

CLAUSE NOTES

Anti-Discrimination Amendment Bill 2016

Clause 1: **Short title**

This clause provides that, once passed, the Bill will be cited as the Anti-Discrimination Amendment Act 2016.

Clause 2: **Commencement**

This clause provides for the amendments to commence on the day on which the Bill receives the Royal Assent.

Clause 3: **Principal Act**

This clause provides that the Principal Act to which the amendments apply is *Anti-Discrimination Act 1998* (the Act).

Clause 4: **Section 55 substituted (Public purpose)**

This clause substitutes section 55 of the Act with a new provision.

Section 55 provides an exception for conduct that would otherwise be unlawful under sections 17(1) or 19 of the Act. It states that the provisions of sections 17(1) and 19 do not apply in relation to certain conduct.

Section 17(1) of the Act provides that a person must not engage in conduct which offends, humiliates, intimidates, insults or ridicules another person on the basis of a specified protected attribute in circumstances in which a reasonable person, having regard to all the circumstances would have anticipated that the other person would be offended, humiliated, intimidated, insulted or ridiculed. The specified protected attributes are gender, race, age, sexual orientation, lawful sexual activity, gender identity, intersex, marital status, relationship status, pregnancy, breastfeeding, parental status, family responsibilities and disability.

Section 19 prohibits the incitement of hatred, serious contempt for, or severe ridicule of a person or group of persons on the grounds of race, disability, sexual orientation or lawful sexual activity or religious belief, affiliation or religious activity.

Section 55 provides an exception for certain conduct, including a public act done in good faith for academic, artistic, scientific or research purposes or for any purpose in the public interest.

The proposed new section 55 clarifies that the exception applies if the public act was done for religious purposes, as well as for academic, artistic, scientific or research purposes.

“Religious purpose” is defined as including conveying, teaching or proselytising a religious belief.

Clause 5: Section 64 amended (Rejection of complaints)

This clause amends section 64 by adding new provisions in relation to complaints under sections 17(1) and 19 of the Act.

Section 64 of the Act provides the Anti-Discrimination Commissioner with the discretion to reject a complaint in certain limited circumstances, including if he or she is of the opinion that the complaint is trivial, vexatious, misconceived or lacking in substance or does not relate to discrimination or prohibited conduct.

This clause inserts two new provisions (subclauses 64(1A) and 64(1B)) to enable complaints to be rejected at an early stage if the Anti-Discrimination Commissioner is satisfied that the relevant conduct does not fall within the ambit of sections 17(1) or 19 or that an exception under section 55 applies.

These new provisions are not discretionary – the Anti-Discrimination Commissioner must reject the complaints if satisfied of the relevant matters.

It is noted that there is a right of review in relation to a decision to reject a complaint. Under section 65 of the Act, a person whose complaint was rejected by the Anti-Discrimination Commissioner may apply to the Anti-Discrimination Tribunal for the rejection to be reviewed.

Proposed new subsection 64(1A):

The new subsection (1A)) requires the Anti-Discrimination Commissioner to reject a complaint made under section 17(1) if he or she is satisfied that:

- A reasonable person, having regard to all the circumstances, would not have anticipated that the person by or in respect of whom the complaint is made would be offended, humiliated, intimidated, insulted or ridiculed by the conduct; or
- By virtue of section 55, the provisions of section 17(1) do not apply to the conduct.

Proposed new subsection 64(1B):

This new provision (new subsection (1B)) requires the Anti-Discrimination Commissioner to reject a complaint made under section 19 if he or she is satisfied that:

- The public act does not constitute an incitement of, as the case may be, hatred towards, serious contempt for or severe ridicule of the person or persons by or in respect of whom the complaint is made on whichever of the grounds referred to in section 19(a), (b), (c) and (d) is relevant to the complaint; or
- By virtue of section 55, the provisions of section 19 do not apply.

Clause 6: Section 71 amended (Completion of investigation)

This clause amends section 71 to reflect the new complaints provisions in section 64 (refer to clause note for clause 5).

If a complaint has been accepted under section 64 of the Act, it proceeds to investigation. Section 71 of the Act provides that once an investigation is completed, the Anti-Discrimination Commissioner (or an authorised person) is to determine either that the complaint is dismissed under one of the specified grounds referred to in section 64(1), or that the matter is to proceed to conciliation or is to proceed to inquiry by the Anti-Discrimination Tribunal.

This clause inserts a new subsection into section 71 (subsection 71(1A)) which will require the Anti-Discrimination Commissioner to dismiss a complaint if, following the investigation, he or she is satisfied that it is a complaint that the Anti-Discrimination Commissioner, exercising reasonable judgment, ought to have rejected under the proposed new subsections 64(1A) or (1B).

Clause 7: Section 99 amended (Dismissal of complaint)

This clause amends section 99 to reflect the new complaints provisions in section 64 (refer to clause note for clause 5).

A complaint that is not resolved during the conciliation or investigation stage is referred to the Anti-Discrimination Tribunal (the Tribunal).

Under section 99 of the Act, the Anti-Discrimination Tribunal (the Tribunal) can dismiss a complaint if, following an inquiry, it finds that the complaint is unsubstantiated. The Tribunal also has the power to dismiss a complaint at any time if it is satisfied that the complaint is trivial, vexatious, misconceived or lacking in substance; or that, for some other reason, dismissing the complaint would be just and appropriate.

This clause inserts a new subsection 99(2A) to require the Tribunal to dismiss a complaint where it is satisfied that the complaint is one which the Anti-Discrimination Commissioner, exercising reasonable judgment, ought to have rejected under the proposed new subsections 64(1A) or (1B). This new requirement only applies in relation to complaints made under sections 17(1) or 19. It does not affect any other complaints.

Clause 8: Repeal of Act

This is a standard provision to provide for the automatic repeal of the Amendment Act (the Bill) after the amendments have been incorporated into the Principal Act.