

# Law Reform Commission of NSW

## Anti-Discrimination Act review

### **Submission**

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#### Contact

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The Shooting Industry of Australia (SIFA) welcomes the opportunity to contribute to the Law Reform Commissions review into the NSW Anti-Discrimination Act 1977.

SIFA is the peak body representing the major importers, wholesalers and retailers of firearms and related accessories in Australia.

Although a niche industry in relative terms, Australia's shooting industry generates many triple bottom-line benefits for Australia.

- Social
  - Enabling Australia's security by supplying Defence, Law enforcement and other government agencies.
  - Supplying Australia's ~1,000,000 licensed firearm owners and shooting clubs.
- Economic
  - Contributing \$2.4 Billion to Australia's GDP.
  - Supporting an estimated 19,500 jobs.
- Environmental.
  - Firearms are the most common and most humane method of controlling over abundant wildlife populations, protecting our ecology.
  - Firearms are frequently used by farmers to satisfy their biosecurity obligations and to mitigate the impact of pests, protecting the viability of their crops and our food security.

### **Scope and structure of the current act.**

It is noted that the objects of the act are not established within this legislation, as is contemporary legislative drafting practice.

The inclusion of some clear guidance on what legislators intended the act to achieve would be a welcome addition to any proposed amendments.

For the purpose of this submission, SIFA assumes that the legislation seeks to address discrimination such as it is defined in the Cambridge dictionary.

***“the treatment of a person or particular group of people differently, in a way that is worse than the way people are usually treated”.***

SIFA stakeholders experience discrimination every day. Some examples of what forms that takes is provided later in this submission.

Often, these forms of discrimination are dealt with in other pieces of legislation or regulation. It would be helpful if the subject of discrimination were dealt with once within a single act, rather than being touched upon across a range of other legislation and similar instruments.

Failing that, the review might consider how best to cross reference and integrate with other regulatory instruments which also touch on discrimination.

The act currently adopts a very prescriptive and structured approach to defining its boundaries and applications. In doing so, it is silent on many other forms of discrimination which are equally detrimental to a well-functioning civil society.

The rapidly evolving nature of our society demands a more principles-based approach towards discrimination, so that amendments to the act are not required each time a new subject or type of discrimination emerges, or indeed when groups or individuals begin to experience forms of discrimination which were not an issue previously.

### **Denial of essential business services.**

On a weekly basis, SIFA stakeholders are denied access to essential business services simply because of the nature of the products and services we deal in. We experience this across the banking, insurance, advertising, transport and similar sectors.

In the vast majority of cases, this has nothing to do with the underlying business dynamics of the purchaser. That is to say, the business or individuals being discriminated against satisfy the terms & conditions for the service being sought in every aspect and are being denied service for no other reason than the nature of the industry they operate within.

When challenged, the circumstances behind most denial-of-service decisions are often attributed to ill-informed and opinionated employees exercising their authority in an inappropriate way (personal bias) and / or inadequately defined business policies and processes which are open to interpretation.

SIFA would argue that the legislation ought to include protections for legitimate entities operating within the law, and that there ought to be an obligation upon businesses to ensure that their business processes and practices do not allow their staff or agents to act in a discriminatory manner (all else being equal).

### **The pursuit of Environmental, Social & Governance (ESG) aspirations.**

SIFA has observed that the denial of essential business services outlined above is often associated with a poorly considered or misdirect attempts by businesses to implement internal ESG policies.

Increasingly, businesses in Australia are entering the political sphere and advocating for or against issues which have little or nothing to do with the fundamental business objectives of the entity.

Whilst it could be argued that these actions represent a breach of Directors fiduciary duties to use shareholder funds in the best interests of those shareholders, there is also a discriminatory aspect to this.

The prime example here is when the Australian freight provider TNT was acquired by the international conglomerate FedEx, which subsequently terminated all Australian firearm related contracts giving only 30 days' notice. Some of those customers had contracts dating back decades.

There were no underlying issues which drove this local decision to discriminate against one particular group of consumers of freight services. FedEx still ship firearms in other jurisdictions.

The review might consider how to mitigate the situation where the pursuit of Environmental, Social & Governance aspirations results in some existing or prospective customers being treated worse than others due to factors which have nothing to do with the underlying business relationship.

### **Reluctance of regulators to follow due process.**

Another form of discrimination which we see is when public servants misuse legislated powers in a discriminatory way.

The most obvious example of this is the mental health provisions within firearms legislation.

Whilst it is clearly appropriate that regulators consider an applicant's mental health before issuing (or denying) a firearms license, an issue arises when the condition has been treated and is no longer a relevant consideration.

SIFA is well aware of instances where public servants have continued to give significant weight to these mental health considerations in their decision making, even after letters of support from treating mental health professionals have been provided, attesting that the applicants condition is no longer an issue and is highly unlikely to reoccur.

SIFA has made the point before that this unprofessional behaviour by bureaucrats has the unintended consequence of discouraging firearms license holders from seeking treatment for mental health conditions for fear of subsequent discrimination.

The review might well give some thought as to what appeal mechanisms are appropriate when citizens "do the right thing" and then subsequently experience bureaucratic discrimination (in this case, when a public servant fails to follow the decision-making guidelines contained within administrative law).

At the moment, there are few avenues available to seek natural justice in discriminatory situations such as these.