



30 September 2013

Alex Greenwich MP
58 Oxford Street
Paddington NSW 2021

KINGSFORD
LEGAL CENTRE

By email: Sydney@parliament.nsw.gov.au

Dear Mr Greenwich,

RE: Anti-Discrimination Amendment (Private Educational Authorities) Bill 2013

Kingsford Legal Centre (KLC) thanks you for the opportunity to comment on the *Anti-Discrimination Amendment (Private Educational Authorities) Bill 2013 (the Bill)*.

We support the removal of exceptions in the *Anti-Discrimination Act 1977 (NSW) (ADA)* allowing private educational authorities to discriminate against students on the basis of their sex, homosexuality, transgender status, marital or domestic status, disability and age.

We further submit that section 56(d) of the ADA should also be removed, which allows religious organisations to discriminate when they deem it necessary to avoid injury to the religious susceptibilities of their adherents.

About Kingsford Legal Centre

KLC is a community legal centre which has been providing legal advice and advocacy to people in need of legal assistance in the Randwick and Botany Local Government areas since 1981. KLC provides general advice on a wide range of legal issues and undertakes casework for many clients who, without our assistance, would be unable to afford a lawyer.

KLC also has a specialist employment law service, a specialist discrimination law service (NSW wide) and an Aboriginal Access Program. In addition to this work, KLC also undertakes law reform and policy work in areas where the operation and effectiveness of the law could be improved.

In the last 12 months KLC provided legal advice to 180 people about discrimination law.

Private educational institutions in NSW

We support the amendments proposed by the Bill and the removal of section 56(d) of the ADA because these exceptions and exemptions allow educational institutions to discriminate against approximately one third of all school students in NSW.

There are three school sectors in NSW, the NSW Government sector and the non-government sector, which is comprised of the Catholic sector and the independent sector.

NSW Government schools enrol approximately 66% of all students in NSW, the Catholic system enrolls approximately 18% of students in NSW and the independent sector enrolls

approximately 15% of students in NSW.¹ The ADA only applies to NSW Government sector schools, therefore the exceptions allow non-government schools to discriminate against approximately 32% of all students in NSW.

It is also worth noting that 84% of all independent schools have a religious affiliation.² This means that even if the exceptions in the ADA allowing private educational authorities to discriminate³ were removed, the overwhelming majority of independent schools may still be able to claim they are exempt from the ADA under section 56(d) of the ADA.

We support the Bill but also emphasise that it is important to remove section 56(d) of the ADA to make it unlawful for all private educational institutions to discriminate against students.

Funding of schools

We support the amendments proposed by the Bill and the removal of section 56(d) of the ADA because we believe that educational institutions who receive funding from the state and Federal governments should not be allowed to discriminate against their students.

In 2008-9 the state and Federal governments provided approximately \$8.2 billion to non-government schools.⁴ According to recurrent funding arrangements for school education in 2010-11 the Federal Government provided \$4.5 billion and the state governments provided \$1.5 billion to Catholic schools and the Federal Government provided \$2.5 billion and the state governments provided \$900 million to independent schools.⁵

The Federal Parliament recently decided that it was not appropriate to allow religious organisations in receipt Commonwealth funding to provide aged care services to discriminate against consumers on the basis of their sexual orientation or gender identity.⁶

We similarly submit that any organisation funded by either the NSW or Federal Government to provide education should not be allowed to discriminate against their students.

Anti-Discrimination Act

We support the amendments proposed by the Bill and support the removal of section 56(d) of the ADA because such reforms support the purpose of the ADA.

The long title of the ADA states that the ADA is to “render unlawful racial, sex and other types of discrimination in certain circumstances and to promote equality of opportunity between all persons.”

However, sections 31A(3)(a), 38K(3), 46A(3), 49L(3)(a), 49ZO(3), 49ZYL(3)(b) and 56(d) of the ADA allow private educational authorities and religious organisations to discriminate

¹ Association of Independent Schools NSW <http://www.aisnsw.edu.au/About/Pages/About-Independent-Schools.aspx> accessed 27 September 2013.

