



New South Wales

Crimes and Anti-Discrimination Legislation Amendment (Vilification) Bill 2016

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to make amendments to the *Crimes Act 1900* and the *Anti-Discrimination Act 1977* in relation to racial, transgender, homosexual and HIV/AIDS vilification. This Bill has been prepared in response to the report of the Legislative Council Standing Committee on Law and Justice entitled *Racial vilification law in New South Wales*.

The Bill deals with the following:

- (a) moves the offence of serious racial, transgender, homosexual or HIV/AIDS vilification by means of threat or incitement of physical harm into the *Crimes Act 1900* from the *Anti-Discrimination Act 1977*,
- (b) in doing so, removes the requirement that the Attorney General must give consent to a prosecution for that offence,
- (c) extends the time within which prosecutions for such offences may be commenced to not later than 12 months from the date when the offence was alleged to have been committed (rather than 6 months, which is the limitation period that currently applies under the *Criminal Procedure Act 1986*),
- (d) brings together into a new Part (proposed Part 4H) all the provisions of the *Anti-Discrimination Act 1977* dealing with racial, transgender, homosexual and HIV/AIDS vilification and makes those provisions consistent,
- (e) clarifies that unlawful vilification under the *Anti-Discrimination Act 1977* occurs when a person, by a public act, intentionally or recklessly promotes (rather than incites) hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on racial, transgender, homosexual and HIV/AIDS grounds,

- (f) clarifies which public acts constitute such unlawful vilification,
- (g) provides that the proposed Part applies whether or not the person or members of the group vilified have the characteristic that was the ground for the promotion of hatred, contempt or ridicule concerned,
- (h) provides that the President of the Anti-Discrimination Board, after accepting a vilification complaint under the *Anti-Discrimination Act 1977*, is to refer the complaint to the Commissioner of Police if the President considers that the offence of serious racial, transgender, homosexual or HIV/AIDS vilification may have been committed (rather than investigating the complaint first and then referring such a complaint to the Attorney General).

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 the date of assent to the proposed Act.

Schedule 1 Amendment of Crimes Act 1900 No 40

Schedule 1 inserts proposed Division 15C (proposed section 91N) into Part 3 of the *Crimes Act 1900* to give effect to the objectives outlined in paragraphs (a)–(c) above.

Schedule 2 Amendment of Anti-Discrimination Act 1977 No 48

Schedule 2 [5] inserts proposed Part 4H (proposed sections 50AA and 50AB) into the *Anti-Discrimination Act 1977* to give effect to the objectives outlined in paragraphs (d)–(g) above.

Schedule 2 [12] inserts proposed section 94D into the *Anti-Discrimination Act 1977* to give effect to the objective outlined in paragraph (h) above.

Schedule 2 [14] amends Schedule 1 to the *Anti-Discrimination Act 1977* to enable regulations of a savings or transitional nature consequent on the enactment of any Act that amends that Act to be made.

Schedule 2 [1]–[4], [6]–[11] and [13] make consequential amendments.



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New South Wales

Crimes and Anti-Discrimination Legislation Amendment (Vilification) Bill 2016

No. , 2016

A Bill for

An Act to amend the *Crimes Act 1900* and the *Anti-Discrimination Act 1977* to make further provision with respect to racial or certain other vilification.

The Legislature of New South Wales enacts:

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1 Name of Act

2

This Act is the *Crimes and Anti-Discrimination Legislation Amendment (Vilification) Act 2016*.

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2 Commencement

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This Act commences on the date of assent to this Act.

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Schedule 1	Amendment of Crimes Act 1900 No 40	1
Part 3, Division 15C		2
Insert after Division 15B of Part 3:		3
Division 15C	Racial, transgender, homosexual and HIV/AIDS vilification	4
		5
91N	Offence of serious racial, transgender, homosexual or HIV/AIDS vilification by means of threat or incitement of physical harm	6
		7
(1)	A person who contravenes section 50AB of the <i>Anti-Discrimination Act 1977</i> by means which include:	8
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(a)	threatening physical harm towards, or towards any property of, the person or group of persons concerned, or	10
		11
(b)	inciting others to threaten physical harm towards, or towards any property of, the person or group of persons concerned,	12
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	is guilty of an offence.	14
	Maximum penalty:	15
(a)	in the case of an individual—50 penalty units or imprisonment for 6 months, or both, or	16
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(b)	in the case of a corporation—100 penalty units.	18
(2)	An offence against subsection (1) is a summary offence.	19
(3)	Proceedings for an offence against subsection (1) must be commenced not later than 12 months from when the offence was alleged to have been committed.	20
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Schedule 2	Amendment of Anti-Discrimination Act 1977	1
	No 48	2
[1]	Part 2, Division 3A Racial vilification	3
	Omit the Division.	4
[2]	Part 3A, Division 5 Transgender vilification	5
	Omit the Division.	6
[3]	Part 4C, Division 4 Homosexual vilification	7
	Omit the Division.	8
[4]	Part 4F HIV/AIDS vilification	9
	Omit the Part.	10
[5]	Part 4H	11
	Insert after Part 4G:	12
	Part 4H Prohibition of racial, transgender, homosexual and	13
	HIV/AIDS vilification	14
50AA	Definition of “public act”	15
(1)	In this Part, <i>public act</i> includes:	16
(a)	any form of communication (including speaking, writing, displaying notices, playing of recorded material, broadcasting and communicating through social media and other electronic methods) to the public, and	17 18 19
(b)	any conduct (including actions and gestures and the wearing or display of clothing, signs, flags, emblems and insignia) observable by the public, and	20 21 22
(c)	the distribution or dissemination of any matter to the public.	23
(2)	For the avoidance of doubt, an act may be a public act even if it occurs on private land.	24 25
(3)	Despite subsection (1), in any proceedings under this Act or in relation to the offence under section 91N of the <i>Crimes Act 1900</i> , an act is not a <i>public act</i> if the person concerned establishes that the person engaged in the conduct in circumstances that may reasonably be taken to indicate that the parties to the conduct desired it to be heard or seen only by themselves.	26 27 28 29 30
(4)	Subsection (3) does not apply in relation to conduct in any circumstances in which the parties to the conduct ought reasonably to expect that it may be heard or seen by someone else.	31 32 33
50AB	Serious vilification unlawful	34
(1)	It is unlawful for a person, by a public act, to intentionally or recklessly promote hatred towards, serious contempt for, or severe ridicule of, a person or group of persons:	35 36 37
(a)	on the ground of the race of the person or members of the group, or	38
(b)	on the ground that the person is, or members of the group are, transgender (within the meaning of Part 3A), or	39 40

