZF References to person's sexual preference

A reference in this Part to a person's sexual preference includes a reference to the person's being thought to have a particular sexual preference, whether the person in fact has that sexual preference.

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49ZG What constitutes discrimination on the ground of sexual preference

(1) A person (*the perpetrator*) discriminates against another person (*the aggrieved person*) on the ground of sexual preference if, on the ground of the aggrieved person's sexual preference or the sexual preference of a relative or associate of the aggrieved person, the perpetrator:

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(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 he or she did not think has that particular sexual preference or who does not have such a relative or associate who he or she thinks has that particular sexual preference, or

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- (b) requires the aggrieved person to comply with a requirement or condition with which a substantially higher proportion of persons who do not have the aggrieved person's sexual preference, or who do not have such a relative or associate who has that sexual preference, comply or are able to comply, being a requirement which 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. 5 10
- (2) For the purposes of subsection (1) (a), something is done on the ground of a person's sexual preference if it is done on the ground of the person's sexual preference, a characteristic that appertains generally to persons having that sexual preference or a characteristic that is generally imputed to persons having that sexual preference. 15

Division 2 Discrimination in work

49ZH Discrimination against applicants and employees

- (1) It is unlawful for an employer to discriminate against a person on the ground of sexual preference: 20
 - (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 25
 - (c) in the terms on which employment is offered.
- (2) It is unlawful for an employer to discriminate against an employee on the ground of sexual preference: 30
 - (a) in the terms or conditions of employment that are afforded to the employee, or
 - (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 35
 - (c) by dismissing the employee or subjecting the employee to any other detriment.

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- (3) This section does not apply to employment:
- (a) for the purposes of a private household, or
 - (b) if the number of persons employed by the employer (disregarding any persons employed within the employer's private household) does not exceed 5, or 5
 - (c) by a private educational authority.
- (4) 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 first-mentioned corporation, is a related body corporate within the meaning of the *Corporations Law*. 10

49ZI Discrimination against commission agents

- (1) It is unlawful for a principal to discriminate against a person on the ground of sexual preference: 15
- (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 20
 - (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 sexual preference:
- (a) in the terms or conditions that are afforded to the commission agent, or 25
 - (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 30

- (c) by terminating the commission agent's engagement or subjecting the commission agent to any other detriment.

49ZJ Discrimination against contract workers

It is unlawful for a principal to discriminate against a contract worker on the ground of sexual preference: 5

- (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 10
- (c) by denying the contract worker access, or limiting the contract worker's access, to any benefit associated with the work performed by the contract worker, or
- (d) by subjecting the contract worker to any other detriment. 15

49ZK 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 sexual preference: 20

- (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 25
- (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 sexual preference: 30

- (a) by denying the partner access, or limiting the partner's access, to any benefit arising from membership of the firm, or

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- (b) by expelling the partner from the firm, or
 - (c) by subjecting the partner to any other detriment.

49ZKA Discrimination by local government councillors

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 the member's or members' official functions to discriminate against another member of the council on the ground of sexual preference.

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49ZL Industrial organisations

- (1) It is unlawful for an industrial organisation to discriminate against a person on the ground of sexual preference:

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

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- (2) It is unlawful for an industrial organisation to discriminate against a member of the organisation on the ground of sexual preference:

- (a) by denying the person access, or limiting the person's access, to any benefit provided by the organisation, or
- (b) by depriving the person of membership or varying the terms of that membership, or
- (c) by subjecting the person to any other detriment.

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49ZM Qualifying bodies

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 sexual preference:

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- (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 5
- (c) by withdrawing the authorisation or qualification or varying the terms or conditions on which it is held.

49ZN Employment agencies

It is unlawful for an employment agency to discriminate against a person on the ground of sexual preference: 10

- (a) by refusing to provide the person with any of its services, or
- (b) in the terms on which it offers to provide the person with any of its services, or 15
- (c) in the manner in which it provides the person with any of its services.

Division 3 Discrimination in other areas

49ZO Education

- (1) It is unlawful for an educational authority to discriminate against a person on the ground of sexual preference: 20
 - (a) by refusing or failing to accept the person's application for admission as a student, or
 - (b) in the terms on which it is prepared to admit the person as a student. 25
- (2) It is unlawful for an educational authority to discriminate against a student on the ground of sexual preference:
 - (a) by denying the student access, or limiting the student's access, to any benefit provided by the educational authority, or 30
 - (b) by expelling the student or subjecting the student to any other detriment.

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- (3) Nothing in this section applies to or in respect of a private educational authority.

49ZP Provision of goods and services

It is unlawful for a person who provides (whether or not for payment) goods or services to discriminate against another person on the ground of sexual preference: 5

- (a) by refusing to provide the person with those goods or services, or
- (b) in the terms on which the other person is provided with those goods or services. 10

49ZQ Accommodation

- (1) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of sexual preference:

- (a) by refusing the person's application for accommodation, or 15
- (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 giving the other person a lower order of precedence in any list of applicants for that accommodation. 20

- (2) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of sexual preference: 25

- (a) by denying the other person access, or limiting the other person's access, to any benefit associated with accommodation occupied by the other person, or
- (b) by evicting the other person or subjecting the other person to any other detriment. 30

- (3) Nothing in this section applies to or in respect of the provision of accommodation in premises if:
 - (a) the person who provides or proposes to provide the accommodation (or a near relative of that person) resides, and intends to continue to reside, on those premises, and 5
 - (b) the accommodation provided in those premises is for no more than 6 persons.

49ZR Registered clubs

- (1) It is unlawful for a registered club to discriminate against a person who is not a member of the registered club on the ground of sexual preference: 10
 - (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. 15
- (2) It is unlawful for a registered club to discriminate against a person who is a member of the registered club on the ground of sexual preference:
 - (a) by denying the person access, or limiting the person's access, to any benefit provided by the registered club, or 20
 - (b) by depriving the person of membership or varying the terms of the person's membership, or
 - (c) by subjecting the person to any other detriment. 25

Division 4 Sexual preference vilification

49ZS Definition

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, or 30

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- (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, or 5
- (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 sexual preference of the person or members of the group. 10

49ZT Sexual preference vilification unlawful

- (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 sexual preference of the person or members of the group. 15
- (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 20 25
- (c) a public act, done reasonably and in good faith, for academic, artistic, religious instruction, scientific or research purposes or for other purposes in the public interest, including discussion or debate about and expositions of any act or matter. 30

49ZTA Offence of serious sexual preference vilification

- (1) A person must 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 sexual preference

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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. 5

Maximum penalty:

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

In the case of a corporation—100 penalty units.

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

[3] Section 87 Definitions 15

Omit the definition of *homosexual vilification complaint*.

[4] Section 87

Omit "homosexuality" from paragraph (b) of the definition of *representative body*.
Insert instead "sexual preference". 20

[5] Section 87

Insert ", 49ZT" after "20C" in the definition of *vilification complaint*.

[6] Section 89B Prosecution for serious vilification

Insert ", 49ZTA" after "20D" wherever occurring. 25

[7] Section 89C Prosecution for serious homosexual vilification

Omit the section.

[8] Section 113 Order or other decision of the Tribunal

Omit "or a homosexual vilification complaint" wherever occurring.

