

19 March 2024

NSW Law Reform Commission  
Locked Bag 5000  
Parramatta NSW 2124

**Anti-Discrimination Act review – Response from The Sussan Group**

Dear Commissioner,

The purpose of this letter is to request that the NSW Government consider amendments to the NSW Discrimination Act that would allow targeted recruitment or employment initiatives for historically disadvantaged groups without needing to apply for an exemption. We, at The Sussan Group believe that such an amendment would bring the Act into line with all other states and territories and remove a current barrier which is likely to impact diversity initiatives within businesses.

The Sussan Group, encompassing Sportsgirl, Sussan and Suzanne Grae, is dedicated to fostering diversity and inclusion within all our brands and is a large employer of women. At our core, we strive to make a positive impact in the lives of Australian women, our customers, our teams, and our community. We continually look for ways to amplify underrepresented voices and empower diverse communities, including but not limited to our initiatives supporting First Nations and marginalised groups. In New South Wales, our operations comprise of one fulfilment centre and 146 stores across our three Brands. This includes 222 full time, 304 part time and 624 casual employees.

We have been actively working on developing an inclusive recruitment process, extending from our Head Office to our stores. Committed to understanding and embedding inclusive hiring practices, we recently completed a comprehensive recruitment review with Get Skilled Access, a disability inclusion consulting firm. This partnership has helped us to identify strengths in our current processes and areas where we can further enhance accessibility, inclusion, and remove barriers for people with disabilities in both recruitment and overall employment opportunities.

The Sussan Group also aims to cultivate a culture of inclusion through various initiatives. For instance, we partner with Maxima who offer one of the most extensive not-for-profit recruitment, training and employment services in Australia. Their scope includes Disability Employment Services, Temporary and Permanent Recruitment, Apprenticeships and Traineeships, and Indigenous Employment Services.

In the federal Sex Discrimination Act 1984, Racial Discrimination Act 1975, Disability Discrimination Act 1992, Age Discrimination Act 2004 and the regulations of other states and territories, a variation of 'positive discrimination', 'special measures' or 'measures intended to

achieve equality’ provisions are built into the discrimination laws for the purpose of providing benefits to disadvantaged groups to promote measures to secure formal or substantive equality<sup>1</sup>.

Where a program is being undertaken in accordance with the specific legislative requirements to promote equality for a group with particular attributes as listed in the Act in question, these provisions allow organisations to support inclusivity by for example conducting targeted recruitment without needing to apply for an exemption. Examples of special measures across states and territories can include advertising roles to employ only Indigenous peoples, people with disabilities, or women in industries and sectors with a disparity of people with these particular protected attributes. These intentional employment initiatives play an important role in promoting substantive equality for disadvantaged groups and align with our organisational values.

If any organisation in NSW currently wishes to conduct targeted recruitment or employment initiatives for a historically disadvantaged group of people to promote substantive equality, they are required to apply for an exemption under section 126 of the Act, to grant them permission to favour a particular group of people for a specific job or program. This introduces a barrier which is likely to impact inclusivity initiatives and have an impact on positive outcomes for disadvantaged groups. We note for example that while there are more than 770,000 businesses with NSW as their main state<sup>2</sup>, there are fewer than 180 organisations that are listed as having current exemptions.

Across Australia, The Sussan Group employs more than 3,000 people. We employ people in a variety of roles, from highly-skilled and specialist positions to entry level jobs across stores and in our fulfilment centres. The current process of applying for an exemption in NSW is resource intensive for our Group, and makes intentionally hiring groups of historically disadvantaged groups challenging in NSW relative to other states and territories. Removing the need to apply for an exemption to conduct hiring for specific cohorts will enable us to make significant progress on our diversity initiatives in NSW resulting in more positive social and economic outcomes for historically disadvantaged groups.

### **The proposed amendment**

We would urge the NSW government to add an amendment to the NSW Discrimination Act to extend section 21 to permit employers to lawfully implement ‘special needs programs and activities’ in employment initiatives and for a broader range of attributes, so that this is not only

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1 S 8(1) of the federal Racial Discrimination Act 1975, s 7D of the Sex Discrimination Act 1984, s 45 of the Disability Discrimination Act 1992, s 57 of the NT Anti-Discrimination Act 1996, and s 12 of the VIC Equal Opportunity Act provides that ‘special measures’ will not constitute unlawful discrimination under those acts. Similarly, s 33 of the Age Discrimination Act 2004 permits positive discrimination. s 27 of the ACT Discrimination Act 1991 permits actions for the purpose of ensuring that there are equal opportunities and/or opportunities to meet special needs. ss 31, 35K, 35ZD, 51, 66R and 66ZP of the WA Equal Opportunity Act 1984 includes ‘measures intended to achieve equality’ including for sex, family responsibilities, sexual orientation, race, impairment and age. s 65 of the SA Equal Opportunity Act 1984 includes ‘projects for benefit of persons of a particular race’, s 85 includes ‘projects for the benefit of persons with a particular disability’ and s 85P includes ‘projects for the benefit of persons of a particular age group’. S 47 permits measures intended to achieve equality for persons of a particular sex, sexual orientation, gender identity or intersex status. s 105 of the QLD Anti-Discrimination Act 1991 includes ‘equal opportunity measures’ and s 104 permits ‘welfare measures’. s 25 and 26 under the TAS Anti-Discrimination Act 1998 includes either schemes for the benefit of disadvantaged groups’ or a ‘program, plan or arrangement designed to promote equal opportunity’

2 <https://www.abs.gov.au/statistics/economy/business-indicators/counts-australian-businesses-including-entries-and-exits/latest-release#states-and-territories>

limited to a particular race but would also include (at a minimum) special measures to achieve equality for persons of a particular sex and/or disability. This would bring it in line with other states and territories and remove the need to apply for an exemption for targeted recruitment and development programs, and assist National organisations such as ours.

We would welcome the commission to make this amendment to support businesses, including The Sussan Group, to remove this barrier. Please contact myself should you require any further information.

Kind regards,

Robyn Batson  
Group People & Community Partnerships Manager  
The Sussan Group