

Act 1993 No. 97

**ANTI-DISCRIMINATION (HOMOSEXUAL VILIFICATION)
AMENDMENT BILL 1993***

NEW SOUTH WALES



EXPLANATORY NOTE

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

The object of this Bill is to amend the Anti-Discrimination Act 1977 to enact provisions relating to the vilification of homosexual persons. This is expressed to occur when a person, by a public act, incites hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the homosexuality of the person or members of the group. The provisions are substantially similar to the existing provisions in the Act relating to racial vilification.

The Bill:

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

Clause 1 specifies 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.

*Amended in Committee—see table at end of volume.

SCHEDULE 1—AMENDMENTS

Schedule 1 (1) inserts a new Division 4 into Part 4C (Discrimination on the ground of homosexuality) which contains the following provisions:

- Proposed section 492S defines the term “public act” for the purposes of the new Division. The term includes spoken and written communications to the public, actions and gestures observable by the public, the wearing or displaying of signs and emblems and the distribution of matter to the public with knowledge that the matter vilifies a person or group on the ground of the homosexuality of the person or members of the group.
- Proposed section 49ZT makes it unlawful for a person to engage in the vilification of homosexual persons. The proposed section is subject to a number of exceptions, including the fair reporting of acts of vilification of homosexuals, the communication or publication of matter subject to the defence of absolute privilege in proceedings for defamation and a public act done reasonably and in good faith in the public interest. The proposed section will enable complaints to be made to the President of the Anti-Discrimination Board and to be dealt with in accordance with the procedures currently set out in the Act.
- Proposed section 49ZTA provides that vilification of homosexual persons involving threatened violence (including inciting others to threaten violence) is a criminal offence. A person may only be prosecuted for the offence with the consent of the Attorney General.

Schedule 1 (2) amends section 87 (Definitions) to define the term “homosexual vilification complaint” and to substitute the definition of “representative body” as a consequence of the new type of complaint.

Schedule 1 (3) amends section 88 (Making of complaints) to provide that a body which represents a group of homosexual persons may lodge a homosexual vilification complaint on behalf of a named person who is a homosexual person (but only with the consent of that person).

Schedule 1 (4) inserts a new section 89C which requires the President of the Anti-Discrimination Board to refer a complaint to the Attorney General if, after investigating the complaint, the President considers that the offence of serious vilification of homosexual persons may have been committed. The President is required to notify the complainant of the referral and the complainant retains the right to require the President to refer the complaint to the Equal Opportunity Tribunal.

Schedule 1 (5) amends section 91 (Reference of complaint to the Equal Opportunity Tribunal at requirement of complainant) as a consequence of the new section 89C.

Schedule 1 (6) amends section 113 (Order or other decision of the Tribunal) to enable the Tribunal, after holding an inquiry into a homosexual vilification complaint, to order a respondent to publish an apology or retraction. In the case of a complaint by a representative body, the Tribunal may award damages under section 113 to the person or persons on behalf of whom the complaint is lodged.
