



New South Wales

Anti-Discrimination Amendment (Sex Workers) Bill 2020

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* (the *Principal Act*) to make it unlawful to discriminate against persons on the ground the persons are, or have been, sex workers.

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[2] inserts Part 4H (proposed sections 50AA–50AO) into the Principal Act.

Proposed section 50AA defines *public act* and *sex worker* for Part 4H. **Schedule 1[1]** is a consequential amendment.

Proposed section 50AB sets out what constitutes discrimination against a person on the ground the person is, or has been, a sex worker.

Proposed section 50AC makes it unlawful for an employer to discriminate against an employee or an applicant for employment on the ground the employee or applicant is, or has been, a sex

worker. The proposed section does not apply to employment for the purposes of a private household.

Proposed section 50AD makes it unlawful for a principal to discriminate against a commission agent or a prospective commission agent on the ground the commission agent or prospective commission agent is, or has been, a sex worker.

Proposed section 50AE makes it unlawful for a principal to discriminate against a contract worker on the ground the contract worker is, or has been, a sex worker.

Proposed section 50AF makes 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 a prospective partner on the ground the partner or prospective partner is, or has been, a sex worker.

Proposed section 50AG makes it unlawful for local government councillors to discriminate against another councillor on the ground the councillor is, or has been, a sex worker.

Proposed section 50AH makes it unlawful for an industrial organisation to discriminate against a member of the organisation or an applicant for membership of the organisation on the ground the member or applicant is, or has been, a sex worker.

Proposed section 50AI makes it unlawful for an authority or body which is empowered to confer, renew or extend a professional, trade or occupational qualification to discriminate against a person who holds or seeks the qualification on the ground the person is, or has been, a sex worker.

Proposed section 50AJ makes it unlawful for an employment agency to discriminate against a person seeking the services of the agency on the ground the person is, or has been, a sex worker.

Proposed section 50AK makes it unlawful for an educational authority to discriminate against a student or an applicant for admission as a student on the ground the student or applicant is, or has been, a sex worker. The proposed section does not apply in relation to a private educational authority.

Proposed section 50AL makes it unlawful for a person who provides goods or services to discriminate against another person seeking the goods or services on the ground the person is, or has been, a sex worker.

Proposed section 50AM makes it unlawful in certain circumstances for an agent or principal to discriminate against a person who has accommodation or seeks accommodation on the ground the person is, or has been, a sex worker.

Proposed section 50AN makes it unlawful for a registered club to discriminate against a member of the club or an applicant for membership on the ground the member or applicant is, or has been, a sex worker.

Proposed section 50AO makes it unlawful in certain circumstances for a person, by public act, to vilify other persons on the ground the persons are, or have been, sex workers.



New South Wales

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New South Wales

Anti-Discrimination Amendment (Sex Workers) Bill 2020

No. _____, 2020

A Bill for

An Act to amend the *Anti-Discrimination Act 1977* to make it unlawful to discriminate against persons on the grounds the persons are, or have been, sex workers.

The Legislature of New South Wales enacts—

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1 Name of Act

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This Act is the *Anti-Discrimination Amendment (Sex Workers) Act 2020*.

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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 Anti-Discrimination Act 1977	1
	No 48	2
[1] Section 4 Definitions		3
	Insert in alphabetical order in section 4(1)—	4
	<i>public act</i> , for Part 4H, see section 50AA.	5
	<i>sex worker</i> , for Part 4H, see section 50AA.	6
[2] Part 4H		7
	Insert after Part 4G—	8
	Part 4H Discrimination on grounds of occupation as sex worker	9
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	Division 1 Preliminary	11
50AA Definitions		12
	In this Part—	13
	<i>public act</i> includes—	14
	(a) any form of communication to the public, including speaking, writing, printing, displaying notices, broadcasting, telecasting, screening and playing of tapes or other recorded material, and	15
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	(b) any other conduct observable by the public, including actions and gestures and the wearing or display of clothing, signs, flags, emblems and insignia, and	18
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	(c) the distribution or dissemination of any matter to the public with knowledge the matter promotes or expresses hatred towards, serious contempt for, or severe ridicule of—	21
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	(i) a person on the ground the person is, or has been, a sex worker, or	24
	(ii) a group of persons on the ground the members of the group are, or have been, sex workers.	25
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	<i>sex worker</i> means a person who provides sexual services on a commercial basis.	27
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50AB What constitutes discrimination on grounds of occupation as sex worker		29
	(1) A person (<i>the perpetrator</i>) discriminates against another person (<i>the aggrieved person</i>) on the ground the person is, or has been, a sex worker if the perpetrator—	30
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	(a) on the ground the aggrieved person is, or has been, a sex worker, treats the aggrieved person less favourably than in the same circumstances, or circumstances that are not materially different, the perpetrator treats or would treat a person who is not, or has not been, a sex worker, or	33
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	(b) requires the aggrieved person to comply with a requirement or condition with which a substantially higher proportion of persons who are not, or have not been, sex workers comply or are able to comply, being a requirement which is not reasonable having regard to the circumstances of the case and with which the aggrieved person does not or is not able to comply.	37
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- (2) For subsection (1)(a), something is done on the ground a person is, or has been, a sex worker if it is done on any of the following grounds—
- (a) the person is, or has been, a sex worker,
 - (b) a characteristic that appertains generally to sex workers,
 - (c) a characteristic that is generally imputed to sex workers.

