



Gay & Lesbian Rights Lobby

LEGISLATIVE COUNCIL PORTFOLIO COMMITTEE NO.5 LEGAL AFFAIRS INQUIRY

Submission to the Anti-Discrimination Amendment (Complaint Handling) Bill 2020

April 30th, 2020.



Gay & Lesbian Rights Lobby

Introduction and contact

The New South Wales Gay and Lesbian Rights Lobby (NSWGLRL) has a proud history. We are the peak organisation representing the gay and lesbian rights. We advocate on behalf of the gay and lesbian community and their families, as well as joining advocacy efforts of our partners and allies across the LGBTI community. We work closely with bisexual, transgender and intersex organisations, and all Members of Parliament to advance the rights of our communities in NSW.

NSWGLRL has been in continuous existence since 1988, but the origins of our organisation date back to the 1970s and the efforts to decriminalise homosexual acts and to provide phone counselling support to community members impacted by bigotry.

NSWGLRL has established strong ties to the community, consulting with our members and hearing their stories, many of them describing incidents of violence, discrimination and hatred. In the past 31 years, our community-based organisation has been comprised of volunteers with lived experience of this bigotry. We draw on our history of bearing witness to those stories in making this submission.

A full list of our advocacy efforts is published on our website and in our annual reports.

In line with our submission to the NSW Legislative Council's Portfolio Committee No.5 – Legal Affairs (the committee), any questions are welcome and can be directed to Jack Whitney Convenor of NSWGLRL, on 0411 387 913 and convenor@glrl.org.au.



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Our position

Dear Committee,

The NSW Gay and Lesbian Rights Lobby ('the GLRL') welcomes the opportunity to provide comment on the Anti-Discrimination Amendment (Complaint Handling) Bill 2020 ('the Bill') as part of the NSW Legislative Council Portfolio Committee No.5 Legal Affairs Inquiry.

The GLRL is the peak organisation representing the rights of gay and lesbian people and advocating for legislative and social change in the broader LGBTIQ community. We advocate on behalf of the gay and lesbian community and their families, as well as joining advocacy efforts of our partners and allies across the LGBTIQ community. We have strong ties with the community, consulting with our members and hearing their stories. We draw on our history of bearing witness to those stories in making this submission.

Like many stakeholder groups, the GLRL has continuously identified issues with the *Anti-Discrimination Act 1977* ('the Act'), especially where it fails to adequately protect LGBTIQ people from discrimination. We also acknowledge that there are legitimate problems with the way complaints made under the Act are handled.

However, these issues are best addressed by a full review of the Act in partnership with the community, rather than through piecemeal amendments to individual elements of the legislation.

We write with full knowledge of the context in which The Hon. Mark Latham MLC has drafted the Bill. We understand that The Hon. Mark Latham MLC and others genuinely believe themselves to have been subject to vexatious complaints. However, we ask that the issues of complaint handling be considered in full by an expert body, such as Anti-Discrimination NSW themselves or the Law Reform Commission, as one element of a broader review into the Act, rather than via this Bill.

Beyond our firm position that a full review of the Act represents a better process than this Bill, we do hold specific concerns about the Bill as drafted. In considering these proposed amendments, it is critical to remember that there is no requirement for complainants to Anti-Discrimination NSW to have legal representation. This means that the impact of this Bill would be felt most acutely by unrepresented victims of discrimination trying to navigate a complex legal system.

The Bill would significantly impact the ability of victims of discrimination to access justice, by:

- **Stopping victims from accessing justice in more than one jurisdiction:**¹ This would mean where discrimination has occurred across more than one state or territory and it is unclear which jurisdiction is appropriate, a victim would not be able to make a valid complaint in NSW if they had tried to do so in another state or territory.
- **Stopping victims from accessing justice where the discrimination occurred over more than 12 months:** This would remove the ability of a victim to lodge a complaint where any part of the

¹ Anti-Discrimination Amendment (Complaint Handling) Bill 2020 schedule 1, clause 2.



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discrimination occurred more than 12 months prior.² In practice this would mean victims of long periods of discrimination would have their complaints declined entirely, simply because some part of the discrimination occurred more than 12 months earlier.

- **Stopping victims from accessing justice because some part of the complaint lacks substance:** As noted, complaints can be made by unrepresented victims. The Bill would require the President of Anti-Discrimination NSW to decline a complaint where even one part of it is frivolous, vexatious, misconceived or lacks substance.³ This would mean unrepresented victims who tried in good faith to make a complaint, but mistakenly included some part of it that lacked substance, would have their entire complaint declined.
- **Adding unnecessary complexity by requiring victims and respondents to provide details of cognitive function:** The limitation on bringing complaints against respondents who have a cognitive impairment⁴ adds significant complexity to the system and places a burden on possibly unrepresented parties to prove the cognitive function of the respondent either way.

The GLRL will allow other stakeholders with a deeper understanding of the operational components of the Act to comment on the interaction of this Bill with the exceptions to the Act and NCAT. However, we do note that NCAT was critical in affording justice to the four police officers who suffered homophobic discrimination during their time working at Newtown Police Station⁵ and it appears important that a link with NCAT be maintained.

The Bill as drafted is flawed, would limit access to justice and unnecessarily complicates a system which must be capable of navigation by unrepresented victims of discrimination. This Bill should be rejected and a full review of the *Anti-Discrimination Act 1977*, including complaint handling, be pursued by an external body such as the Anti-Discrimination NSW or the Law Reform Commission in partnership with the community.

Please do not hesitate to contact the GLRL with any questions about our submission. These can be directed to Jack Whitney, Convenor of the GLRL, on 0411 387 913 and convenors@glrl.org.au.

Stay proud,

Jack Whitney
Convenor, NSW Gay and Lesbian Rights Lobby

² Ibid, clause 3.

³ Ibid, clause 4.

⁴ Ibid.

⁵ <https://www.abc.net.au/news/2019-11-29/gay-cops-win-landmark-discrimination-case-against-nsw-police/11749158>