

EQUAL OPPORTUNITY ACT — REFORM

Statement

HON DR BRAD PETTITT (South Metropolitan) [6.19 pm]: I rise to talk about desperately needed reform to the Equal Opportunity Act 1984 that this government has promised to deliver, yet here we are in the final sitting weeks of 2023 and it is still nowhere to be seen. I start by acknowledging members of the LGBTQIA+ community who are with us tonight. I thank them for coming and for their support. I know that this is something that means a lot to that community and I am proud to be able to stand up today and talk about it.

In 2022, the Law Reform Commission made 163 recommendations for amendments to the Equal Opportunity Act to provide for stronger protections for women and LGBTQIA+ communities in employment and school settings and, importantly, to bring Western Australia's anti-discrimination laws in line with those in the rest of the country to ensure that all workplaces could be free from harassment. That was an important moment. It was a huge win for the community and one that gave many people hope. Over the years this government, and the Attorney General in particular, have been pretty clear that the time line would see legislation introduced to Parliament in 2023, well ahead of the next state election.

In November last year—almost a year ago to the day—I asked the Attorney General about the time line for reform and the answer given was that the government was aiming to introduce the new legislation in the first half of the 2023 parliamentary year. At the end of the first half of the 2023 parliamentary year, during the budget estimates hearings in June, I again asked the Attorney General when we would see this legislation. I was told that it was in the final stages of drafting.

Here we are in the last stages of the 2023 parliamentary year and there is still no sign of it. I note that one of the key regrets of former Premier Mark McGowan as he was leaving office after announcing his resignation in June was that he would still be able to see it; he just would not be giving the press conference. The former Premier championed this and the Attorney General has talked about it. The former Premier, Mark McGowan, is right: there is still time. However, we have got to get a move on and do it now; otherwise, there is a real danger that these reforms will not pass this Parliament. Passing this Parliament is really important. We have a progressive majority in both houses. I know a huge majority on this side and others on the crossbench would be keen to support this. That is not guaranteed in the next Parliament. In the next Parliament, this place will be much more diverse and getting through legislation like this may be much more fraught. Now is the opportunity to pass legislation on this. This is one of the key reasons I was keen to get up tonight and, with the support of those in the public gallery, hopefully get this moving. I think it is a really important reform.

I want to talk about some of the reasons this reform is so desperately needed here in WA. Members would all agree that the law is outdated. It is undoubtedly one of the worst in the country when it comes to giving equal opportunity to members of our community who face discrimination. At the heart of this legislation is that it is the government's responsibility to look after at-risk communities. However, it cannot do that without a robust Equal Opportunity Act.

Some key areas of reform that I would expect to see to the Equal Opportunity Act include the following. The first is around strengthening equal opportunity provisions for LGBTQIA staff and students in religious schools. The current anti-discrimination law in WA is almost four decades old and is outdated compared with that in other jurisdictions. Reforms to religious exemptions would particularly protect the LGBTQIA community. This is really important. Limiting these exemptions will mean that discrimination based on a person's sexuality, gender, gender identity and sex characteristics will be much more difficult. That would be sensible reform.

The next reform is around removing the disadvantage test for sexual harassment complaints. The current test for unlawful sexual harassment is one of disadvantage, which means that in the workplace, sexual harassment complainants must prove that they were harassed and that challenging the behaviour would or did disadvantage them in their employment. The reforms propose to remove the disadvantage test on the basis that it ought not be incumbent on the harassed person to navigate complex legal arguments to satisfy the disadvantage requirement. Again, that is very sensible. The removal of that test would reflect current public expectations on how sexual harassment in the workplace is treated. Interestingly, the recommendations came in proximity to the 2022 *Enough is enough* report from the Community Development and Justice Standing Committee, which uncovered what we would all agree were some shocking revelations around sexual harassment in WA's mining industry. The recommendations will simplify the test for complainants and place greater responsibility on employers to keep workplaces harassment-free. The reforms will also prohibit sexual and racial harassment by members of Parliament and Parliament staff, judicial officers and court staff, and unpaid and volunteer workers.

There is a range of other important recommendations. I note that my time is rapidly ticking away, so I will speed up what I want to say and unfortunately skip over a little.

The recommendation to introduce anti-vilification laws is important. The current act covers only race. The reforms propose to expand the definition to include disability, gender identity, sex, sex characteristics and sexual orientation,

and that is important. The Law Reform Commission also recommended strengthening protections for family and domestic violence victims from discrimination.

Finally, I will focus on gender recognition, because this is a really important one. We need better protections for the trans and gender-diverse members of our community. The current act extends protection only to those who have legally updated their gender, and that is simply not good enough in 2023. Protecting trans and gender-diverse people from transphobic discrimination regardless of their gender history should be a given and we need to take action on this. While the Equal Opportunity Act continues to be delayed, protections for trans and gender-diverse people depend on them being able to update their gender through the Gender Reassignment Board. We know that the board has had its own problems. For several parts of this year, it has been inactive due to lack of membership. In 2017, the Labor Party itself committed to abolishing the board. It is time we got on and did that because we need to move on. The requirements of that board are more stringent than those in every other jurisdiction in Australia. It provides no option for a non-binary gender and that in itself is discriminatory against an entire section of our community. It is time to get on and do that.

The Equal Opportunity Act is a crucial piece of legislation that affects a broad range of people, and it should be a priority. The Gender Reassignment Act 2000 is a small piece of legislation that affects a specific group of people, but in a huge way. It needs to be updated urgently to follow through on the government's promises to transgender and gender-diverse people, and to protect this at-risk community.

I have been reliably informed that the legislation has already been drafted—since May this year in fact—so the fundamental question arises: why has the government not brought it on? The government has used the line that the drafting office is under pressure and there is a backlog, but my understanding—again, reliably informed—is that a dedicated drafter, a former parliamentary counsel for NSW, was brought in to assist in rewriting discrimination laws in this state. If that is true and there is no pressure on other drafters, that line needs to be called out, because we are pretty close to being ready to go on this really important legislative change that has fundamentally been supported by this government and the community and is one that we should be backing.

These changes are not controversial; they would be broadly supported. They mean a lot to a segment of our community. My simple argument is that I hope the Premier and cabinet have the courage to introduce these changes as soon as possible.