



New South Wales

Anti-Discrimination Amendment (Complaint Handling) 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 make further provision with respect to the declining of certain complaints by the President of the Anti-Discrimination Board and to remove the requirement for the President to refer certain declined complaints to the Civil and Administrative Tribunal.

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] omits a provision relating to the making of complaints in more than one jurisdiction.

Schedule 1[3] provides that the President of the Anti-Discrimination Board must decline certain complaints made to the President.

Schedule 1[4] inserts additional grounds on which the President must decline a complaint made to the President. These grounds are as follows—

- (a) the President is of the opinion that the complaint, or part of the complaint, is frivolous, vexatious, misconceived or lacking in substance,

- (b) the President is of the opinion there is another more appropriate remedy that should be pursued in relation to the complaint or part of the complaint,
- (c) the subject-matter of the complaint has been dealt with by the President, an authority of the State or the Commonwealth,
- (d) the President is of the opinion that the subject-matter of the complaint may be more effectively or conveniently dealt with by an authority of the State or the Commonwealth,
- (e) one or more of the respondents is an individual who has made a public statement to which the complaint relates and, at the time of making the statement, was—
 - (i) a resident of another State or Territory, and
 - (ii) unless otherwise established by the complainant, not in New South Wales,
- (f) the complaint falls within an exception to the unlawful discrimination concerned,
- (g) the respondent has a cognitive impairment and it is reasonably expected that the cognitive impairment was a significant contributing factor to the conduct that is the subject of the complaint.

Schedule 1[5] clarifies the matters the President is to consider before determining that a complaint is frivolous, vexatious, misconceived or lacking in substance and inserts definitions used in the proposed amendments to section 89B.

Schedule 1[7] provides that the President must decline certain complaints during investigation. **Schedule 1[6]** makes a consequential amendment.

Schedule 1[9] clarifies the matters the President is to consider before being satisfied that a complaint is frivolous, vexatious, misconceived or lacking in substance for the purposes of declining the complaint at any stage of the President's investigation of a complaint.

Schedule 1[11] omits a provision that requires the President to refer certain declined complaints to the Civil and Administrative Tribunal at the request of the complainant. **Schedule 1[1], [8], [10], [12] and [13]** make consequential amendments.

Schedule 1[14] provides that an amendment made to the *Anti-Discrimination Act 1977* by the proposed Act does not apply to a complaint that was made before the commencement of the proposed Act.



New South Wales

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New South Wales

Anti-Discrimination Amendment (Complaint Handling) Bill 2020

No. , 2020

A Bill for

An Act to amend the *Anti-Discrimination Act 1977* to provide clear and reasonable rules for the acceptance of complaints by the NSW Anti-Discrimination Board; and for related purposes.

The Legislature of New South Wales enacts—

1

1 Name of Act

2

This Act is the *Anti-Discrimination Amendment (Complaint Handling) Act 2020*.

