

First print



New South Wales

Anti-Discrimination Amendment Bill 1996

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 sexual harassment, and
 - to ensure that Ministers and other Members of Parliament are liable for any unlawful discrimination against, or sexual harassment of, people employed in their offices, and
 - to provide that a complaint of unlawful discrimination or sexual harassment does not automatically lapse on the death of the complainant or the respondent, and
 - to make a number of miscellaneous amendments relating to the handling of complaints, the proceedings of the Equal Opportunity Tribunal and the coverage of the Act, and
 - to update references to Acts of the New South Wales and Commonwealth Parliaments, and
 - to make other minor amendments.
-

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

Employment in the Public Service and in the office of a Minister or Member of Parliament

At present, discrimination in employment is prohibited in respect of each ground of unlawful discrimination. For instance, section 8 provides that it is unlawful for an employer to discriminate against a person on the ground of race in respect of arrangements made for determining who should be offered employment and in the terms on which the employer offers employment. (Similar provisions are made in respect of each other ground of unlawful discrimination.)

Those provisions operate by reference to an "employer". At present, section 4 (7) of the Act says, in effect, that a public servant's employer is the relevant Department Head.

Schedule 1 [6] and [7] replace the provisions that set out who is the "employer" of a public servant and updates the terminology of that provision.

In addition, Schedule 1 [7] inserts proposed section 4C, which makes provision for Ministers and Members of Parliament to be regarded as the "employer" of people employed in their offices. As a result, a Minister or other Member of Parliament will be prohibited from unlawfully discriminating against, or sexually harassing, such people and will also be liable for unlawful conduct of other employees in their offices, as are other employers (by virtue of section 53 of the Act).

Proposed section 4C (1) states that the section applies where a Minister or member is not the employer of staff in his or her office.

Proposed section 4C (2) provides that a Minister or member is taken to be the employer of staff in his or her office for the purposes of the Principal Act.

Proposed section 4C (3) provides that Ministers employ on behalf of the Crown.

Proposed section 4C (4) provides that if, because of the section, there would be more than one employer, the Principal Act applies to each employer jointly and severally. Accordingly, obligations under the Principal Act will have to be complied with by each employer, and proceedings will be able to be taken against each employer jointly or separately.

Proposed section 4C (5) makes it clear that section 4B is not affected by the proposed section. (Section 4B treats the relevant Department Head as the employer of certain public sector employees.)

Proposed section 4C (6) makes it clear that the proposed section extends to prospective employment.

Proposed section 4C (7) contains definitions.

Amendments relating to sexual harassment

The Schedule inserts Part 2A (Prohibition of sexual harassment) into the Act. (See Schedule 1 [10]) The Part renders it unlawful to sexually harass a person in the circumstances set out in the Part.

At present, sex-based harassment is regarded as an element of sex discrimination within the meaning of Part 3 of the Act (see the decision of the Equal Opportunity Tribunal in *Hill v Water Resources Commission* (1985) EOC 92-127).

Part 2A specifically makes sexual harassment unlawful. The prohibition against sexual harassment applies in all areas covered by the Act in relation to other grounds of discrimination, namely accommodation, the provision of goods and services, education, registered clubs and employment, although the exemptions applicable in relation to such unlawful discrimination (that is exemptions for small businesses and private educational authorities) will not apply to sexual harassment. It will also apply to participants in organised sporting competitions and related matters. The consequences of sexual harassment are that a person can make a complaint, dealt with under Part 9, which may lead to orders or other decisions of the Equal Opportunity Tribunal, including an order for damages of up to \$40,000.

Part 2A Prohibition of sexual harassment

Part 2A is modelled on the provisions relating to sexual harassment in the *Sex Discrimination Act 1984* of the Commonwealth.

Proposed section 22A defines sexual harassment. A person sexually harasses another person if he or she makes an unwelcome sexual advance, an unwelcome request for sexual favours or engages in any other unwelcome conduct of a sexual nature in relation to the other person in circumstances in which a reasonable person would have anticipated that the other person would be offended, humiliated or intimidated.

Proposed section 22B renders it unlawful to sexually harass an employee, a prospective employee, a fellow employee, commission agent, contract worker, a partner or participant at the same workplace. The liability of a principal or employer for the acts of their agent or employee, or for the acts of any other person in relation to their agent or employee, is limited in respect of sexual harassment. Proposed Part 2A does not operate so as to confer liability on a principal or employer if the principal or employer took all reasonable steps to prevent sexual harassment by their agent or employee. (See Schedule 1 [19])

Proposed section 22C renders it unlawful for a member of an industrial organisation, or a member of staff of such an organisation, to sexually harass a member of the organisation or prospective member.

Proposed section 22D renders it unlawful for a member of a qualifying body to sexually harass a person seeking action in connection with an occupational qualification.

Proposed section 22E renders it unlawful for a person who operates, or is a member of staff of, an employment agency, to sexually harass another person in the course of providing or offering to provide any of the agency's services to that person.

Proposed section 22F renders it unlawful for a member of staff of an educational institution to sexually harass a student or a potential student, and for an adult student to sexually harass a member of staff or student of an institution at the institution or while on an event organised by the institution.

Proposed section 22G renders it unlawful for a person to sexually harass another person in the course of providing, or offering to provide, goods, services or facilities to that other person.

Explanatory note

Proposed section 22H renders it unlawful for a person to sexually harass another person in the course of providing or offering to provide accommodation to that person.

Proposed section 22I renders it unlawful for a person to sexually harass another person in the course of dealing with that other person in the disposal or acquisition by that person of an estate or interest in land.

Proposed section 22J renders it unlawful for a member of the committee of management of a registered club, or a member of a registered club, to sexually harass a member of the club or a potential member of the club.

Proposed section 22K renders it unlawful for a person to sexually harass another person in the course of a sporting activity.

Proposed section 22L renders it unlawful for a person performing any function under a State law or for the purpose of a State program to sexually harass another person.

Schedule 1 [19] makes a consequential amendment.

Discrimination in relation to access to places and vehicles

At present, discrimination in relation to access to places and vehicles is treated separately from discrimination in the provision of goods and services, but only in respect of discrimination on the ground of race or age or on transgender grounds.

Schedule 1 [5] makes the provision of access to a place or vehicle a category of "services", which will apply to all types of discrimination.

Schedule 1 [8], [13] and [16] omit provisions that render discrimination in the provision of access unlawful, since such discrimination will now be encompassed by the provisions dealing with discrimination in the provision of goods and services.

