



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## SENATE

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL  
AFFAIRS

**Reference: Effectiveness of the Commonwealth Sex Discrimination Act 1984**

THURSDAY, 11 SEPTEMBER 2008

CANBERRA

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**SENATE STANDING COMMITTEE ON  
LEGAL AND CONSTITUTIONAL AFFAIRS**

**Thursday, 11 September 2008**

**Members:** Senator Crossin (*Chair*), Senator Barnett (*Deputy Chair*), Senators Farrell, Feeney, Fisher, Hanson-Young, Marshall and Trood

**Participating members:** Senators Abetz, Adams, Arbib, Bernardi, Bilyk, Birmingham, Mark Bishop, Boswell, Boyce, Brandis, Bob Brown, Carol Brown, Bushby, Cameron, Cash, Colbeck, Jacinta Collins, Coonan, Cormann, Eggleston, Ellison, Fielding, Fierravanti-Wells, Fifield, Forshaw, Furner, Heffernan, Humphries, Hurley, Hutchins, Johnston, Joyce, Kroger, Ludlam, Lundy, Ian Macdonald, McEwen, McGauran, McLucas, Mason, Milne, Minchin, Moore, Nash, O'Brien, Parry, Payne, Polley, Pratt, Ronaldson, Ryan, Scullion, Siewert, Stephens, Sterle, Troeth, Williams, Wortley and Xenophon

**Senators in attendance:** Senators Bartlett, Crossin, Farrell, Fisher, Kroger and Stephens

**Terms of reference for the inquiry:**

To inquire into and report on:

The effectiveness of the Commonwealth Sex Discrimination Act 1984 in eliminating discrimination and promoting gender equality, with particular reference to:

- a. the scope of the Act, and the manner in which key terms and concepts are defined;
- b. the extent to which the Act implements the non-discrimination obligations of the Convention of the Elimination of All Forms of Discrimination against Women and the International Labour Organization or under other international instruments, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights;
- c. the powers and capacity of the Human Rights and Equal Opportunity Commission and the Sex Discrimination Commissioner, particularly in initiating inquiries into systemic discrimination and to monitor progress towards equality;
- d. consistency of the Act with other Commonwealth and state and territory discrimination legislation, including options for harmonisation;
- e. significant judicial rulings on the interpretation of the Act and their consequences;
- f. impact on state and territory laws;
- g. preventing discrimination, including by educative means;
- h. providing effective remedies, including the effectiveness, efficiency and fairness of the complaints process;
- i. addressing discrimination on the ground of family responsibilities;
- j. impact on the economy, productivity and employment (including recruitment processes);
- k. sexual harassment;
- l. effectiveness in addressing intersecting forms of discrimination;
- m. any procedural or technical issues;
- n. scope of existing exemptions; and
- o. other matters relating and incidental to the Act.

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**Committee met at 9.06 am****ARNAUDO, Mr Peter, Assistant Secretary, Human Rights Branch, Attorney-General's Department**

**CHAIR**—I declare open this hearing of the Senate Standing Committee on Legal and Constitutional Affairs. This is the committee's third hearing in its inquiry into the effectiveness of the Commonwealth Sex Discrimination Act 1984. This inquiry was referred to the committee by the Senate on 26 June for report by 12 November 2008. We have received 70 submissions for this inquiry, most of which have been authorised for publication and are available on the committee's website.

I remind all witnesses that, in giving evidence to the committee, they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee, and such action may be treated by the Senate as contempt. It is also a contempt to give false or misleading evidence to the committee.

The committee prefers all evidence to be given in public but, under the Senate's resolutions, witnesses have the right to request to be heard in private session. It is important that witnesses give the committee notice if they intend to ask to give evidence in camera. If a witness objects to answering a question, they should state the ground upon which the objection is taken and the committee will determine whether it will insist on an answer, having regard for the ground which is claimed. If the committee determines to insist on an answer, the witness may request that the answer be given in camera. I remind people here to switch off their mobile phones or to make sure that they are turned to 'silent'.

Before we start, I need to remind committee members that the Senate has resolved that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of them to superior officers or to a minister. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. Officers of the department are also reminded that any claim that it would be contrary to the public interest to answer a question must be made by a minister and should be accompanied by a statement setting out the basis for that claim. Mr Arnaudo, do you want to make a short opening statement?

**Mr Arnaudo**—I would make only a very short comment and it is very much to welcome the opportunity to participate in this inquiry. The government is looking forward to the recommendations that the committee makes in relation to the Sex Discrimination Act. As has been noted, the terms of reference are quite broad, which makes it difficult for me to comment on issues of policy. But I am very happy to assist the committee in its consideration of how the Sex Discrimination Act currently operates and the framework that it fits into with the Human Rights and Equal Opportunity Commission's role as well. So, to the best of my ability I am here to try to assist the committee in that regard.

**CHAIR**—We will go to questions

**Senator KROGER**—How do you see the SDA operating and fitting in with that international framework that have you referred to?

**Mr Arnaudo**—Clearly, it is one of the important planks to meeting Australia's obligations under the Convention on the Elimination of All Forms of Discrimination against Women, also known as CEDAW; it is a key plank and a key measure in terms of meeting our obligations under that convention. But there are also other programs and other laws that go towards meeting Australia's obligations under CEDAW. The usual approach for Australian governments for quite some time now has been that we will not ratify or sign up to a convention or any national treaty, unless the government is satisfied that it would meet all the obligations that are set up under that convention or treaty. That often might require some legislation to be changed or created before accession is made to a convention. I think that is what happened in the early eighties with the Sex Discrimination Act and CEDAW. The Sex Discrimination Act was one of the responses to the convention and to meet the obligations that the convention placed on Australia.

