



29 September, 2023

NSW Law Reform Commission

Dear Members of the NSW Law Reform Commission,

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

Thank you for inviting preliminary submissions on reform of the Anti-Discrimination Act 1977 (NSW).

Rainbow Labor NSW welcomes the opportunity to submit.

The Anti-Discrimination Act 1977 (NSW) was the first jurisdiction in Australia to introduce anti-discrimination protections for 'homosexuals' and was widely perceived as progressive when introduced. In 1994 'homosexual' was clarified to include male and female 'homosexuals' and expanded to include transgender as a protected attribute in 1996. As noted by the NSW Attorney General Michael Daley, 'we have come a long way since 1977 and it is time for the anti-discrimination laws to come under scrutiny so we can assess whether they are still fit for purpose.' Rainbow Labor NSW applauds the Minns Labor Government for fulfilling their election commitment in referring the Anti-Discrimination Act 1977 to the NSW Law Reform Commission for review, which will ensure the legislation continue to evolve to protect our most vulnerable people.

Rainbow Labor believes an evolving legislation should be inclusive and comprehensive, and the current Act contains exclusions to the LGBTQIA+ community that we seek to represent. The existing legislation focusses only on binary genders and does not currently extend to a modern inclusive spectrum, specifically people who do not identify as either male or female. In particular, Part 3A *Discrimination on transgender grounds*, Section 38A should be broadened to include all trans and gender diverse people, including non-binary people. It is also worth noting that bisexual people do not appear in the legislation, and should have

protections under the Act. Broadening protections based on 'sexual orientation', in line with the Commonwealth Sex Discrimination Act 1984, would be a step towards inclusion. As a grassroots Labor organization, the rights of LGBTQIA+ people are paramount, and visibility is an essential step in protecting our rights under an evolving legislation.

Rainbow Labor is concerned with ongoing discrimination against queer workers, including a broad range of LGBTQIA+ people employed at private schools and religious institutions, which are exempt from the Act in its current form. Under Part 3A *Discrimination on transgender grounds*, division 3 notes that 'Nothing in this section applies to or in respect of a private educational authority.' Similarly, under Part 4C *Discrimination on the ground of homosexuality*, under Division 3 the same caveat appears. A lack of protection from discrimination for LGBTQIA+ teachers and staff at private and religious schools is an inequality which must be corrected, especially when considering that private and religious schools benefit from government funding. All Australians deserve to live honestly and openly, especially at their place work. These exemptions also extend to students attending private schools and religious institutions, and no child should be subject to discrimination by an educational institution.

It is also important to address Part 6 *General exceptions to this Act*, where subsection 56 largely excludes religious bodies from the Act. Under subsection 59A Adoption services notes "(1) Nothing in Part 3A or 4C affects any policy or practice of a faith-based organisation concerning the provision of adoption services under the *Adoption Act 2000* or anything done to give effect to any such policy or practice." Therefore, adoptive services, many of which are faith based and run by religious institutions, are exempt from the legislation and free to discriminate against the LGBTQIA+ community as they see fit, despite receiving public funding (as do schools). This has severe ramifications for those individuals who work within these institutions, as well as for those individuals who seek those services.

Rainbow Labor will continue to advocate for equal rights and fair treatment. It is our belief the Anti-Discrimination Act 1977 (NSW) can be modernized and simplified to better promote the equal enjoyment of rights and reflect more contemporary community standards. A first step is to broaden who is protected under the legislation to ensure the Act serves its purpose of anti-discrimination. Following, we need to ensure that no single group is exempt from the legislation, especially if that groups is benefitting from public funding. If

the Anti-Discrimination Act 1977 is to serve a modern and accepting community, it must be impartial and equal for all peoples.

Rainbow Labor Executive