Schedule 1 [12] omits a provision which prohibits discrimination on the grounds of sex in relation to access to places where liquor is sold. (There is no analogous provision in respect of other types of discrimination.) Such discrimination will be covered by the extended definition of *service*.

Tribunal proceedings

Section 69N of the Act is amended to allow a judicial member of the Equal Opportunity Tribunal sitting alone to deliver any judgment of the Tribunal or to make an order in respect of costs. (See Schedule 1 [24])

Schedule 1 [26] allows the Registrar of the Equal Opportunity Tribunal to deliver any judgment of the Tribunal.

Proposed section 69NA confers protection from personal liability on members of the Tribunal or members of staff of the Tribunal in respect of any act, matter or thing done or omitted in good faith for the purposes of carrying out the provisions of the Act. (See Schedule 1 [25])

Pursuit of a complaint when the complainant or respondent has died

At present, a person has a right to make a complaint under the Act, which is required to be investigated by the President of the Anti-Discrimination Board and may be referred to the Equal Opportunity Tribunal.

Schedule 1 [30] provides that if a complainant dies before a complaint is finally heard, the person's estate may pursue the complaint and is entitled to any damages that may be ordered in respect of the complaint. Similarly, the death of the respondent does not cause the complainant's cause of action to cease.

Notification of respondent of decision not to proceed with complaint

At present, section 90A (3) requires the President of the Anti-Discrimination Board to notify both the complainant and the respondent when the President makes a decision not to proceed with a complaint. This decision may be made after the Board has commenced an initial investigation of the complaint, or where the complainant has elected not to pursue the complaint. In either case, the respondent may not be aware that the complainant has lodged a complaint.

Schedule 1 [34] amends the subsection so the President is required to notify the respondent of the President's decision only if the respondent had been notified that the complaint was made.

Exemptions from the Act

Section 126 of the Act provides that the Minister may grant an exemption from the Act or regulations (or any part of the Act or regulations) on the recommendation of the Anti-Discrimination Board.

At present, such an exemption may not exceed 5 years and may only be renewed once, for a further 5 years. Schedule 1 [43] allows for the initial exemption to remain in force for a maximum of 10 years and provides for an unlimited number of renewals of that exemption.

Section 126A provides for exemptions from the application of Parts 3–4C of special needs programs and activities. The section allows an “appropriate authority” to certify a program or activity to be a special needs program or activity in certain circumstances. If the program or activity is one for which a Government Department or public or local authority is responsible, the appropriate authority is the Minister responsible for the Department or authority. In any other case, the appropriate authority is the Minister administering the Act. Schedule 1 [44] and [45] provide for such exemptions to be granted only by the Minister administering the Act.

Updating references to repealed Acts

The Schedule makes numerous amendments updating references to repealed Acts of the New South Wales and Commonwealth Parliaments. (See Schedule 1 [1], [2], [3], [11], [14], [18], [20], [21], [23], [27], [37], [38] and [40]) The Schedule also replaces out of date references to statutory bodies. (See Schedule 1 [15], [41] and [42])

Other minor amendments

Schedule 1 [9] repeals and re-enacts section 19, which renders it unlawful to discriminate on the grounds of race in the provision of goods and services. The new provision is consistent with the language of analogous provisions in respect of other types of discrimination.

Schedule 1 [17] provides an exemption from the prohibition on discrimination on the grounds of age in relation to the provision of accommodation. As a result of the amendment, an accommodation concession based on a person’s age will not amount to unlawful discrimination on the grounds of age.

Schedule 1 [22] empowers the senior judicial member of the Equal Opportunity Tribunal to authorise the taking of leave by a member of the Equal Opportunity Tribunal.

Schedule 1 [31] empowers the President of the Anti-Discrimination Board, during conciliation proceedings, to order the production of broadcast material in relation to a broadcast that is the subject of a vilification complaint.

Anti-Discrimination Amendment Bill 1996

Explanatory note

Schedule 1 [28], [29], [32], [33], [35] and [36] remove the unnecessary distinction between “vilification complaint” and a “homosexual vilification complaint”. Such complaints are dealt with identically in the Act.

Schedule 1 [39] omits a redundant provision.

Schedule 1 [46] inserts certain savings and transitional provisions consequent on the enactment of the proposed Act.

First print



New South Wales

Anti-Discrimination Amendment Bill 1996

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Anti-Discrimination Act 1977 No 48	2
 Schedule 1 Amendments	 3



New South Wales

Anti-Discrimination Amendment Bill 1996

No. , 1996

A Bill for

An Act to amend the *Anti-Discrimination Act 1977* so as to prohibit sexual harassment, to ensure that Ministers and other Members of Parliament are liable for any unlawful discrimination against, or sexual harassment of, people working in their offices; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Anti-Discrimination Amendment Act 1996*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation. 5

3 Amendment of Anti-Discrimination Act 1977 No 48

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

Schedule 1 Amendments

(Section 3)

[1] Section 4 Definitions

Omit the definition of *corporation* from section 4 (1).
Insert in alphabetical order:

5

corporation has the same meaning as in the
Corporations Law.

Department and *Department Head* have the same
meanings as they have in the *Public Sector Management
Act 1988*.

10

[2] Section 4 (1) definition of "private educational authority"

Omit "*Education and Public Instruction Act 1987*" from paragraph
(a).
Insert instead "*Education Reform Act 1990* (by the Minister
administering that Act)".

15

[3] Section 4 (1) definition of "private educational authority"

Omit ", the *New South Wales State Conservatorium of Music Act
1965*" from paragraph (a).

[4] Section 4 definition of "services"

Omit "and" from paragraph (d).

20

[5] Section 4 definition of "services"

Insert after paragraph (e):

- (f) services consisting of access to, and the use of any
facilities in, any place or vehicle that the public or
a section of the public is entitled or allowed to
enter or use, for payment or not.

25

Anti-Discrimination Amendment Bill 1996

Schedule 1 Amendments

[6] Section 4 (7)

Omit the subsection.

