



New South Wales

Anti-Discrimination Amendment Act 1997 No 9

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Anti-Discrimination Amendment Act 1997 No 9

Act No 9, 1997

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 their own acts of sexual harassment; and for other purposes.
[Assented to 20 May 1997]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Anti-Discrimination Amendment Act 1997*.

2 Commencement

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

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:

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*.

[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)”.

[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).

[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.

[6] Section 4 (7)

Omit the subsection.

[7] Section 4 8

Insert after section 4A:

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

- (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
 - (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.
- (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.
- (3) Subsection (2) includes anything determined or done with respect to:
 - (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
 - (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

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] Part 2A

Insert after section 22:

Part 2A Prohibition of sexual harassment

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,

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

- (1) It is unlawful for an employer to sexually harass:
 - (a) an employee, or
 - (b) a person who is seeking employment with the employer.
- (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
 - (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.
- (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.
- (7) It is unlawful for a member of either House of Parliament to sexually harass:
 - (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.
- (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.

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,
- (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,
- (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.

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.

- (2) In this section:

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

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.

22E Harassment at educational institutions

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

- (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:

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

- (3) If a complaint under subsection (2) is found to have been substantiated after an inquiry under Part 9, the Tribunal may make any order that it is empowered to make under section 113 (1) (b). However, if the respondent student was over the age of 16, but under the age of 18, when the unlawful conduct occurred, the Tribunal may not make an order requiring the student to pay damages under section 113 (1) (b) (i).

- (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.

22F 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
- (b) providing, or offering to provide, goods or services to that other person.

22G 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.
- (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.

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
- (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.
- (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,
- (c) the person is carrying out an activity relating to the administration of a sport or an organised sporting competition,
- (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.

22J 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
 - (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:

- (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.

[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.

[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).

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.

[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.

[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).

[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.
- (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.

[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*,

[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,

[22] Section 69F Vacation of office

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

[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).

[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.

[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

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”

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:
 - (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.

[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.

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).

[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.

[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) (iia) and (iib) and (2).

[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
- (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
- (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
- (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

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”

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.

[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

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.

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

Omit “appropriate authority” wherever occurring in section 126A (2) and (5).

Insert instead “Minister”.

[45] Section 126A (3)

Omit the subsection.

[46] Schedule 1 Savings and transitional provisions

Insert after Part 2:

Part 3 Anti-Discrimination Amendment Act 1997

9 Definition

In this Part:

the amending Act means the *Anti-Discrimination Amendment Act 1997*.

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.

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.

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.
- (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.

[Minister's second reading speech made in—
Legislative Council on 20 November 1996
Legislative Assembly on 15 April 1997]