



New South Wales

# Anti-Discrimination and Crimes Legislation Amendment (Disability) Bill 2024

## 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* and the *Crimes Act 1900* as follows—

- (a) to make it unlawful to vilify a person or group of persons on the grounds of disability,
- (b) to make it unlawful to offend, insult, humiliate or intimidate another person or a group of persons on the grounds of race, religion, disability, sexual orientation, gender identity or intersex or HIV/AIDS status,
- (c) to create an offence of threatening or inciting violence on the grounds of disability.

## 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 Anti-Discrimination Act 1977 No 48

**Schedule 1[1]** replaces the definition of *disability*. **Schedule 1[4]** makes a consequential amendment.

**Schedule 1[2] and [3]** provide that, for the *Anti-Discrimination Act 1977*, a reference to a person with a disability includes a reference to—

- (a) a person who has a genetic disposition to be a parent to a child who has a disability, and
- (b) a person who is a carer of a person who has a disability, and
- (c) a person who may have a disability in the future, whether or not there is anything to indicate the person may have a disability in the future.

**Schedule 1[5]** inserts proposed Part 4A, Division 3A to make it unlawful for a person, by conduct observable by the public, to incite hatred towards, serious contempt for or severe ridicule of a person or a group of persons on the grounds that they have or do not have a disability. **Schedule 1[7]** makes a consequential amendment.

**Schedule 1[6]** inserts proposed Part 5A to make it unlawful for a person, by conduct observable by the public, to offend, insult, humiliate or intimidate a person or a group of persons on the grounds of race, religion, disability, sexual orientation, gender identity or intersex or HIV/AIDS status.

## **Schedule 2      Amendment of Crimes Act 1900 No 40**

**Schedule 2[4] and [6]** make it an offence to make public threats or incite violence against a person or a group of persons on the grounds the person has a disability, is a person who has a genetic disposition to be a parent to a child who has a disability or the person is a person who is a carer of a person who has a disability. **Schedule 2[1], [2] and [5]** make consequential amendments.

**Schedule 2[3]** makes a minor amendment.



New South Wales

# Anti-Discrimination and Crimes Legislation Amendment (Disability) Bill 2024

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*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 and Crimes Legislation Amendment (Disability) Bill 2024**

No. \_\_\_\_\_, 2024

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### **A Bill for**

An Act to amend the *Anti-Discrimination Act 1977* and the *Crimes Act 1900* to make it unlawful to vilify a person or group of persons on the grounds of disability; to make it unlawful to offend, insult, humiliate or intimidate another person or a group of persons on the grounds of certain specified attributes; to create an offence of threatening or inciting violence on the grounds of disability; and for related purposes.

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*The LEGISLATIVE ASSEMBLY has this day agreed to this Bill with/without amendment.*

*Legislative Assembly*

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*Clerk of the Legislative Assembly*

**The Legislature of New South Wales enacts—**

1

**1 Name of Act**

2

This Act is the *Anti-Discrimination and Crimes Legislation Amendment (Disability) Act 2024*.

3

4

**2 Commencement**

5

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

6

## Schedule 1      **Amendment of Anti-Discrimination Act 1977 No 48**

### [1]      **Section 4 Definitions**

Omit section 4(1), definition of *disability*. Insert instead—

*disability*—

- (a) means—
  - (i) total or partial loss of a bodily or mental function, or
  - (ii) total or partial loss of a part of the body, or
  - (iii) the presence in the body of organisms that cause disease or illness, or
  - (iv) the presence in the body of organisms that are capable of causing disease or illness, or
  - (v) the disfigurement of a part of the body, or
  - (vi) a disorder that results in a person learning differently from a person without the disorder, or
  - (vii) a disorder, illness or disease that affects a person’s thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour, or
  - (viii) another condition prescribed by regulations, and
- (b) includes—
  - (i) behaviour that is a symptom or manifestation of the disability, and
  - (ii) a disability that a person may have in the future, including because of a genetic disposition to the disability, and
  - (iii) a disability that it is thought a person may have in the future, whether or not—
    - (A) the person has a genetic disposition to the disability, or
    - (B) there is anything else to indicate the person may have the disability in the future, and
  - (iv) a long-term physical, mental, intellectual or sensory impairment that, in interaction with various barriers, may hinder a person’s full and effective participation in society on an equal basis with other persons, and
  - (v) reliance on—
    - (A) a support person, being a person who provides assistance or services to another person because of a disability the other person has, or
    - (B) a disability aid, being equipment, including a palliative or therapeutic device, generally recognised to alleviate an effect of a disability or another thing prescribed by regulations, or
    - (C) an assistance animal within the meaning of the *Disability Discrimination Act 1992* of the Commonwealth, section 9.