(c)	on the ground of the homosexuality of the person or members of the group, or	1
		2
(d)	on the ground that the person is (or members of the group are) infected with HIV or has (or have) AIDS.	3
		4
(2)	This section applies whether or not the person has, or members of the group have, the characteristic that was the ground for the promotion of hatred, contempt or ridicule concerned.	5
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		7
(3)	Nothing in this section renders unlawful:	8
(a)	a fair report of a public act referred to in this section, or	9
(b)	a communication or the distribution or dissemination of any matter on an occasion that would be subject to a defence of absolute privilege in proceedings for defamation, or	10
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(c)	a public act, done reasonably and in good faith for:	13
(i)	academic, artistic, scientific or research purposes, or	14
(ii)	other purposes (including discussion or debate) in the public interest.	15
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[6]	Section 87 Definitions	17
	Omit “section 20C, 38S, 49ZT or 49ZXB” from the definition of <i>vilification complaint</i> .	18
	Insert instead “section 50AB”.	19
[7]	Section 88	20
	Omit the section. Insert instead:	21
	88 Vilification complaints	22
	A vilification complaint cannot be made unless:	23
(a)	each person on whose behalf the complaint is made:	24
(i)	has the characteristic that was the ground for the conduct that constitutes the alleged contravention, or	25
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(ii)	claims to have that characteristic and there is no sufficient reason to doubt that claim, or	27
		28
(b)	the complaint claims that the person who is alleged to have contravened Part 4H believed that each person on whose behalf the complaint is made has that characteristic (whether or not the person actually had the characteristic) and there is no sufficient reason to doubt that claim.	29
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[8]	Section 89B Acceptance or declining of complaints by the President	33
	Omit “(not including section 20D, 38T, 49ZTA or 49ZXC)” from section 89B (2) (c).	34
[9]	Section 90A Investigation of vilification complaints	35
	Omit “section 20D, 38T, 49ZTA or 49ZXC” from section 90A (1).	36
	Insert instead “section 91N of the <i>Crimes Act 1900</i> has been committed”.	37
[10]	Section 91 Prosecution for serious vilification	38
	Omit the section.	39

[11] Section 93A Referral of complaints to Tribunal at requirement of complainant	1
Omit “91 (4) or 92” from section 93A (1). Insert instead “92 or 94D (3)”.	2
[12] Section 94D	3
Insert after section 94C:	4
94D Referral of possible commission of offence of serious racial, transgender, homosexual or HIV/AIDS vilification	5
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(1) The President, after accepting a complaint (in whole or in part), is to consider whether an offence may have been committed under section 91N of the <i>Crimes Act 1900</i> in respect of the matter the subject of the complaint.	7
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(2) If the President considers that an offence may have been so committed, the President is to refer the complaint to the Commissioner of Police.	10
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(3) On making the referral, the President is to give notice in writing to the complainant of:	12
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(a) the making of the referral, and	14
(b) the rights of the complainant under section 93A.	15
(4) The Tribunal may stay proceedings relating to the complaint until the conclusion of proceedings for the alleged offence.	16
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(5) If the President becomes aware of information (otherwise than by way of a complaint) and considers that an offence under section 91N of the <i>Crimes Act 1900</i> may have been committed, the President may refer the information to the Commissioner of Police.	18
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[13] Section 96 Leave of Tribunal required for inquiry into certain matters	22
Omit “91 (2)” from section 96 (1). Insert instead “94D (2)”.	23
[14] Schedule 1 Savings and transitional provisions	24
Insert at the end of clause 1 (1):	25
any other Act that amends this Act	26