[7] Sections 4B and 4C

Insert after section 4A:

- 4B Interpretation of references to the employer of people in the Public Service, Police Service or Education Teaching Service** 5
- (1) A reference in this Act to an employer:
- (a) in relation to employment in a Department, is a reference to the relevant Department Head, and 10
 - (b) in relation to employment in the Police Service, is a reference to the Commissioner of Police, and
 - (c) in relation to employment in the Education Teaching Service, is a reference to the Director-General of the Department of School Education. 15
- (2) Anything determined or done with respect to any matter concerning any such employment by an officer or employee in any Department, in the Police Service or in the Education Teaching Service who is authorised to determine and do things in that respect is taken to have been determined or done by the Department Head, Commissioner of Police or Director-General of the Department of School Education, respectively. 20
- (3) Subsection (2) includes anything determined or done with respect to: 25
- (a) any offer of employment, or
 - (b) the terms and conditions on which employment is offered, or
 - (c) the opportunity afforded for promotion, transfer, training or other benefits associated with employment, or 30
 - (d) dismissal from employment.

4C Application of Act to Ministers and members of Parliament

- (1) **Circumstances in which section applies**
 This section applies to the office of a Minister or member, where (apart from this section) that Minister or member is not the employer, or an employer, of all or any persons employed in it. This section does not affect other provisions of the Act that apply where a Minister or member is such an employer. 5
- (2) **Minister or member regarded as employer** 10
 If this section applies to the office of a Minister or member, that Minister or member is taken to be an employer of any person employed in his or her office, and:
- (a) a reference in this Act to an employer is to be read, in relation to the employment of any such person, as including a reference to that Minister or member, and 15
- (b) anything determined or done with respect to:
- (i) an offer of employment, or 20
- (ii) the terms and conditions on which employment is offered, or
- (iii) the opportunity afforded for promotion, transfer, training or other benefits associated with employment, or 25
- (iv) dismissal from employment, or
- (v) any other matter concerning employment, by an officer or employee in a Department, or any other person, who is authorised to determine and do things in that respect is taken also to have been determined or done by that Minister or member. 30
- (3) **Ministers employ on behalf of the Crown**
 The following provisions have effect in relation to a Minister who is an employer of persons under this section: 35

Anti-Discrimination Amendment Bill 1996

Schedule 1 Amendments

- (a) That Minister is, for the purposes of any proceedings (including any inquiry) under or connected with this Act, taken to be employing those persons on behalf of the Crown.
- (b) The *Crown Proceedings Act 1988* applies to those proceedings so far as they relate to that Minister as such an employer as if they were civil proceedings within the meaning of that Act, and (without affecting the interpretation of that Act in any other context) a reference in that Act to: 5
- (i) a court extends to a body constituted under this Act, and
- (ii) a judgment extends to an order of such a body. 10
- (c) Any such proceedings may accordingly be brought against the Crown under the title "State of New South Wales". 15
- (d) This subsection does not prevent any such Minister as such an employer being joined as a party to any such proceedings. 20
- (e) This subsection does not otherwise affect the responsibilities of that Minister as such an employer.
- (4) **Joint and several application of section**
If because of this section an employee would have more than one employer, this Act applies in relation to the employers jointly and severally. 25
- (5) **Department Head's responsibility not affected**
This section does not affect section 4B.
- (6) **Prospective employment** 30
This section extends to persons seeking or offered employment in an office of a Minister or member, and accordingly references in this section to employment or an employer or employee extend to prospective employment or a prospective employer or employee. 35

-
- (7) **Definitions**
In this section:
- employment* in an office of a Minister or member means employment by way of appointment, secondment or otherwise (whether or not under an Act), and includes work under a contract for services, but does not include occasional employment in the office that is of a nature unconnected with the functions of that Minister or member (including, for example, the maintenance or repair of the premises of the office). 5
- member* means a member of either House of Parliament. 10
- office* includes a ministerial office, parliamentary office or electoral office where one or more persons are employed.
- [8] **Section 18 Access to places and vehicles** 15
Omit the section.
- [9] **Section 19**
Omit the section. Insert instead:
- 19 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 race: 20
- (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. 25
- [10] **Part 2A**
Insert after section 22:
- Part 2A Prohibition of sexual harassment**
- 22A Meaning of "sexual harassment"** 30
For the purposes of this Part, a person sexually harasses another person if:

Anti-Discrimination Amendment Bill 1996

Schedule 1 Amendments

- (a) the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person, or
 - (b) the person engages in other unwelcome conduct of a sexual nature in relation to the other person, 5
in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated.
- 22B Harassment of employees, commission agents, contract workers, partners etc 10**
- (1) It is unlawful for an employer to sexually harass:
 - (a) an employee, or
 - (b) a person who is seeking employment with the employer. 15
 - (2) It is unlawful for an employee to sexually harass a fellow employee or a person who is seeking employment with the same employer.
 - (3) It is unlawful for a person to sexually harass:
 - (a) a commission agent or contract worker of the person, or 20
 - (b) a person who is seeking to become a commission agent or contract worker of the person.
 - (4) It is unlawful for a commission agent or contract worker to sexually harass a fellow commission agent or fellow contract worker. 25
 - (5) It is unlawful for a partner in a partnership to sexually harass another partner, or a person who is seeking to become a partner, in the same partnership.
 - (6) It is unlawful for a workplace participant to sexually harass another workplace participant at a place that is a workplace of both those persons. 30

(7) In this section:

place includes a ship, aircraft or vehicle.

workplace means a place at which a workplace participant works or otherwise attends in connection with being a workplace participant. 5

workplace participant means any of the following:

- (a) an employer or employee,
- (b) a commission agent or contract worker,
- (c) a partner in a partnership,
- (d) a person who is self-employed, 10
- (e) a volunteer or unpaid trainee.

22C Harassment in industrial organisations

It is unlawful for:

- (a) a member of an industrial organisation, or
- (b) an employee of an industrial organisation, 15

to sexually harass a member of the organisation, or a person who is seeking to become a member of the organisation.

22D Harassment by members of qualifying bodies

- (1) It is unlawful for a member or an employee of 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 sexually harass a person seeking action in connection with an occupational qualification. 20
25

(2) In this section:

action in connection with an occupational qualification means conferring, renewing, extending, revoking or withdrawing an authorisation or qualification. 30

22E Harassment in employment agencies

It is unlawful for:

- (a) a person who operates an employment agency, or
- (b) an employee of an employment agency,

to sexually harass another person in the course of providing, or offering to provide, any of the agency's services to that other person. 5

22F Harassment at educational institutions

- (1) It is unlawful for a member of the staff of an educational institution to sexually harass: 10

- (a) a person who is a student at the institution, or
- (b) a person who is seeking to become a student at the institution.