### [2]      **Section 4(6)**

Insert after section 4(5)—

(6)	For this Act, a reference to a person who has a disability includes a reference to the following—	1
		2
(a)	a person who has a genetic disposition to be a parent to a child who has a disability, and	3
		4
(b)	a person who is a carer of a person who has a disability.	5
<b>[3]</b>	<b>Section 49A Disability includes past, future and presumed disability</b>	6
	Omit section 49A(d). Insert instead—	7
(d)	that a person may have in the future, including because of a genetic disposition to the disability, or	8
		9
(e)	a disability that it is thought a person may have in the future, whether or not—	10
		11
(i)	the person has a genetic disposition to the disability, or	12
(ii)	there is anything else to indicate the person may have the disability in the future.	13
		14
<b>[4]</b>	<b>Section 49B What constitutes discrimination on the ground of disability</b>	15
	Omit section 49B(3) and (3A).	16
<b>[5]</b>	<b>Part 4A, Division 3A</b>	17
	Insert after Part 4A, Division 3—	18
	<b>Division 3A Disability vilification</b>	19
<b>490A</b>	<b>Definition</b>	20
	In this part—	21
	<b>public act</b> includes—	22
(a)	a form of communication to the public, including speaking, writing, printing, displaying notices, broadcasting, telecasting, screening and playing of tapes or other recorded material, and	23
		24
		25
(b)	conduct, not being a form of communication referred to in paragraph (a), observable by the public, including—	26
		27
(i)	actions and gestures, and	28
(ii)	the wearing or display of clothing, signs, flags, emblems and insignia, and	29
		30
(c)	the distribution or dissemination of matter to the public with knowledge the matter promotes or expresses hatred towards, serious contempt for or severe ridicule of—	31
		32
		33
(i)	a person on the ground the person has, or does not have, a disability, or	34
		35
(ii)	a group of persons on the ground the members of the group have, or do not have, a disability.	36
		37
<b>490B</b>	<b>Disability vilification unlawful</b>	38
(1)	It is unlawful for a person, by a public act, to incite hatred towards, serious contempt for or severe ridicule of—	39
		40
(a)	a person on the ground the person has, or does not have, a disability, or	41
(b)	a group of persons on the ground the members of the group have, or do not have, a disability.	42
		43

(2)	Nothing in this section renders unlawful—	1
(a)	a fair report of a public act referred to in subsection (1), or	2
(b)	a communication or the distribution or dissemination of a matter on an occasion that would be subject to a defence of absolute privilege, whether under the <i>Defamation Act 2005</i> or otherwise, in proceedings for defamation, or	3 4 5 6
(c)	a public act, done reasonably and in good faith, for academic, artistic, scientific, research or religious discussion or instruction purposes or for other purposes in the public interest, including discussion or debate about and expositions of an act or matter.	7 8 9 10
<b>[6] Part 5A</b>		11
	Insert after Part 5—	12
	<b>Part 5A Prohibition of offensive behaviour because of race, religion, disability, sexual orientation, gender identity or intersex or HIV/AIDS status</b>	13 14 15
<b>53A</b>	<b>Offensive behaviour because of race, religion, disability, sexual orientation, gender identity or intersex or HIV/AIDS status</b>	16 17
(1)	It is unlawful for a person to do a public act that is—	18
(a)	reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of persons, and	19 20
(b)	done because of any one or more of the following grounds—	21
(i)	the race of the other person or one or more of the members of the group,	22 23
(ii)	the other person has, or one or more of the members of the group have, a specific religious belief or affiliation,	24 25
(iii)	the other person has, or one or more of the members of the group have, a disability,	26 27
(iv)	the sexual orientation of the other person or one or more of the members of the group,	28 29
(v)	the gender identity of the other person or one or more of the members of the group,	30 31
(vi)	the other person is, or one or more of the members of the group are, of intersex status,	32 33
(vii)	the other person is, or one or more of the members of the group are, living with HIV or AIDS.	34 35
(2)	This section does not render unlawful anything said or done reasonably and in good faith—	36 37
(a)	in the performance, exhibition or distribution of an artistic work, or	38
(b)	during a statement, publication, discussion or debate made or held for a genuine academic, artistic or scientific purpose or another genuine purpose in the public interest, or	39 40 41
(c)	in making or publishing—	42
(i)	a fair and accurate report of an event or matter of public interest, or	43 44