Division 2 Discrimination in work

50AC Discrimination against applicants and employees

- (1) It is unlawful for an employer to discriminate against a person on the ground the person is, or has been, a sex worker—
- (a) in the arrangements the employer makes for deciding who should be offered employment, or
 - (b) in deciding who should be offered employment, or
 - (c) in the terms on which employment is offered.
- (2) It is unlawful for an employer to discriminate against an employee on the ground the person is, or has been, a sex worker—
- (a) in the terms or conditions of employment given to the employee, or
 - (b) by denying the employee access, or limiting the employee's access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment, or
 - (c) by dismissing the employee, or
 - (d) by subjecting the employee to any other detriment.
- (3) Subsections (1) and (2) do not apply to employment for the purposes of a private household.

50AD Discrimination against commission agents

- (1) It is unlawful for a principal to discriminate against a person on the ground the person is, or has been, a sex worker—
- (a) in the arrangements the principal makes for deciding who should be engaged as a commission agent, or
 - (b) in deciding who should be engaged as a commission agent, or
 - (c) in the terms on which the principal engages the person as a commission agent.
- (2) It is unlawful for a principal to discriminate against a commission agent on the ground the person is, or has been, a sex worker—
- (a) in the terms or conditions given to the commission agent, or
 - (b) by denying the commission agent access, or limiting the commission agent's access, to opportunities for promotion, transfer or training, or to any other benefits associated with the person's position as a commission agent, or
 - (c) by terminating the commission agent's engagement, or
 - (d) by subjecting the commission agent to any other detriment.

50AE Discrimination against contract workers

It is unlawful for a principal to discriminate against a contract worker on the ground the person is, or has been, a sex worker—

(a)	in the terms on which the contract worker is allowed to work, or	1
(b)	by not allowing the contract worker to work or continue to work, or	2
(c)	by denying the contract worker access, or limiting the contract worker's access, to any benefit associated with the work performed by the contract worker, or	3 4 5
(d)	by subjecting the contract worker to any other detriment.	6
50AF	Partnerships	7
(1)	It is unlawful for a firm consisting of 6 or more partners, or for any one or more of 6 or more persons proposing to form themselves into a partnership, to discriminate against a person on the ground the person is, or has been, a sex worker—	8 9 10 11
(a)	in the arrangements made for deciding who should be offered a position as partner in the firm, or	12 13
(b)	in deciding who should be offered a position as partner in the firm, or	14
(c)	in the terms on which the person is offered a position as partner in the firm.	15 16
(2)	It is unlawful for a firm consisting of 6 or more partners to discriminate against a partner on the ground the person is, or has been, a sex worker—	17 18
(a)	by denying the partner access, or limiting the partner's access, to any benefit arising from membership of the firm, or	19 20
(b)	by expelling the partner from the firm, or	21
(c)	by subjecting the partner to any other detriment.	22
50AG	Discrimination by local government councillors	23
	It is unlawful for any member or members of a local council when acting, whether alone or together, in the course of the member's or members' official functions to discriminate against another member of the council on the ground the person is, or has been, a sex worker.	24 25 26 27
50AH	Industrial organisations	28
(1)	It is unlawful for an industrial organisation to discriminate against a person who is not a member of the industrial organisation on the ground the person is, or has been, a sex worker—	29 30 31
(a)	by refusing or failing to accept the person's application for membership, or	32 33
(b)	in the terms on which it is prepared to admit the person to membership.	34
(2)	It is unlawful for an industrial organisation to discriminate against a member of the organisation on the ground the member is, or has been, a sex worker—	35 36
(a)	by denying the member access, or limiting the member's access, to any benefit provided by the organisation, or	37 38
(b)	by depriving the member of membership or varying the terms of the member's membership, or	39 40
(c)	by subjecting the member to any other detriment.	41
50AI	Qualifying bodies	42
	It is unlawful for an authority or a 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	43 44 45

