

[Act 2000 No 24]



New South Wales

# **Anti-Discrimination Amendment (Carers' Responsibilities) Bill 2000**

## **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 discrimination against a person on the ground of the person's responsibilities as a carer. Such discrimination will be unlawful only to the extent to which it relates to the person's work.

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## 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

**Schedule 1 [1]** inserts proposed Part 4B (Discrimination on the ground of a person's responsibilities as a carer) into the *Anti-Discrimination Act 1977*. The Part makes it unlawful to discriminate against a person, in the circumstances relating to work described in the Part, on the ground of the person's responsibilities as a carer.

Part 4B follows the pattern established in the Act for the other forms of discrimination that are made unlawful by the Act's provisions.

## Part 4B Discrimination on the ground of a person's responsibilities as a carer

### Division 1 General

Proposed section 49S defines *responsibilities as a carer* as a person's responsibility to care for or support a dependent child or another immediate family member who is in need of care or support.

Proposed section 49T states what constitutes discrimination on the ground of a person's responsibilities as a carer. It includes direct and indirect discrimination.

Proposed section 49U states what constitutes unjustifiable hardship (which is relevant to the exception set out in proposed sections 49V, 49W, 49X, 49Y and 49ZA).

## **Division 2      Discrimination in work**

Proposed section 49V renders it unlawful for an employer to discriminate against an employee or an applicant for employment on the ground of the employee's or applicant's responsibilities as a carer. The proposed section does not apply in relation to employment within a private household or where the number of persons employed does not exceed 5.

The proposed section will require an employer to accommodate the needs of persons with responsibilities as a carer, unless such accommodation would cause the employer an unjustifiable hardship. In addition, the employer will be permitted to decline to hire, or to dismiss an employee, if the employee is unable to perform the "inherent requirements" of the job because of his or her responsibilities as a carer. Analogous exceptions are provided in proposed sections 49W, 49X, 49Y and 49ZA. This is the same model as has been adopted in Part 4A (Discrimination on the ground of disability).

Proposed section 49W renders it unlawful for a principal to discriminate against a commission agent or a prospective commission agent on the ground of his or her responsibilities as a carer.

Proposed section 49X renders it unlawful for a principal to discriminate against a contract worker on the ground of the worker's responsibilities as a carer.

Proposed section 49Y renders it unlawful for a firm consisting of 6 or more partners, or persons proposing to form a firm consisting of 6 or more partners, to discriminate against a partner or prospective partner on the ground of his or her responsibilities as a carer.

Proposed section 49Z renders it unlawful for local government councillors to discriminate against another councillor on the ground of the councillor's responsibilities as a carer.

Proposed section 49ZA renders it unlawful for an industrial organisation to discriminate against a member of such an organisation, or an applicant for membership of such an organisation, on the ground of his or her responsibilities as a carer.

Proposed section 49ZB renders it unlawful for an authority or body that is empowered to confer, renew or extend a professional, trade or other occupational qualification to discriminate on the ground of his or her responsibilities as a carer against a person who holds or seeks to hold that qualification.

Proposed section 49ZC renders it unlawful for an employment agency to discriminate against a person who seeks the services of the agency on the ground of the person's responsibilities as a carer.

Explanatory note

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**Schedule 1 [2]** and **[3]** provide for the making of savings and transitional regulations, consequent on the enactment of the proposed Act.

**Schedule 1 [4]** inserts savings and transitional provisions that make it clear that the provisions relating to discrimination on the ground of a person's responsibilities as a carer do not apply to acts occurring before the provisions come into force.