3

2 Commencement

4

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 87B Complaints made on behalf of others | | 3 |
| Omit section 87B(4). Insert instead— | | 4 |
| (4) On declining a complaint under subsection (3)(b), the President is to advise the complainant, by notice in writing, of the declining of the complaint. | | 5 6 |
| [2] Section 88B Making of complaints in more than one jurisdiction | | 7 |
| Omit the section. | | 8 |
| [3] Section 89B Acceptance or declining of complaints by the President | | 9 |
| Omit “may” from section 89B(2). Insert instead “must”. | | 10 |
| [4] Section 89B(2)(f)–(l) | | 11 |
| Insert at the end of section 89B(2)(e)— | | 12 |
| , or | | 13 |
| (f) the President is of the opinion that the complaint, or part of the complaint, is frivolous, vexatious, misconceived or lacking in substance, or | | 14 15 16 |
| (g) the President is of the opinion there is another more appropriate remedy that should be pursued in relation to the complaint or part of the complaint, or | | 17 18 19 |
| (h) the subject-matter of the complaint has been dealt with by the President, an authority of the State or the Commonwealth, or | | 20 21 |
| (i) the President is of the opinion that the subject-matter of the complaint may be more effectively or conveniently dealt with by an authority of the State or the Commonwealth, or | | 22 23 24 |
| (j) one or more of the respondents is an individual who has made a public statement to which the complaint relates and, at the time of making the statement, was— | | 25 26 27 |
| (i) a resident of another State or Territory as evidenced by the individual’s address on the electoral roll, and | | 28 29 |
| (ii) not in New South Wales, or | | 30 |
| (k) the complaint falls within an exception to the unlawful discrimination concerned, or | | 31 32 |
| (l) the respondent has a cognitive impairment and it is reasonably expected that the cognitive impairment was a significant contributing factor to the conduct that is the subject of the complaint. | | 33 34 35 |
| (2A) For the purposes of excluding the application of subsection (2)(j), the onus of establishing that the respondent was in New South Wales lies with the complainant. | | 36 37 38 |
| [5] Section 89B(5) and (6) | | 39 |
| Insert after section 89B(4)— | | 40 |
| (5) The President is to consider the following matters before determining that a complaint is frivolous, vexatious, misconceived or lacking in substance— | | 41 42 |
| (a) the number of complaints lodged by the complainant— | | 43 |

| | | |
|-------------|---|----------------|
| | (i) in respect of the same respondent, and | 1 |
| | (ii) in respect of the same or similar conduct, | 2 |
| | (b) if the complainant has lodged more than one complaint in respect of the same respondent—any similarity in the conduct that is the subject of the complaint, | 3 4 5 |
| | (c) any evidence that the complainant is not acting in the interests of justice. | 6 |
| | (6) In this section— | 7 |
| | <i>cognitive impairment</i> includes an intellectual disability, a developmental disorder (including an autistic spectrum disorder), a neurological disorder, dementia or a brain injury. | 8 9 10 |
| | <i>public statement</i> means any form of communication published in a newspaper or periodical, on a website or social media platform, or by radio or television broadcast or in a film. | 11 12 13 |
| [6] | Section 92, heading | 14 |
| | Omit “may”. Insert instead “must”. | 15 |
| [7] | Section 92(1) | 16 |
| | Omit “may”. Insert instead “must”. | 17 |
| [8] | Section 92(2)(b) | 18 |
| | Omit “sections 93A and”. Insert instead “section”. | 19 |
| [9] | Section 92(3) | 20 |
| | Insert after section 92(2)— | 21 |
| | (3) The President is to consider the following matters in order to be satisfied that a complaint is frivolous, vexatious, misconceived or lacking in substance— | 22 23 |
| | (a) the number of complaints lodged by the complainant in respect of the same respondent, | 24 25 |
| | (b) if the complainant has lodged more than one complaint in respect of the same respondent—any similarity in the conduct that is the subject of the complaint, | 26 27 28 |
| | (c) any evidence that the complainant is not acting in the interests of justice. | 29 |
| [10] | Section 92A Settlement or resolution of complaint | 30 |
| | Omit section 92A(2). | 31 |
| [11] | Section 93A Referral of complaints to Tribunal at requirement of complainant | 32 |
| | Omit the section. | 33 |
| [12] | Section 95 Referral of complaints to Tribunal | 34 |
| | Omit “93A,” from section 95(1). | 35 |
| [13] | Section 96 Leave of Tribunal required for inquiry into certain matters | 36 |
| | Omit section 96(1). | 37 |
| [14] | Schedule 1 Savings and transitional provisions | 38 |
| | Insert at the end of the Schedule, with appropriate Part and clause numbering— | 39 |

| | | |
|-------------|--|---|
| Part | Anti-Discrimination Amendment (Complaint Handling) Act 2020 | 1 |
| | | 2 |
| | Operation of amendments | 3 |
| | An amendment made to this Act by the <i>Anti-Discrimination Amendment (Complaint Handling) Act 2020</i> does not apply to a complaint that was made before the commencement of that Act. | 4 |
| | | 5 |
| | | 6 |