

**ANTI-DISCRIMINATION (HOMOSEXUAL VILIFICATION)
AMENDMENT ACT 1993 No. 97**

NEW SOUTH WALES



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SCHEDULE 1—AMENDMENTS

**ANTI-DISCRIMINATION (HOMOSEXUAL VILIFICATION)
AMENDMENT ACT 1993 No. 97**

NEW SOUTH WALES



Act No. 97, 1993

An Act to amend the Anti-Discrimination Act 1977 to render vilification on the ground of homosexuality unlawful and to create an offence of serious homosexual vilification; and for other purposes. [Assented to 2 December 1993]

The Legislature of New South Wales enacts:**Short title**

1. This Act may be cited as the Anti-Discrimination (Homosexual Vilification) Amendment Act 1993.

Commencement

2. This Act commences 3 months after the date of assent, unless commenced sooner by proclamation.

Amendment of Anti-Discrimination Act 1977 No. 48

3. The Anti-Discrimination Act 1977 is amended as set out in Schedule 1.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Part 4C, Division 4:

After Division 3, insert:

Division 4—Homosexual vilification**Definition**

49ZS. In this Division:

“**public act**” includes:

- (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
- (b) any conduct (not being a form of communication referred to in paragraph (a)) 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 any matter to the public with knowledge that the matter promotes or expresses hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the homosexuality of the person or members of the group.

SCHEDULE 1—AMENDMENTS—*continued***Homosexual vilification unlawful**

49ZT. (1) It is unlawful for a person, by a public act, to incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the homosexuality of the person or members of the group.

(2) Nothing in this section renders unlawful:

- (a) a fair report of a public act referred to in subsection (1); or
- (b) a communication or the distribution or dissemination of any matter comprising a publication referred to in Division 3 of Part 3 of the Defamation Act 1974 or which is otherwise subject to a defence of absolute privilege in proceedings for defamation; or
- (c) a public act, done reasonably and in good faith, for academic, artistic, religious instruction, scientific or research purposes or for other purposes in the public interest, including discussion or debate about and expositions of any act or matter.

Offence of serious homosexual vilification

49ZTA. (1) A person must not, by a public act, incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the homosexuality of the person or members of the group by means which include:

- (a) threatening physical harm towards, or towards any property of, the person or group of persons; or
- (b) inciting others to threaten physical harm towards, or towards any property of, the person or group of persons.

Maximum penalty:

In the case of an individual—10 penalty units or imprisonment for 6 months, or both.

In the case of a corporation—100 penalty units.

(2) A person is not to be prosecuted for an offence under this section unless the Attorney General has consented to the prosecution.

SCHEDULE 1—AMENDMENTS—*continued*(2) Section 87 (**Definitions**):

(a) After the definition of “Court”, insert:

“homosexual vilification complaint” means a complaint in respect of a contravention of section 49ZT;

(b) Omit the definition of “representative body”, insert instead:

“representative body” means a body (whether incorporated or unincorporated) which represents or purports to represent:

(a) a racial group of people within New South Wales;
or

(b) a group of people within New South Wales on the basis of their homosexuality,

(whether or not the body is authorised to do so by the group concerned) and which has as its primary object the promotion of the interests and welfare of the group;

(3) Section 88 (**Making of complaints**):

(a) In section 88 (1A) (b), after “representative body”, insert “(as referred to in paragraph (a) of the definition of representative body)”.

(b) After section 88 (1A), insert:

(1AB) A homosexual vilification complaint in writing may be lodged with the President:

(a) in accordance with subsection (1), but only if the person or persons on whose behalf the complaint is lodged is, or are, or are thought to be, homosexual persons; or

(b) by a representative body (as referred to in paragraph (b) of the definition of representative body) on behalf of a named person or persons who is, or are, or are thought to be, homosexual persons.

(c) In section 88 (1B) and (1C), after “racial vilification complaint” wherever occurring, insert “or a homosexual vilification complaint”.

SCHEDULE 1—AMENDMENTS—*continued*

(4) Section 89C:

After section 89B, insert:

Prosecution for serious homosexual vilification

89C. (1) The President:

- (a) after investigating a homosexual vilification complaint; and
- (b) before endeavouring to resolve the complaint by conciliation,

must consider whether an offence may have been committed under section 49ZTA in respect of the matter the subject of the complaint.

(2) If the President considers that an offence may have been committed under section 49ZTA, the President must refer the complaint to the Attorney General.

(3) The President may only make such a referral within 28 days after receipt of the complaint.

(4) On making the referral, the President must, by notification in writing addressed to the complainant, advise the complainant of:

- (a) the making of the referral; and
- (b) the rights of the complainant under section 91 (1).

(5) Despite section 96, the Tribunal may stay an inquiry into the complaint until the conclusion of proceedings for the alleged offence under section 49ZTA.

(5) Section 91 (**Reference of complaint to Tribunal at requirement of complainant**):

In section 91 (1), after “section 89B (4)”, insert “, 89C (4)”.

(6) Section 113 (**Order or other decision of the Tribunal**):

In section 113 (1) (b) (iiia) and (iiib), (2) and (3), after “racial vilification complaint” wherever occurring, insert “or a homosexual vilification complaint”.