

8 August 2023

RE: Anti-Discrimination Act review – call for preliminary submissions

Please take this as a submission on a narrow sub-set of the various matters that the Commission may consider in the course of this review.

Having conducted several matters under the Anti-Discrimination Act 1977 (NSW) on behalf of clients (on both sides of a complaint) I wish to make only two subtle suggestions for reform of the Act that should fall under items 1, 4, 8, 9 and 11 of the terms of reference. I believe both suggestions would assist with a speedy resolution of complaints and match with contemporary community standards. These are

1. Section 4A should be amended to make clear that once it is shown that treatment has been less favourable because of any number of reasons (one of which could be on the basis of a protected attribute), an onus falls on the Respondent to establish that the treatment was not based on the protected attribute;
2. It should be possible, early in a complaint process and up until determination of a complaint, for an expression of apology to be given that is not then taken to be an express or implied admission and not be relevant to the determination of fault or liability. The analogue is to s 20 of the Defamation Act 2005 (and could also include the analogue provision in s 38(1)(a) of that Act that evidence of the apology might be admissible and able to be taken into account as a mitigating factor on an assessment of damages).

Yours faithfully

MARK SEYMOUR