- (2) It is unlawful for a person who is an adult student at an educational institution to sexually harass: 15

- (a) a person who is a student at the institution, or
- (b) a member of the staff of the institution.

- (3) An educational authority is jointly and severally liable in relation to an act that is unlawful under this section, done by a student of the educational institution administered by the educational authority on the premises of the educational institution or during the course of any excursion or other event organised by or sponsored by the educational institution, unless it is established that the educational authority took all reasonable steps to prevent students from doing such acts. 20
25

- (4) In this section:

adult student means a student who has attained the age of 16 years.

educational institution means a school, college, university or other institution at which education or training is provided. 30

22G Provision of goods and services

It is unlawful for a person to sexually harass another person in the course of:

- (a) receiving, or seeking to receive, goods or services from that other person, or 5
- (b) providing, or offering to provide, goods or services to that other person.

22H Provision of accommodation

- (1) It is unlawful for a person to sexually harass another person in the course of providing, or offering to provide, (whether as principal or agent) accommodation to that other person. 10
- (2) This section does not apply to anything done by a person in the course of providing, or offering to provide, accommodation in a private household. 15

22I Land

It is unlawful for a person to sexually harass another person in the course of dealing (whether as principal or agent) with that other person in connection with:

- (a) disposing of, or offering to dispose of, an estate or interest in land to the other person, or 20
- (b) acquiring, or offering to acquire, an estate or interest in land from the other person.

22J Registered clubs

It is unlawful for a member of the committee of management of a registered club, or a member of a registered club, to sexually harass a member of the club or a person seeking to become a member of the club. 25

22K Sport

- (1) It is unlawful for a person engaged in a sporting activity to sexually harass another person engaged in a sporting activity. 30

- (2) For the purposes of this section, a person is engaged in a sporting activity if:
- (a) the person is involved in an organised sporting competition,
 - (b) the person is coaching a person or team, or is being coached, for the purposes of an organised sporting competition, 5
 - (c) the person is carrying out an activity relating to the administration of a sport or an organised sporting competition, 10
 - (d) the person is officiating at an organised sporting competition or carrying out related duties or functions,
 - (e) the person is officially involved in a function relating to a sport or an organised sporting competition. 15

22L State laws and programs

- (1) It is unlawful for a person to sexually harass another person:
- (a) in the course of performing any function under a State law or for the purposes of a State program, or 20
 - (b) in the course of carrying out any other responsibility for the administration of a State law or the conduct of a State program. 25
- (2) In this section:
- State law* means:
- (a) an Act, a statutory rule, or a determination made under or pursuant to an Act, or
 - (b) an order or award made under or pursuant to such a law. 30

State program means a program conducted by or on behalf of the State Government.

-
- [11] **Sections 25 (4), 40 (4) and 49ZH (4)**
Omit "*Companies (New South Wales) Code*" wherever occurring.
Insert instead "*Corporations Law*".
- [12] **Section 32 Access to place where liquor is sold**
Omit the section. 5
- [13] **Section 38L Access to places and vehicles**
Omit the section.
- [14] **Section 49ZU Application of Part**
Omit "award or agreement within the meaning of the *Industrial Arbitration Act 1940*" from the definition of *award or agreement* in section 49ZU (3). 10
Insert instead "award or enterprise agreement within the meaning of the *Industrial Relations Act 1996*".
- [15] **Section 49ZU (3) definition of "employed in the public sector"**
Omit "a Teaching Service" from paragraph (a). 15
Insert instead "the Education Teaching Service".
- [16] **Section 49ZYM Access to places and vehicles**
Omit the section.
- [17] **Section 49ZYO Accommodation**
Insert after section 49ZYO (3) (b): 20
 , and
 (c) the accommodation is provided with a concession provided in good faith to a person by reason of the person's age.
- [18] **Section 49ZYS Superannuation** 25
Insert ", or a requirement under the *Superannuation Industry (Supervision) Act 1993*," after "*Occupational Superannuation Standards Act 1987*" in section 49ZYS (1) (a).

[19] Section 53

Insert at the end of the section:

- (3) Despite subsection (1), a principal or an employer is not liable under that subsection if the principal or employer took all reasonable steps to prevent the agent or employee from contravening the Act. 5
- (4) For the purposes of subsection (1), the principal or employer of a volunteer or unpaid trainee who contravenes Part 2A is the person or body on whose behalf the volunteer or unpaid trainee provides services. 10

[20] Section 54 Acts done under statutory authority etc

Omit section 54 (3) (b), (c) and (e). Insert instead:

- (b) the *Financial Institutions (New South Wales) Act 1992*,
- (c) the *Friendly Societies Act 1989*, 15
- (c1) the *Co-operatives Act 1992*,

[21] Section 57 Voluntary bodies

Omit section 57 (1) (b), (c) and (d). Insert instead:

- (b) a credit union,
- (c) a society registered under the *Friendly Societies Act 1989*, 20
- (d) a building society,

[22] Section 69F Vacation of office

Omit "Minister" wherever occurring in section 69F (b).
Insert instead "senior judicial member". 25

[23] Sections 69I, 69O (1), 86 (1) and 122HG (1)

Omit "the *Public Service Act 1979*" wherever occurring.
Insert instead "Part 2 of the *Public Sector Management Act 1988*".

[24] Section 69N Procedure at sittings of the Tribunal

Insert after section 69N (4):

- (5) A judicial member may:
 - (a) deliver any judgment of the Tribunal, or
 - (b) make an order in respect of costs (in accordance with section 114). 5

[25] Section 69NA

Insert after section 69N:

69NA Protection from liability

A matter or thing done or omitted to be done by the Tribunal, a member of the Tribunal or a member of staff of the Tribunal does not, if the matter or thing was done or omitted to be done in good faith for the purpose of executing this Act, subject a member or member of staff personally to any action, liability, claim or demand. 10
15

[26] Section 69O Registrar

Insert after section 69O (2):

- (3) The Registrar may deliver any judgment of the Tribunal.

[27] Section 78 Member not subject to Public Sector Management Act 1988 20

Omit "the *Public Service Act 1902*".
Insert instead "Part 2 of the *Public Sector Management Act 1988*".

[28] Section 87 Definitions

Omit the definition of *homosexual vilification complaint*.

[29] Section 87 definition of "vilification complaint" 25

Insert ", 49ZT" after "38S".

