

Act No. 48 of 1989

## ANTI-DISCRIMINATION (RACIAL VILIFICATION) AMENDMENT BILL 1989

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 racial vilification. Racial vilification 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 race of the person or members of the group, subject to certain qualifications.

The Bill—

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

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**Clause 1** specifies 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** gives effect to the Schedule of amendments to the Principal Act.

### SCHEDULE 1—AMENDMENTS

**Schedule 1 (1)** inserts a new Division 3A into Part 2 of the Principal Act. The proposed Division contains sections 20B–20D.

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**Definition of "public act"**

Proposed section 20B defines the term "public act" for the purposes of the new Division. "Public act" includes spoken and written communications to the public, actions and gestures observable by the public, the wearing or displaying in public 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 race.

**Racial vilification unlawful**

Proposed section 20C makes it unlawful for a person to engage in racial vilification. The proposed section is subject to a number of exceptions, including the fair reporting of acts of racial vilification, the communication or publication of matter subject to a 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. Those complaints may then be dealt with in accordance with the procedures set out in the Principal Act for dealing with complaints relating to other forms of unlawful discrimination.

**Offence of serious racial vilification**

Proposed section 20D provides that racial vilification involving threatened violence (including inciting others to threaten violence) constitutes a summary offence, punishable, in the case of an individual, by a maximum penalty of 10 penalty units or imprisonment for 6 months, or both, and, in the case of a corporation, by a maximum penalty of 100 penalty units. A person may only be prosecuted for the offence with the Attorney General's consent.

**Schedule 1 (8)** replaces section 125 (Recovery of penalties) with a new section as a consequence of the proposed penalty of imprisonment for the offence.

**Complaints by representative bodies**

**Schedule 1 (2)** amends section 87 to define the terms "racial vilification complaint" and "representative body".

**Schedule 1 (3)** amends section 88 to enable a body which represents a racial group to lodge a racial vilification complaint on behalf of one or more named persons who are members of that racial group. Such a complaint may only be lodged with the consent of the person or persons.

**Prosecution for serious racial vilification**

**Schedule 1 (4)** inserts a new section 89B. The new section 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 racial vilification 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. The Tribunal may delay holding an inquiry into the complaint until any proceedings for the alleged offence of serious racial vilification have been completed.

**Schedule 1 (5)** amends section 91 as a consequence of the insertion of proposed section 89B.

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**Orders of the Tribunal**

**Schedule 1 (6)** amends section 113 to enable the Tribunal, after holding an inquiry into a racial vilification complaint, to order a respondent to publish an apology or retraction. The Tribunal may also order a respondent to develop and implement a program aimed at eliminating unlawful discrimination. These orders are in addition to those currently provided for in section 113.

In the case of a racial vilification 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. The Tribunal may not award damages to the representative body which lodged the complaint.

**Schedule 1 (7)** amends section 116 as a consequence of the amendment to section 113.

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