

The Hon Thomas Bathurst AC KC
Chairperson
New South Wales Law Reform Commission
By email: ADAreview@dcj.nsw.gov.au

Re: SafeWork NSW Submission - Review of the Anti-Discrimination Act 1977 (NSW): Unlawful conduct

Dear Chair,

SafeWork NSW welcomes the opportunity to provide a submission in response to the NSW Law Reform Commission's first consultation paper on the *Review of the Anti-Discrimination Act 1977 (NSW): Unlawful Conduct*. The consultation paper provides an important opportunity to consider reforms that strengthen protections for workers, promote safer and more inclusive workplaces, and align anti-discrimination protections with existing work health and safety obligations.

SafeWork NSW is the primary work health and safety regulator in NSW and plays a vital role in protecting workers from both physical and psychosocial harms, such as bullying and sexual harassment. SafeWork NSW administers the *Work Health and Safety Act 2011* (WHS Act) and associated regulations, responds to workplace incidents, and works proactively with businesses to identify and manage work health and safety risks.

On 28 June 2024, SafeWork NSW became one of the first Australian jurisdictions to adopt the model Code of Practice: Sexual and Gender-Based Harassment. It adopts a definition of sexual harassment consistent with section 28A of the *Sex Discrimination Act 1984* (Cth).

SafeWork NSW welcomes the Law Reform Commission's comprehensive review of the *Anti-Discrimination Act 1977* and strongly supports any proposed amendments that align with work health and safety (WHS) laws. These include simplifying the test for sexual harassment, prohibiting sex- and gender-based conduct, ensuring all types of workers are covered by existing prohibitions, extending protections to harassment connected to a person's status as a worker or a Person Conducting a Business or Undertaking, and introducing a positive duty to prevent discrimination, harassment, and vilification.

SafeWork NSW supports any amendments to the test for sexual harassment which make it easier for workers to identify when sexual harassment has occurred at work and to come forward and actively report these incidents. On the positive duty to prevent workplace harms, the existing NSW WHS laws have an implicit positive duty requiring employers to take preventative, proactive action to identify psychosocial hazards, including workplace sexual harassment, and to manage these risks in consultation with workers.

Any proposal to include a positive duty in NSW Anti-Discrimination laws should consider alignment with WHS laws as well as existing SD Act positive duty to ensure there is not excessive regulatory burden, confusion and uncertainty for duty holders. Therefore we:

- recommend aligning with the definition of sexual harassment in the Sex Discrimination Act 1984. This is consistent with SafeWork and Fair Work’s definition of sexual harassment.
- recommend aligning the definition of ‘workplace’ if appropriate with section 8 of the Work Health and Safety Act 2011. Please see 1.2 of the ‘Code of practice: Sexual and gender-based harassment’ for further information on this definition.
- would like to be consulted on the drafting of key provisions to ensure alignment of provisions where possible.

SafeWork NSW also supports a simplified approach to prohibiting sexual harassment that extends protections beyond the traditional physical workplace, including work-related events such as conferences, and captures harassment by non-employees, such as customers or patrons. Expanding the scope in this way ensures the legislation reflects the realities of modern work and provides comprehensive protection for all workers, regardless of where or how the harassment occurs.

I thank you again for the opportunity to contribute to the Law Reform Commission’s ongoing review of the *Anti-Discrimination Act 1977* and look forward to the second consultation paper. Should you require any further information about this submission, I encourage you to contact Clarence Brown, Director Policy, SafeWork NSW

Yours sincerely,

Janet Schorer PSM

Commissioner

SafeWork NSW