² Independent Schools Council of Australia, “Independent schooling in Australia: The Independent Schools Sector Snapshot 2013” accessed from <http://isca.edu.au/about-independent-schools/> on 26 September 2013.

³ Sections 31A(3)(a), 38K(3), 46A(3), 49L(3)(a), 49ZO(3) and 49ZYL(3)(b) of the ADA.

⁴ Productivity Commission, *Report on Government Services 2011* (28 January 2011) Commonwealth Government.

⁵ Independent Schools Council of Australia, above n 2.

⁶ Section 37(2) of the *Sex Discrimination Act 1984*.

against some of the most vulnerable people in our community such as young pregnant women, children with disabilities and young lesbian, gay and trans* people.

We understand that some private educational institutions believe that there is no need to amend the ADA because they do not discriminate against students. We submit that if private educational institutions do not discriminate against their students, they do not need the exemptions and exceptions currently provided for in the ADA.

However, the *Writing Themselves In* reports have documented over the years that schools continue to be a place where young lesbian, gay, bisexual, trans* and intersex (LGBTI) people experience verbal and physical abuse due to their sexual orientation, gender identity and intersex status.⁷

We submit that discriminatory treatment of students can severely affect their ability to participate fully in our communities as adults. These exemptions and exceptions also send a message that discrimination against vulnerable young people is acceptable by some educational institutions.

We support the Bill and the removal of section 56(d) of the ADA because the amendments would help to fulfil the aim of the ADA to promote equality of opportunity for all people.

Australian Human Rights Framework

We support the amendments proposed by the Bill and the removal of section 56(d) of the ADA because such amendments accord with Australia's Human Rights Framework.

On 21 April 2010, the Commonwealth Attorney-General launched Australia's Human Rights Framework which outlined a range of key measures to further protect and promote human rights in Australia and encourage greater inclusion and participation in our community.⁸

The framework focuses on (amongst other things):

- reaffirming a commitment to Australia's human rights obligations; and
- improving human rights protections.⁹

Australia is a signatory to the *Universal Declaration of Human Rights (UDHR)* which requires that all people be treated equally before the law and be entitled, without any discrimination, to equal protection of the law.¹⁰ Article 8 of the UDHR requires that Australia afford everyone the right to an effective remedy for acts violating the fundamental rights granted by international human rights law.

Australia, as a signatory to the *Convention on the Rights of the Child (CROC)*, is specifically required to ensure that children are not discriminated against on the basis of their, or their

⁷ Lynne Hillier, Deborah Dempsey, Lyn Harrison, Lisa Beale, Lesley Matthews, Doreen Rosenthal, *Writing Themselves In – A national report on the sexuality, health and wellbeing of same-sex attracted young people* La Trobe University (1998); Lynne Hillier, Alina Turner, Anne Mitchell, *Writing Themselves In Again – 6 years on. The 2nd national report on the sexual health and wellbeing of same-sex attracted young people in Australia*, La Trobe University (2005); Lynne Hillier, Tiffany Jones, Marisa Monagle, Naomi Overton, Luke Gahan, Jennifer Blackman, Anne Mitchell, *Writing Themselves in 3* La Trobe University (2010).

⁸ Attorney-General's Department, <http://www.ag.gov.au/RightsAndProtections/HumanRights/HumanRightsFramework/Pages/default.aspx> accessed 27 September 2013.

⁹ Ibid.

¹⁰ Article 7.

parent's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status and to undertake all appropriate legislative, administrative, and other measures for the implementation of this right and all other rights within CROC.

The amendments proposed by the Bill and removing section 56(d) of the ADA would reaffirm the NSW Government's commitment to Australia's Human Rights Framework by respecting Australia's international human rights obligations and improving human rights protections by offering a remedy to students who experience discrimination in educational institutions.

Please do not hesitate to call us on (02) 9385 9566 if you would like to discuss the content of our submission further.

Yours faithfully,

KINGSFORD LEGAL CENTRE



Kellie McDonald
Solicitor

Anna Cody
Director