[30] Section 88A

Insert after section 88:

88A Death of complainant does not terminate complaint

- (1) If a complainant dies before his or her complaint is finally determined, the complaint survives and the estate of the complainant: 5
- (a) may continue the carriage of the complaint, including any appeal, and
 - (b) is entitled to the benefit of any monetary sum ordered to be paid by the respondent in respect of the complaint. 10
- (2) If a respondent dies before any complaint against him or her is finally determined, the complainant may continue to pursue the complaint (including any appeal) and any monetary sum ordered to be paid in respect of the complaint is payable from the estate of the respondent. 15

[31] Section 89 Investigation of complaints by the President

Insert at the end of section 89:

- (2) If the complaint is a vilification complaint, or alleges an offence of serious vilification, the President may, by notice in writing, require any person to produce a copy of any broadcast the subject of the complaint at a specified place. A person must not fail to comply with the terms of such a notice. 20
- Maximum penalty: 50 penalty units, in the case of a body corporate, or 10 penalty units in any other case. 25

[32] Section 89B Prosecution for serious vilification

Insert “, 49ZTA” after “38T” wherever occurring in section 89B (1), (2) and (5).

-
- [33] Section 89C Prosecution for serious homosexual vilification**
Omit the section.
- [34] Section 90A Withdrawal of complaint**
Insert after section 90A (3):
- (4) The President is not required to give a respondent notice of the President's decision not to proceed with a complaint if the President had not notified the respondent that the complaint had been made. 5
- [35] Section 91 Reference of complaint to Tribunal at requirement of complainant** 10
Omit “, 89C (4)” from section 91 (1).
- [36] Section 113 Order or other decision of the Tribunal**
Omit “or a homosexual vilification complaint” wherever occurring in section 113 (1) (b) (iia) and (iib) and (2).
- [37] Section 122B Application of Part 9A—Authorities** 15
Omit section 122B (1) (a) and (b). Insert instead:
- (a) each Department, and
(a1) the Education Teaching Service, and
(b) each declared authority within the meaning of the *Public Sector Management Act 1988*, and 20
- [38] Section 122D Exercise of functions of authorities under Part 9A**
Omit section 122D (a) and (b). Insert instead:
- (a) in the case of an authority referred to in section 122B (1) (a)—by the Department Head, or

- (a) in the case of the authority referred to in section 122B (1) (a1)—by the Director-General of the Department of School Education, or
- (b) in the case of an authority referred to in section 122B (1) (b)—by the authority, or 5
- (b1) in the case of a corporation referred to in section 122B (1) (b1)—by the corporation, or
- [39] Section 122JA Amendment etc of management plans—physically handicapped persons**
- Omit the section. 10
- [40] Section 122T (1) definition of “human rights” and sections 122V and 122W**
- Omit “*Human Rights Commission Act 1981* of the Commonwealth” wherever occurring.
- Insert instead “*Human Rights and Equal Opportunity Commission Act 1986* of the Commonwealth”. 15
- [41] Section 122T (1) definition of “Human Rights Commission”**
- Omit the definition. Insert instead:
- Human Rights and Equal Opportunity Commission* means the Human Rights and Equal Opportunity Commission established under the *Human Rights and Equal Opportunity Commission Act 1986* of the Commonwealth. 20
- [42] Section 122U (1) and 122V**
- Omit “Human Rights Commission” wherever occurring. 25
- Insert instead “Human Rights and Equal Opportunity Commission”.

[43] Section 126 Granting of exemptions by Minister

Omit section 126 (2) and (3). Insert instead:

- (2) Such an exemption remains in force for the period specified in the order, which cannot be more than 10 years. 5
- (3) The Minister may, on the recommendation of the Board, renew any exemption, for no more than 10 years at a time, by making a new order in accordance with subsection (1).
- (4) The power to make an order conferred by this section includes power, exercisable in the same manner and subject to the same conditions, to vary or revoke any order so made. 10

[44] Section 126A Exemption for special needs programs and activities 15

Omit "appropriate authority" wherever occurring in section 126A (2) and (5).
Insert instead "Minister".

[45] Section 126A (3)
Omit the subsection. 20

[46] Schedule 1 Savings and transitional provisions

Insert after Part 2:

Part 3 Anti-Discrimination Amendment Act 1996

9 Definition

In this Part: 25

the amending Act means the *Anti-Discrimination Amendment Act 1996*.

10 Application of Act to Ministers and Members of Parliament

The insertion of section 4C by the amending Act does not affect any proceedings (including any inquiry) under or connected with the Act that were commenced before the commencement of Schedule 1 [7] to the amending Act. 5

11 Complaints relating to sexual harassment

The insertion of Part 2A by the amending Act does not affect any complaint lodged before the commencement of Schedule 1 [10] to the amending Act. 10

12 Exemptions under section 126 and 126A

(1) The amendment made to section 126 by the amending Act extends to an exemption in force immediately before the commencement of Schedule 1 [43] to the amending Act. 15

(2) The amendments made to section 126A by the amending Act do not affect the validity of any exemption in force immediately before the commencement of Schedule 1 [44] and [45] to the amending Act. 20

