



30 September 2013

Alex Greenwich MP
50 Oxford Street
Parramatta NSW 2015

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 or language.

We further submit that section 56(d) of the ADA should also be removed, which allows religious organisations to discriminate when they deny access to their premises to persons on the basis of their religious susceptibilities or 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 casework for many clients who, without KLC, would be unable to afford a lawyer.

KLC also has a specialist employment and a specialist discrimination law service (NSW wide) and an Aboriginal Access Unit. KLC 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 100 people about discrimination law.

Private educational institutions in NSW

We support the amendments proposed in 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 28% and the independent sector enrolls approximately 6%.

approximately 15% of students in NSW.¹ The ADA only applies to NSW Government schools to approximately 32% of all students.

It is also worth noting that the independent schools exemption means that even if the exemptions were removed, the overwhelming majority of independent schools may still be able to claim that they are exempt from the ADA under section 31A of the ADA.

We support the Bill but do 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

We support the amendments proposed by the Bill and the removal of section 56(d) of the ADA because it would 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 recent funding arrangements for 2010-11 the Federal Government provided \$4.5 billion and the state governments provided \$3.7 billion to Catholic schools and the NSW Government provided \$900 million to independent schools.⁵

The Federal Fair Trading Act 2007 prohibits Commonwealth Government organisations that receive Commonwealth funding from discriminating 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 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 "prohibit unlawful racial, sex and other types of discrimination between all persons."

However, sections 31A(3), 31A(4), 31A(5), 31A(6), 49L(3)(a), 49L(3)(b) and 50(d) of the ADA allow private education

¹ Association of Independent Schools NSW <http://www.aisnsw.edu.au/About-us> 27 September 2010.

² Independent Schools Council of Australia, "Independent Schools in Australia 2013" accessed 27 September 2010.

³ Sections 31A(3)(a), 38K(3), 46A(3), 49L(3)(a), 49Z(3) and 49Y(3) of the ADA.

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

⁵ Independent Schools Council of Australia, *2010-11* above n 2.

⁶ See

against some of the most vulnerable people in our society – women, children, young people, people with disabilities, people in care, people in custody, people in the justice system, people in the aged care system, people in the mental health system, people in the homelessness system, people in the refugee and migrant system, people in the indigenous community, people in the LGBTIQ community, people in the aged care system, people in the mental health system, people in the homelessness system, people in the refugee and migrant system, people in the indigenous community, people in the LGBTIQ community.

We understand that some private educational institutions believe that they do not 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* reports have documented over the years that schools continue to be a place where young people experience verbal and physical abuse due to their sexual orientation 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 can send a message that discrimination against vulnerable people is acceptable in 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 2013, the Attorney-General announced 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.

The framework focuses on (amongst other things):

- reaffirming a commitment to Australia's human rights obligations, and
- improving human rights protections.⁸

Australia is a signatory to the *Universal Declaration of Human Rights* which states that all people be treated equally before the law, 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 guaranteed by international human rights law.

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

⁷ Lynne Hillier, Jemsey, Lyn Harrison, Lisa Beale, Lesley M. Hillier, *National report on the sexual health and wellbeing of same-sex attracted young people* La Trobe University (1998); Lynne Hillier, Anna Turner, Anne Mitchell, *Writing their wellbeing of same-sex attracted young people in Australia* La Trobe University (2005); Lynne Hillier, Tiffany Jones, Larisa Monagle, Naomi Overton, Luke Gahan, Jennifer Black, Anne Mitchell, *Writing their wellbeing of same-sex attracted young people in Australia* La Trobe University (2013).

⁸ <http://www.ag.gov.au/rights/frames/protections/humanrights/humanrights.htm>, accessed 11 September 2013.

⁹ Ibid.

¹⁰ Article 7.

parent's race, colour, sex, language, religion, political or other beliefs, social origin, property, disability, birth or other status, and to undertake appropriate legislative, administrative, and other measures for the implementation of this and other rights within CE 1994C.

The amendment proposed by the NSW Government reflects the NSW Government's commitment to Australia's Human Rights and Australia's international human rights obligations, and offers a more robust and effective framework for the implementation of this and other rights within CE 1994C.

Please do not hesitate to call us on (02) 9385 5531 if you would like to discuss our submission further.

Yours faithfully,
KINGSFORD LEGAL



Kellie Zenaide
Solicitor

Director