
**Submission to the Legal and Constitutional Affairs
Committee Inquiry into the effectiveness of the
Commonwealth Sex Discrimination Act 1984 in eliminating
discrimination and promoting gender equality.**

Women's Electoral Lobby Australia.

1 August 2008

Women's Electoral Lobby Australia (WEL) makes the following submission to the Legal and Constitutional Affairs Committee's inquiry into the effectiveness of the Commonwealth Sex Discrimination Act 1984 in eliminating discrimination and promoting gender equality. WEL welcomes the inquiry, notes the very short deadline for submissions but trusts that the tight turn-around will enable the government to respond to the substantial issues that need to be addressed in time for the 25th anniversary of the Act in March 2009.

We also draw the Committee's attention to overlapping issues addressed by the WEL submission to the House of Representatives Standing Committee on Employment and Workplace Relations' concurrent Inquiry into Pay Equity.

Summary and Recommendations

The Convention on the Elimination of All Forms of Discrimination against Women 1979, which in part provides the Constitutional basis for the Sex Discrimination Act, looks to promote substantive equality between women and men and their equal enjoyment of human rights. The Sex Discrimination Act, on the other hand, provides only a complaints-based model that limits the kinds of complaints that can be made and the kinds of discrimination that can be remedied. Moreover, the objects of the Act are drafted in a most unhelpful and equivocal way, with the repeated use of the phrase 'so far as possible'. As we point out, this is the equivalent of requiring people to drive on the left-hand side of the road 'so far as possible'.

What is more, the processes through which the Act operates—including its narrow interpretation, particularly on the part of the High Court, the need to establish a comparator and the increased proportion of complainants requiring legal representation—all further reduce the capacity of the legislation

to redress individual instances of discrimination, let alone to address the impact of systemic discrimination or to educate the community about its nature.

WEL's view is that both the underlying assumptions of the SDA and the processes it puts in place need to be amended to bring the legislation into line with its original goal of promoting substantive equality and to establish an adequate monitoring mechanism for measuring progress towards this goal.

Recommendations

1. That the phrase 'so far as is possible' be removed from the preamble to the SDA.

2 That the objects provision of the SDA be strengthened:

(a) That the phrase 'to eliminate, so far as possible' be removed and replaced with the words 'to prohibit', as in the Preamble;

(b) That a new subsection be added as a guide to judicial interpretation:

It is the intention of the Parliament that the provisions of this Act shall be interpreted so as to further the objects set out in subsection (1) and that any discretions conferred by this Act shall be exercised so as to facilitate those objects.

[For the full redraft of the objects provision, see Attachment A.]

3. That the Sex Discrimination Commissioner be empowered to intervene in whatever proceeding she thinks fit with the aim of promoting the objects of the SDA, including proceedings before Fair Work Australia.

4. That HREOC and the Sex Discrimination Commissioner be authorised to initiate inquiries into systemic discrimination.

5. That the Director Director of EOWA should be able to refer appropriate matters that have come to her attention to the

Sex Discrimination Commissioner for a possible systemic discrimination inquiry.

6. That the Sex Discrimination Commissioner be given the statutory duty to monitor and report to Parliament annually on progress towards gender equality.
7. That such reports focus on key performance indicators (see Attachment B).
8. That government respond within 15 sitting days to such reports.
9. That a discrete unit be established within HREOC to undertake the research required for the monitoring and reporting role.
10. That the Sex Discrimination Commissioner be provided with sufficient resources to:
 - conduct substantive inquiries into direct, indirect and systemic discrimination issues, as in R4 and R5;
 - intervene in legal cases of relevance to direct, indirect and systemic discrimination, including matters under consideration in the industrial jurisdiction as in R3. This should include the resources to provide well-researched evidence in test cases relating to matters such as pay equity and conditions affecting workers with family responsibilities;
 - research, compile and promote an annual report to Parliament on progress towards gender equality, as in R6 and R7
 - provide well researched submissions to national inquiries conducted by the Parliament;
 - use the expertise and evidence acquired in inquiries to develop public relations and advertising campaigns to address of direct, indirect and systemic discrimination.
11. That de-identified data from complaint-handling be collected, published and used for educational and policy purposes.

- 12 That the criteria for legal aid be amended to include the funding of equality test cases.
- 13 That the Government legislate to extend the current prohibition on discrimination on the ground of family responsibilities consistent with the recommendations of the It's About Time report, and that other measures proposed to address systemic discrimination be replicated in relation to the new ground.
- 14 That responsibilities for age discrimination be assigned to a specialist Commissioner with statutory responsibility and adequate resources for this role.
- 15 The new Federal Government should give serious consideration to HREOC's 'right to request' model as a way of addressing the conflicts faced by those with work and family responsibilities.