Second print

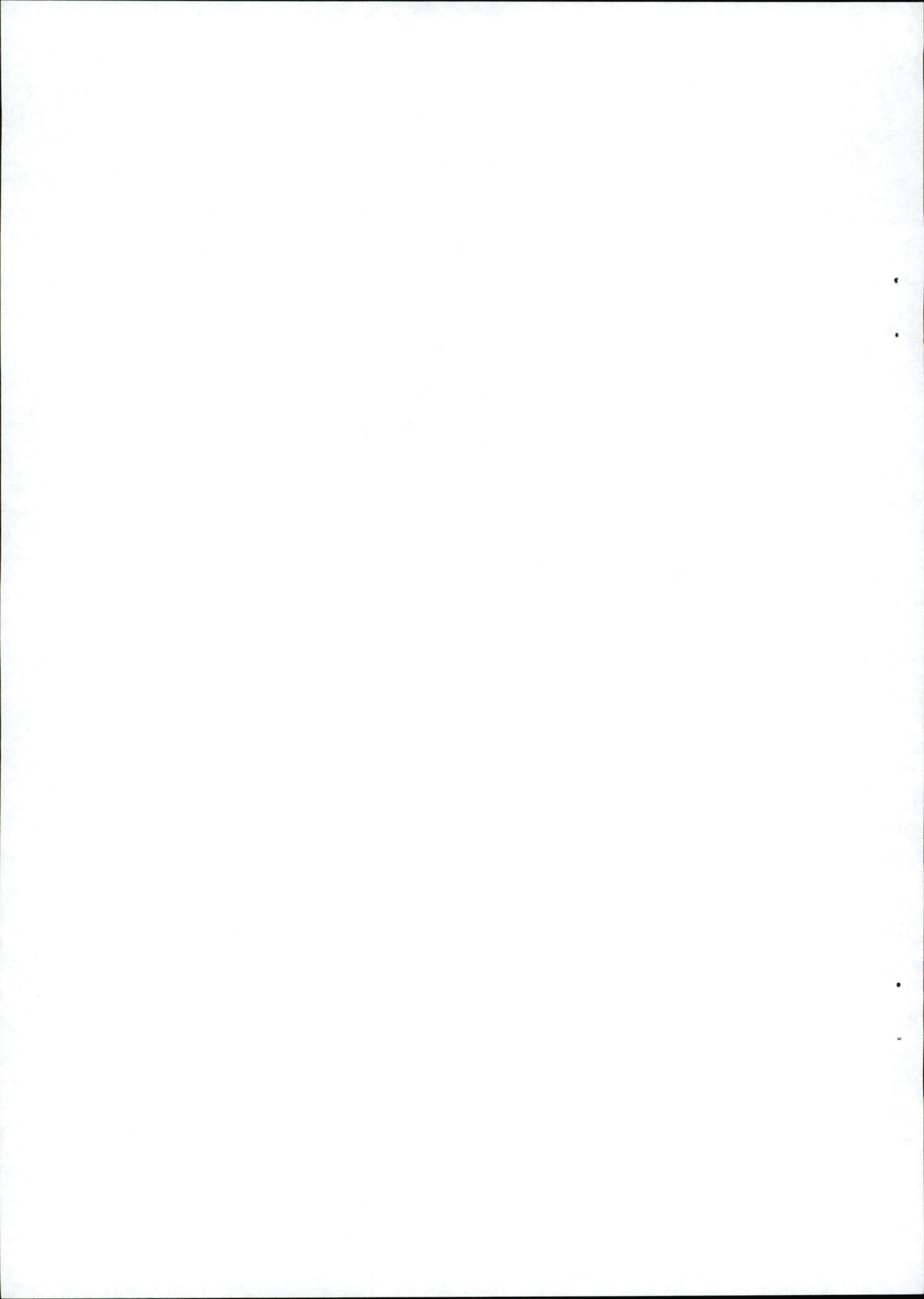


New South Wales

Anti-Discrimination Amendment Bill 1996

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Anti-Discrimination Act 1977 No 48	2
 Schedule 1 Amendments	 3



This PUBLIC BILL, originated in the LEGISLATIVE COUNCIL and, having this day passed, is now ready for presentation to the LEGISLATIVE ASSEMBLY for its concurrence.

Legislative Council

Clerk of the Parliaments



New South Wales

Anti-Discrimination Amendment Bill 1996

Act No , 1996

An Act to amend the *Anti-Discrimination Act 1977* so as to prohibit sexual harassment, to ensure that Ministers and other Members of Parliament are liable for any unlawful discrimination against, or sexual harassment of, people working in their offices; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Anti-Discrimination Amendment Act 1996*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation. 5

3 Amendment of Anti-Discrimination Act 1977 No 48

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

Schedule 1 Amendments

(Section 3)

[1] Section 4 Definitions

Omit the definition of *corporation* from section 4 (1).

Insert in alphabetical order:

5

corporation has the same meaning as in the *Corporations Law*.

Department and *Department Head* have the same meanings as they have in the *Public Sector Management Act 1988*.

10

[2] Section 4 (1) definition of "private educational authority"

Omit "*Education and Public Instruction Act 1987*" from paragraph (a).

Insert instead "*Education Reform Act 1990* (by the Minister administering that Act)".

15

[3] Section 4 (1) definition of "private educational authority"

Omit ", the *New South Wales State Conservatorium of Music Act 1965*" from paragraph (a).

[4] Section 4 definition of "services"

Omit "and" from paragraph (d).

20

[5] Section 4 definition of "services"

Insert after paragraph (e):

- (f) services consisting of access to, and the use of any facilities in, any place or vehicle that the public or a section of the public is entitled or allowed to enter or use, for payment or not.

25

[6] Section 4 (7)

Omit the subsection.

[7] Section 4B

Insert after section 4A:

4B Interpretation of references to the employer of people in the Public Service, Police Service or Education Teaching Service 5

- (1) A reference in this Act to an employer:
 - (a) in relation to employment in a Department, is a reference to the relevant Department Head, and 10
 - (b) in relation to employment in the Police Service, is a reference to the Commissioner of Police, and
 - (c) in relation to employment in the Education Teaching Service, is a reference to the Director-General of the Department of School Education. 15
- (2) Anything determined or done with respect to any matter concerning any such employment by an officer or employee in any Department, in the Police Service or in the Education Teaching Service who is authorised to determine and do things in that respect is taken to have been determined or done by the Department Head, Commissioner of Police or Director-General of the Department of School Education, respectively. 20
- (3) Subsection (2) includes anything determined or done with respect to: 25
 - (a) any offer of employment, or
 - (b) the terms and conditions on which employment is offered, or
 - (c) the opportunity afforded for promotion, transfer, training or other benefits associated with employment, or 30
 - (d) dismissal from employment.

[8] Section 18 Access to places and vehicles

Omit the section.

[9] Section 19

Omit the section. Insert instead:

19 Provision of goods and services

5

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 race:

- (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

[10] Part 2A

Insert after section 22:

Part 2A Prohibition of sexual harassment

15

22A Meaning of "sexual harassment"

For the purposes of this Part, a person sexually harasses another person if:

- (a) the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person, or
- (b) the person engages in other unwelcome conduct of a sexual nature in relation to the other person,

20

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated.

