

# *Exposure Draft - Human Rights and Anti-Discrimination Bill 2012 Submission*



**SOUTH AUSTRALIAN WINE INDUSTRY**  
ASSOCIATION INCORPORATED

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### **About the South Australian Wine Industry Association**

SAWIA is an industry association representing the interests of wine grape growers and wine producers throughout the state of South Australia.

SAWIA is a not for profit incorporated association, funded by voluntary member subscriptions, grants and fee for service activities. SAWIA's mission is to provide leadership and services which underpin the sustainability and competitiveness of our members' wine business.

SAWIA membership represents approximately 96% of the grapes crushed in South Australia and about 36% of the land under viticulture. Each major wine region within South Australia is represented on the board governing our activities.

SAWIA has a strong track record as an industry leader and innovator in many areas. SAWIA pro-actively represents members and the greater wine industry with government and related agencies in all aspects of business in the wine sector.

It is important to note that SAWIA and its members support a fair and equitable workplace and support the need for a workplace free of discrimination.

The Employee Relations (ER) Committee is one committee of SAWIA's that provides strategic direction in relation to employment and industrial relations issues for the industry in South Australia.

SAWIA puts forward this submission on behalf of members of the ER Committee after seeking their input.

### **Background**

In September 2011, the Attorney-General and Minister for Finance and Deregulation released a discussion paper entitled Consolidation of anti-discrimination laws and sought public and community views on this paper. The discussion paper included key issues and questions relating to existing Anti-Discrimination legislation. Submissions on the Consolidation of Anti-Discrimination Laws closed on 1 February 2012 and were used to inform the Exposure Draft – *Human Rights and Anti-Discrimination Bill 2012* (the Bill).

The Bill seeks to consolidate the following 5 pieces of current federal anti-discrimination legislation into one single piece of federal legislation:

- *Sex Discrimination Act*,
- *Race Discrimination Act*,
- *Disability Discrimination Act*,
- *Age Discrimination Act*; and
- *Australian Human Rights Commission Act*.

The Australian Government has asked interested stakeholders for public consultation, with submissions requested by 21 December 2012.

### Current and ongoing Anti-Discrimination Legislation

Whilst the Bill seeks to consolidate 5 pieces of federal anti-discrimination Acts, the states and territories will still operate under their respective anti-discrimination legislation. The individual circumstances of a complaint will determine where the complaint is made (at a State or Federal level). Currently there are a number of pieces of state legislation that impose obligations on employers in relation to Anti-Discrimination Laws. Those pieces of legislation are as listed below:

- *South Australian Equal Opportunity Act 1984*
- *Australian Capital Territory Discrimination Act 1991*
- *New South Wales Anti-Discrimination Act 1977*
- *Northern Territory Anti-Discrimination Act 1996*
- *Queensland Anti-Discrimination Act 1991*
- *Tasmania Anti-Discrimination Act 1998*
- *Victoria Equal Opportunity Act 1995*
- *Western Australia Equal Opportunity Act 1984*

The *South Australian Equal Opportunity Act 1984* (the Act) is the legislation that applies in South Australia and is an Act to promote equality of opportunity between the citizens of the State; to prevent certain kinds of discrimination based on sex, race, disability, age or various other grounds; to facilitate the participation of citizens in the economic and social life of the community; and to deal with other related matters.

In 2009 The Act was strengthened to include more protection for:

- People who care for a dependent child or disabled family member
- People with a mental illness, or an infection without symptoms
- Domestic partners
- People discriminated against because of who their spouse or partner is
- Contractors
- People who have been sexually harassed
- Association with a child
- People who wear dress or adornments symbolic of their religion

The Act also added better protection for workers if they:

- Are sexually harassed and the employer has not taken reasonable steps to prevent the sexual harassment
- Are sexually harassed by customers or clients – such as waiting staff harassed by patrons
- Wear dress or adornments symbolic of their religion.

### Protection for Employees

The *Fair Work Act 2009* also provides protection from discrimination in the workplace by making it unlawful for an employer to take adverse action against an employee or prospective employee because of the person's race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

## **SAWIA's Comments**

Anecdotal evidence from our membership base gives the impression that the investigation process for claims of harassment needs further improvement. In one case, an employee who resided in South Australia was not afforded the opportunity to meet an investigator face to face as the investigator was from interstate, so all discussions took place via either email or telephone, which is hardly a robust way to conduct an investigation into a matter of such gravity.

It is the view of SAWIA that the introduction of the Bill and the reverse onus of proof where an employee is required to prove a 'prima facie' case will lead to an increased number of claims of discrimination in the workplace due to it being easier for the employee to make such claims. This could lead to a cost, time and resource impost for businesses where employers will have to defend claims which may just be part of a strategy, on the part of the employee to get some form of compensation. It is the view of some of our members that introducing a reverse onus of proof process, could, in the extreme, force business to move operations off-shore due to the possible increase in claims of discrimination / harassment.

Whilst SAWIA and its membership base support the need for anti-discrimination in the workplace, it is believed that the Bill will, in its current form, prove to be a red-tape and administrative burden for our members. In an already highly regulated workplace, any further regulatory requirements will place undue pressure on overstretched resources.

SAWIA strongly opposes the Bill in its current form to the extent we have raised above.