(ii)	a fair comment on an event or matter of public interest if the comment is an expression of a genuine belief held by the person making the comment.	1 2 3
(3)	In determining whether an alleged offender has committed an offence against this section, it is irrelevant whether the alleged offender's assumptions or beliefs about an attribute of another person or a member of a group of persons referred to in subsection (1)(b)(i)–(vii) were correct or incorrect when the act is alleged to have occurred.	4 5 6 7 8
(4)	In this section— <b>gender identity</b> means the gender related identity, appearance or mannerisms or other gender related characteristics of a person, whether by way of medical intervention or not, with or without regard to the person's designated sex at birth. <b>intersex status</b> means the status of having physical, hormonal or genetic features that are— (a) neither wholly female nor wholly male, or (b) a combination of female and male, or (c) neither female nor male. <b>public act</b> includes— (a) a form of communication to the public, including speaking, writing, displaying notices, playing of recorded material, broadcasting and communicating through social media and other electronic methods, and (b) conduct observable by the public, including actions and gestures and the wearing or display of clothing, signs, flags, emblems and insignia, and (c) the distribution or dissemination of matter to the public. To avoid doubt, an act may be a public act even if it occurs on private land. <b>religious belief or affiliation</b> means holding or not holding a religious belief or view. <b>sexual orientation</b> means a person's sexual orientation towards— (a) persons of the same sex, or (b) persons of a different sex, or (c) persons of the same sex and persons of a different sex.	9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32
[7]	<b>Section 87 Definitions</b>	33
	Insert "49OB," after "38S," in section 87, definition of <b><i>vilification complaint</i></b> .	34

## Schedule 2 Amendment of Crimes Act 1900 No 40

**[1] Part 3A, Division 8, heading**

Insert “**disability,**” after “**religion,**”.

**[2] Section 93Z, heading**

Insert “**disability,**” after “**religion,**”.

**[3] Section 93Z(1)**

Omit “any”. Insert instead “one or more”.

**[4] Section 93Z(1)(b1)**

Insert after section 93Z(1)(b)—

- (b1) that the other person has, or one or more of the members of the group have, a disability,

**[5] Section 93Z(5)**

Insert in alphabetical order—

***disability***—

(a) means—

- (i) total or partial loss of a bodily or mental function, or
- (ii) total or partial loss of a part of the body, or
- (iii) the presence in the body of organisms that cause disease or illness, or
- (iv) the presence in the body of organisms that are capable of causing disease or illness, or
- (v) the disfigurement of a part of the body, or
- (vi) a disorder that results in a person learning differently from a person without the disorder, or
- (vii) a disorder, illness or disease that affects a person’s thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour, or
- (viii) another condition prescribed by regulations, and

(b) includes—

- (i) behaviour that is a symptom or manifestation of the disability, and
- (ii) a disability that a person may have in the future, including because of a genetic disposition to the disability, and
- (iii) a disability that it is thought a person may have in the future, whether or not—
  - (A) the person has a genetic disposition to the disability, or
  - (B) there is anything else to indicate the person may have the disability in the future, and
- (iv) a long-term physical, mental, intellectual or sensory impairment that, in interaction with various barriers, may hinder a person’s full and effective participation in society on an equal basis with other persons, and
- (v) reliance on—

- (A) a support person, being a person who provides assistance or services to another person because of a disability the other person has, or 1  
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  - (B) a disability aid, being, equipment, including a palliative or therapeutic device, generally recognised to alleviate an effect of a disability or another thing prescribed by regulations, or 4  
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6  
7
  - (C) an assistance animal within the meaning of the *Disability Discrimination Act 1992* of the Commonwealth, section 9. 8  
9
- [6] Section 93Z(6)** 10
- Insert after section 93Z(5)— 11
- (6) In this section, a reference to a person who has a disability includes a reference to the following— 12  
13
    - (a) a person who has a genetic disposition to be a parent to a child who has a disability, and 14  
15
    - (b) a person who is a carer of a person who has a disability. 16