25

22B Harassment of employees, commission agents, contract workers, partners etc

- (1) It is unlawful for an employer to sexually harass:
 - (a) an employee, or
 - (b) a person who is seeking employment with the employer. 5
- (2) It is unlawful for an employee to sexually harass a fellow employee or a person who is seeking employment with the same employer.
- (3) It is unlawful for a person to sexually harass: 10
 - (a) a commission agent or contract worker of the person, or
 - (b) a person who is seeking to become a commission agent or contract worker of the person.
- (4) It is unlawful for a commission agent or contract worker to sexually harass a fellow commission agent or fellow contract worker. 15
- (5) It is unlawful for a partner in a partnership to sexually harass another partner, or a person who is seeking to become a partner, in the same partnership. 20
- (6) It is unlawful for a workplace participant to sexually harass another workplace participant at a place that is a workplace of both those persons.
- (7) It is unlawful for a member of either House of Parliament to sexually harass: 25
 - (a) a workplace participant at a place that is a workplace of both the member and the workplace participant, or
 - (b) another member of Parliament at a place that is a workplace of both members. 30
- (8) It is unlawful for a workplace participant to sexually harass a member of either House of Parliament at a place that is the workplace of both the member and the workplace participant.

(9) In this section:

place includes a ship, aircraft or vehicle.

workplace means a place at which a workplace participant works or otherwise attends in connection with being a workplace participant. 5

workplace participant means any of the following:

- (a) an employer or employee,
- (b) a commission agent or contract worker,
- (c) a partner in a partnership,
- (d) a person who is self-employed, 10
- (e) a volunteer or unpaid trainee.

(10) Without limiting the definition of *workplace*, the workplace of a member of either House of Parliament is taken to include the following:

- (a) the whole of Parliament House, 15
- (b) any ministerial office or electoral office of the member,
- (c) any other place that the member otherwise attends in connection with his or her Ministerial, parliamentary or electoral duties. 20

22C Harassment by members of qualifying bodies

(1) It is unlawful for a member or an employee of 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 sexually harass a person seeking action in connection with an occupational qualification. 25

(2) In this section:

action in connection with an occupational qualification means conferring, renewing, extending, revoking or withdrawing an authorisation or qualification. 30

22D Harassment in employment agencies

It is unlawful for:

- (a) a person who operates an employment agency, or
- (b) an employee of an employment agency,

to sexually harass another person in the course of providing, or offering to provide, any of the agency's services to that other person. 5

22E Harassment at educational institutions

- (1) It is unlawful for a member of the staff of an educational institution to sexually harass: 10

- (a) a person who is a student at the institution, or
- (b) a person who is seeking to become a student at the institution.

- (2) In this section:

educational institution means a school, college, university or other institution at which education or training is provided. 15

22F Provision of goods and services

It is unlawful for a person to sexually harass another person in the course of: 20

- (a) receiving, or seeking to receive, goods or services from that other person, or
- (b) providing, or offering to provide, goods or services to that other person.

22G Provision of accommodation 25

- (1) It is unlawful for a person to sexually harass another person in the course of providing, or offering to provide, (whether as principal or agent) accommodation to that other person.
- (2) This section does not apply to anything done by a person in the course of providing, or offering to provide, accommodation in a private household. 30

22H Land

It is unlawful for a person to sexually harass another person in the course of dealing (whether as principal or agent) with that other person in connection with:

- (a) disposing of, or offering to dispose of, an estate or interest in land to the other person, or 5
- (b) acquiring, or offering to acquire, an estate or interest in land from the other person.

22I Sport

- (1) It is unlawful for a person engaged in a sporting activity to sexually harass another person engaged in a sporting activity. 10
- (2) For the purposes of this section, a person is engaged in a sporting activity if:
 - (a) the person is involved in an organised sporting competition, 15
 - (b) the person is coaching a person or team, or is being coached, for the purposes of an organised sporting competition,
 - (c) the person is carrying out an activity relating to the administration of a sport or an organised sporting competition, 20
 - (d) the person is officiating at an organised sporting competition or carrying out related duties or functions, 25
 - (e) the person is officially involved in a function relating to a sport or an organised sporting competition.

22J State laws and programs

- (1) It is unlawful for a person to sexually harass another person: 30
 - (a) in the course of performing any function under a State law or for the purposes of a State program, or

(b) in the course of carrying out any other responsibility for the administration of a State law or the conduct of a State program.

(2) In this section:

State law means:

5

(a) an Act, a statutory rule, or a determination made under or pursuant to an Act, or

(b) an order or award made under or pursuant to such a law.

State program means a program conducted by or on behalf of the State Government.

10

[11] Sections 25 (4), 40 (4) and 49ZH (4)

Omit "*Companies (New South Wales) Code*" wherever occurring. Insert instead "*Corporations Law*".

[12] Section 32 Access to place where liquor is sold

15

Omit the section.

[13] Section 38L Access to places and vehicles

Omit the section.

[14] Section 49ZU Application of Part

Omit "award or agreement within the meaning of the *Industrial Arbitration Act 1940*" from the definition of *award or agreement* in section 49ZU (3).

20

Insert instead "award or enterprise agreement within the meaning of the *Industrial Relations Act 1996*".

[15] Section 49ZU (3) definition of “employed in the public sector”

Omit “a Teaching Service” from paragraph (a).
Insert instead “the Education Teaching Service”.

[16] Section 49ZYM Access to places and vehicles

Omit the section.

5

[17] Section 49ZYO Accommodation

Insert after section 49ZYO (3) (b):

, and

- (c) the accommodation is provided with a concession provided in good faith to a person by reason of the person’s age.

10

[18] Section 49ZYS Superannuation

Insert “, or a requirement under the *Superannuation Industry (Supervision) Act 1993*,” after “*Occupational Superannuation Standards Act 1987*” in section 49ZYS (1) (a).

15

[19] Section 53

Insert at the end of the section:

- (3) Despite subsection (1), a principal or an employer is not liable under that subsection if the principal or employer took all reasonable steps to prevent the agent or employee from contravening the Act.

20

- (4) For the purposes of subsection (1), the principal or employer of a volunteer or unpaid trainee who contravenes Part 2A is the person or body on whose behalf the volunteer or unpaid trainee provides services.

25

[20] Section 54 Acts done under statutory authority etc

Omit section 54 (3) (b), (c) and (e). Insert instead:

- (b) the *Financial Institutions (New South Wales) Act 1992*,
- (c) the *Friendly Societies Act 1989*,
- (c1) the *Co-operatives Act 1992*,

5

[21] Section 57 Voluntary bodies

Omit section 57 (1) (b), (c) and (d). Insert instead:

- (b) a credit union,
- (c) a society registered under the *Friendly Societies Act 1989*,
- (d) a building society,

10

[22] Section 69F Vacation of office

Omit "Minister" wherever occurring in section 69F (b).
Insert instead "senior judicial member".