occupation to discriminate against a person on the ground the person is, or has been, a sex worker—	1 2
(a) by refusing or failing to confer, renew or extend the authorisation or qualification, or	3 4
(b) in the terms on which it is prepared to confer the authorisation or qualification or to renew or extend the authorisation or qualification, or	5 6
(c) by withdrawing the authorisation or qualification or varying the terms or conditions on which it is held.	7 8
50AJ Employment agencies	9
It is unlawful for an employment agency to discriminate against a person on the ground the person is, or has been, a sex worker—	10 11
(a) by refusing to provide the person with any of its services, or	12
(b) in the terms on which it offers to provide the person with any of its services, or	13 14
(c) in the way in which it provides the person with any of its services.	15
Division 3 Discrimination in other areas	16
50AK Education	17
(1) It is unlawful for an educational authority to discriminate against a person on the ground the person is, or has been, a sex worker—	18 19
(a) by refusing or failing to accept the person’s application for admission as a student, or	20 21
(b) in the terms on which it is prepared to admit the person as a student.	22
(2) It is unlawful for an educational authority to discriminate against a student on the ground the student is, or has been, a sex worker—	23 24
(a) by denying the student access, or limiting the student’s access, to any benefit provided by the educational authority, or	25 26
(b) by expelling the student, or	27
(c) by subjecting the student to any other detriment.	28
(3) Nothing in this section applies in relation to a private educational authority.	29
50AL Provision of goods and services	30
It is unlawful for a person who provides, whether or not for payment, goods or services to discriminate against another person on the ground the person is, or has been, a sex worker—	31 32 33
(a) by refusing to provide the person with the goods or services, or	34
(b) in the terms on which the person is provided with the goods or services.	35
50AM Accommodation	36
(1) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground the person is, or has been, a sex worker—	37 38
(a) by refusing the person’s application for accommodation, or	39
(b) in the terms on which the person is offered accommodation, or	40
(c) by deferring the person’s application for accommodation or giving the person a lower order of precedence in a list of applicants for the accommodation.	41 42 43

(2)	It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground the person is, or has been, a sex worker—	1
	(a) by denying the person access, or limiting the person’s access, to any benefit associated with accommodation occupied by the person, or	2
	(b) by evicting the person, or	3
	(c) by subjecting the person to any other detriment.	4
(3)	Nothing in this section applies in relation to the provision of accommodation in premises if—	5
	(a) the person who provides or proposes to provide the accommodation, or a near relative of that person, resides and intends to continue to reside, in the premises, and	6
	(b) the accommodation provided in the premises is for no more than 6 persons.	7
50AN	Registered clubs	8
(1)	It is unlawful for a registered club to discriminate against a person who is not a member of the registered club on the ground the person is, or has been, a sex worker—	9
	(a) by refusing or failing to accept the person’s application for membership, or	10
	(b) in the terms on which it is prepared to admit the person to membership.	11
(2)	It is unlawful for a registered club to discriminate against a member of the registered club on the ground the member is, or has been, a sex worker—	12
	(a) by denying the member access, or limiting the member’s access, to a benefit provided by the club, or	13
	(b) by depriving the member of membership or varying the terms of the member’s membership, or	14
	(c) by subjecting the member to any other detriment.	15
Division 4	Vilification of sex workers	16
50AO	Vilification of sex workers unlawful	17
(1)	It is unlawful for a person, by a public act, to incite hatred towards, serious contempt for, or severe ridicule of—	18
	(a) a person on the ground the person is, or has been, a sex worker, or	19
	(b) a group of persons on the ground the members of the group are, or have been, sex workers.	20
(2)	Nothing in this section renders unlawful—	21
	(a) a fair report of a public act referred to in subsection (1), or	22
	(b) a communication or the distribution or dissemination of any 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	23
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- (c) a public act, done reasonably and in good faith, for—
 - (i) the purpose of academic, artistic, scientific, research or religious discussion or instruction, or
 - (ii) another purpose in the public interest including discussion, debate, an exhibition or a show about an act or matter.

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