



New South Wales

Anti-Discrimination Amendment (Breastfeeding) Bill 2007

Explanatory note

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

Overview of Bill

The object of this Bill is to remove doubt that discrimination on the ground of breastfeeding constitutes unlawful discrimination on the ground of sex. The *Anti-Discrimination Act 1977* provides that discrimination on the basis of a characteristic that appertains generally to persons of a particular sex is discrimination on the ground of sex. The Bill provides that breastfeeding is a characteristic that appertains generally to women. Discrimination on the ground of sex is unlawful in work, education, provision of goods and services (including in restaurants and cafes), provision of accommodation and in registered clubs.

The Bill also defines *breastfeeding* as including the act of expressing breast milk.

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.

Clause 3 is a formal provision that gives effect to the amendments to the *Anti-Discrimination Act 1977* set out in Schedule 1.

Clause 4 provides for the repeal of the proposed Act after the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendments

Schedule 1 [1] removes doubt that discrimination on the ground of breastfeeding constitutes unlawful sex discrimination. Discrimination on the ground of sex includes treating a person less favourably on the ground of a characteristic that appertains generally to persons of that sex and the amendment declares breastfeeding to be a characteristic that appertains generally to women. The amendment also provides that breastfeeding includes the act of expressing breast milk.

Schedule 1 [2] makes a consequential amendment to a provision about direct discrimination. Direct discrimination occurs only when the circumstances of the persons between whom discrimination occurs are the same or *not materially different*. The purpose of the amendment is to make it clear that the mere fact that the discrimination occurs between a man and a nursing mother does not of itself make the circumstances materially different.

Schedule 1 [3] provides that a person (including an employer) is not to be treated as having unlawfully discriminated against a man on the ground of sex by reason only of the fact that the person grants a woman rights or privileges in connection with breastfeeding.

Schedule 1 [4] provides for the making of savings and transitional regulations consequent on the enactment of the proposed Act.

Schedule 1 [5] provides that the amendments made by the proposed Act do not apply to or in respect of anything done or omitted to be done before the commencement of the amendments.

First print



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New South Wales

Anti-Discrimination Amendment (Breastfeeding) Bill 2007

No. , 2007

A Bill for

An Act to amend the *Anti-Discrimination Act 1977* with respect to discrimination on the ground of breastfeeding.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Anti-Discrimination Amendment (Breastfeeding) Act 2007</i> .	3 4
2 Commencement	5
This Act commences on the date of assent.	6
3 Amendment of Anti-Discrimination Act 1977 No 48	7
The <i>Anti-Discrimination Act 1977</i> is amended as set out in Schedule 1.	8
4 Repeal of Act	9
(1) This Act is repealed on the day following the day on which this Act commences.	10 11
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	12 13

Schedule 1	Amendments	1
	(Section 3)	2
[1]	Section 24 What constitutes discrimination on the ground of sex	3
	Insert after section 24 (1B):	4
	(1C) For the purposes of this section, but without limiting the generality of this section, the fact that a woman is breastfeeding or may breastfeed is a characteristic that appertains generally to women. For the purposes of this Act, <i>breastfeeding</i> includes the act of expressing breast milk.	5 6 7 8 9
[2]	Section 24 (2) (c)	10
	Insert at the end of section 24 (2) (b):	11
	, or	12
	(c) are a woman who is breastfeeding and a man.	13
[3]	Section 35 Pregnancy, childbirth and breastfeeding	14
	Omit “or childbirth”. Insert instead “, childbirth or breastfeeding”.	15
[4]	Schedule 1 Savings and transitional provisions	16
	Insert at the end of clause 1 (1):	17
	<i>Anti-Discrimination Amendment (Breastfeeding) Act 2007</i>	18

[5] Schedule 1, Part 7	1
Insert after clause 17:	2
Part 7 Anti-Discrimination Amendment (Breastfeeding) Act 2007	3 4
18 Operation of amendments	5
An amendment made by the <i>Anti-Discrimination Amendment (Breastfeeding) Act 2007</i> does not apply to or in respect of anything done or omitted to be done before the commencement of the amendment.	6 7 8 9