15

[23] Sections 69I, 69O (1), 86 (1) and 122HG (1)

Omit "the *Public Service Act 1979*" wherever occurring.
Insert instead "Part 2 of the *Public Sector Management Act 1988*".

[24] Section 69N Procedure at sittings of the Tribunal

Insert after section 69N (4):

20

- (5) A judicial member may:
 - (a) deliver any judgment of the Tribunal, or
 - (b) make an order in respect of costs (in accordance with section 114).

[25] Section 69NA

Insert after section 69N:

69NA Protection from liability

A matter or thing done or omitted to be done by the Tribunal, a member of the Tribunal or a member of staff of the Tribunal does not, if the matter or thing was done or omitted to be done in good faith for the purpose of executing this Act, subject a member or member of staff personally to any action, liability, claim or demand.

5

[26] Section 69O Registrar

10

Insert after section 69O (2):

(3) The Registrar may deliver any judgment of the Tribunal.

[27] Section 78 Member not subject to Public Sector Management Act 1988

Omit "the *Public Service Act 1902*".

15

Insert instead "Part 2 of the *Public Sector Management Act 1988*".

[28] Section 87 Definitions

Omit the definition of *homosexual vilification complaint*.

[29] Section 87 definition of "vilification complaint"

Insert ", 49ZT" after "38S".

20

[30] Section 88A

Insert after section 88:

88A Death of complainant does not terminate complaint

(1) If a complainant dies before his or her complaint is finally determined, the complaint survives and the estate of the complainant:

25

(a) may continue the carriage of the complaint, including any appeal, and

(b) is entitled to the benefit of any monetary sum ordered to be paid by the respondent in respect of the complaint.

(2) If a respondent dies before any complaint against him or her is finally determined, the complainant may continue to pursue the complaint (including any appeal) and any monetary sum ordered to be paid in respect of the complaint is payable from the estate of the respondent. 5

[31] Section 89 Investigation of complaints by the President

Insert at the end of section 89: 10

(2) If the complaint is a vilification complaint, or alleges an offence of serious vilification, the President may, by notice in writing, require any person to produce a copy of any broadcast the subject of the complaint at a specified place. A person must not fail to comply with the terms of such a notice. 15

Maximum penalty: 50 penalty units, in the case of a body corporate, or 10 penalty units in any other case.

[32] Section 89B Prosecution for serious vilification

Insert “, 49ZTA” after “38T” wherever occurring in section 89B (1), (2) and (5). 20

[33] Section 89C Prosecution for serious homosexual vilification

Omit the section.

[34] Section 90A Withdrawal of complaint

Insert after section 90A (3): 25

(4) The President is not required to give a respondent notice of the President’s decision not to proceed with a complaint if the President had not notified the respondent that the complaint had been made.

[35] Section 91 Reference of complaint to Tribunal at requirement of complainant

Omit “, 89C (4)” from section 91 (1).

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

Omit “or a homosexual vilification complaint” wherever occurring in section 113 (1) (b) (iiia) and (iiib) and (2).

5

[37] Section 122B Application of Part 9A—Authorities

Omit section 122B (1) (a) and (b). Insert instead:

(a) each Department, and

(a1) the Education Teaching Service, and

10

(b) each declared authority within the meaning of the *Public Sector Management Act 1988*, and

[38] Section 122D Exercise of functions of authorities under Part 9A

Omit section 122D (a) and (b). Insert instead:

(a) in the case of an authority referred to in section 122B (1) (a)—by the Department Head, or

15

(a1) in the case of the authority referred to in section 122B (1) (a1)—by the Director-General of the Department of School Education, or

(b) in the case of an authority referred to in section 122B (1) (b)—by the authority, or

20

(b1) in the case of a corporation referred to in section 122B (1) (b1)—by the corporation, or

- [39] Section 122JA Amendment etc of management plans—physically handicapped persons**
- Omit the section.
- [40] Section 122T (1) definition of “human rights” and sections 122V and 122W** 5
- Omit “*Human Rights Commission Act 1981* of the Commonwealth” wherever occurring.
Insert instead “*Human Rights and Equal Opportunity Commission Act 1986* of the Commonwealth”.
- [41] Section 122T (1) definition of “Human Rights Commission”** 10
- Omit the definition. Insert instead:
- Human Rights and Equal Opportunity Commission* means the Human Rights and Equal Opportunity Commission established under the *Human Rights and Equal Opportunity Commission Act 1986* of the Commonwealth. 15
- [42] Section 122U (1) and 122V**
- Omit “Human Rights Commission” wherever occurring.
Insert instead “Human Rights and Equal Opportunity Commission”.
- [43] Section 126 Granting of exemptions by Minister** 20
- Omit section 126 (2) and (3). Insert instead:
- (2) Such an exemption remains in force for the period specified in the order, which cannot be more than 10 years.

-
- (3) The Minister may, on the recommendation of the Board, renew any exemption, for no more than 10 years at a time, by making a new order in accordance with subsection (1).
- (4) The power to make an order conferred by this section includes power, exercisable in the same manner and subject to the same conditions, to vary or revoke any order so made. 5
- [44] Section 126A Exemption for special needs programs and activities** 10
- Omit "appropriate authority" wherever occurring in section 126A (2) and (5).
Insert instead "Minister".
- [45] Section 126A (3)**
- Omit the subsection. 15
- [46] Schedule 1 Savings and transitional provisions**
- Insert after Part 2:
- Part 3 Anti-Discrimination Amendment Act 1996**
- 9 Definition**
- In this Part: 20
- the amending Act* means the *Anti-Discrimination Amendment Act 1996*.

10 Application of Act to Ministers and Members of Parliament

The insertion of section 4C by the amending Act does not affect any proceedings (including any inquiry) under or connected with the Act that were commenced before the commencement of Schedule 1 [7] to the amending Act. 5

11 Complaints relating to sexual harassment

The insertion of Part 2A by the amending Act does not affect any complaint lodged before the commencement of Schedule 1 [10] to the amending Act. 10

12 Exemptions under section 126 and 126A

(1) The amendment made to section 126 by the amending Act extends to an exemption in force immediately before the commencement of Schedule 1 [43] to the amending Act. 15

(2) The amendments made to section 126A by the amending Act do not affect the validity of any exemption in force immediately before the commencement of Schedule 1 [44] and [45] to the amending Act. 20