



30 September 2013

Alex Greenwich MP
50 Oxford Street
Parramatta NSW 2024

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 ADA's independence means that even if the exceptions were removed, the overwhelming majority of independent schools will still be able to claim that they are exempt from the ADA under section 31A(3) 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 recurrent funding in 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 organisations from receiving Commonwealth funds if they 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 students.

Anti-Discrimination Act

We support the amendments proposed by the Bill and support the removal of section 56(d) of the ADA because each reform supports 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(3), 31A(3), 49L(3)(a), 49L(3)(b) and 50(d) of the ADA allow private education to discriminate against students.

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 49Z(3)(b) of the ADA.

⁴ Productivity Commission, *Report on Government Services* (Canberra: Australian Government, 2011), 26 January 2011; Commonwealth Government.

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

⁶ See

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 1990C.

The amendment proposed by the NSW Government is consistent with the NSW Government's commitment to Australia's Human Rights and Australia's international human rights obligations, and offers a number of benefits:

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

Yours faithfully,
KINGSFORD LEGAL CENTRE



Kellie Zenaide
Solicitor

Director