**Senator KROGER**—Harmonisation was one of the things that was put to us yesterday. I see that has been noted in a statement in your opening paragraph. Do you want to make some observations on that?

**Mr Arnaudo**—The harmonisation of state and territory anti-discrimination laws?

**Senator KROGER**—Yes.

**Mr Arnaudo**—We have not put in a written submission. It is definitely an issue that is on the Attorney-General's agenda. The Standing Committee of Attorneys-General in March earlier this year agreed that interested state and territory jurisdictions and the Commonwealth would examine options to try to harmonise Commonwealth, state and territory laws. At the moment we have quite a large number of discrimination laws at the Commonwealth level and the states and territories all have anti-discrimination acts as well. There are slight differences in coverage and slight differences in procedures. The Attorneys have agreed that a working group be established with officials from the different jurisdictions to look at options that ministers could consider further into the future. Effectively, that working group has been established and it has representatives of all the state, territory and Commonwealth jurisdictions—that is from their justice or attorney-general departments. In addition, as well as the Commonwealth Human Rights and Equal Opportunity Commission, most of the equal opportunity and human rights commissions at a state and territory level are also represented.

**Senator BARNETT**—How many are there on the working group?

**Mr Arnaudo**—Every state and territory is represented. I do not have the names of the commissions, but we can get those for you on notice.

**Senator BARNETT**—Yes, if you could. You have mentioned that there are a large number of representatives on that working group. Would it be a dozen, 20 or 30?

**Mr Arnaudo**—I would probably be more like a dozen. I think it has really very much met by teleconference; it has not met face to face, physically. Most meetings would be conducted by telephone link-ups.

**CHAIR**—Are all states actively participating? We have had evidence in the last couple of days of a view that only one or two of the states as yet have come on board this working group.

**Mr Arnaudo**—It is probably still early days, in one sense. This started in March earlier this year, and also these things develop as ideas develop. At this point, it is very much something with which to explore the kinds of options for harmonisation and to look at the differences between the different systems.

**Senator BARNETT**—Are you developing an options paper?

**Mr Arnaudo**—Basically, ministers have asked us to set up options in three stages. Stage 1 is options that could be identified and progressed in a sort of non-legislative manner fairly quickly. We are looking at bringing those options to ministers later this year. Stage 2 is more medium-term, slightly less-significant legislative and procedural reforms and they are more into the next year. Stage 3 is to identify longer-term more structural, more substantive options to reform the discrimination laws.

**Senator BARNETT**—We have got the SCAG summary of decisions communique; that has been on the website and we have that in front of us. Are you preparing an options paper for either options 1, 2 or 3 or a discussion paper?

**Mr Arnaudo**—I am not sure. A paper will definitely go back to the next meeting of the SCAG ministers in November to update them on progress.

**Senator BARNETT**—Will that paper be available to key stakeholders? Have you consulted and are you consulting with key stakeholders?

**Mr Arnaudo**—At this stage we have not crossed that bridge, in a sense, because it is still fairly early days in terms of that process. I am sure that is something that, as a working group, we will be reporting back to the SCAG ministers and, if that is an issue, we will put it on the agenda—

**Senator BARNETT**—Do you plan to consult before the November meeting?

**Mr Arnaudo**—It will really depend on the types of issues that are there. Stage 1 is very much the non-legislative, procedural options that might not require consultation. But clearly this is an area, with anti-discrimination law, that has effects for not only individual complainants but also businesses, trade unions and a wide range of people, so we would bear the need for consultation very much in mind.

**Senator BARNETT**—As a committee, we are looking into the Sex Discrimination Act and we have to report by 30 September. We are interested to know, in terms of SCAG and the process, when your options paper or discussion paper will be available. Will you be consulting with the key stakeholders and, if so, when? We have had stakeholders appear before us in the last two or three days. For example, the Law Council said that there had been some contact but no official consultation. All the others indicated that they had not been but were open to being consulted. We are trying to get an understanding of the process and I am still not clear. I have the communique in front of me, but it does not make it very clear to me—nor perhaps to other

members of the committee—what the timeframe for consultation is, when the report will be available or when a recommendation for reform will be available for this committee or, indeed, that the public will be briefed on such recommendations?

**Mr Arnaudo**—It is still very much a work in progress because of that staged element to it. Stage 1 is very much minor procedural things that could be done tomorrow, basically, by the commissions themselves by perhaps modifying their forms and websites, for example, and those sorts of things. As I have said, stage 2 involves the more minor legislative options and stage 3 involves the more substantial legislative options. So, it is very much a process. I think consultation will be at the forefront of the SCAG ministers, in terms of the nature of the options that are being developed, but those options are still being developed. It is definitely at the forefront of our minds. By November or December next year, we will be consulting—because I am not really sure where those options are, as there is still—

**Senator BARNETT**—Who is leading or is the chair of the SCAG meetings?

**Mr Arnaudo**—The Commonwealth.

**Senator BARNETT**—Is that you?

**Mr Arnaudo**—No. It is an officer of my branch.

**CHAIR**—On the summary of decisions that you have given us, stage 1 is a priority. Is that work currently being done; that is, is each state and territory and the Commonwealth identifying non-legislative options?

**Mr Arnaudo**—That is right. That is what the working group is doing as a priority in stage 1. It is identifying non-legislative options that allow individuals and businesses to access the complaint handling processes of all jurisdictions.

**CHAIR**—Is there a timeline for all of this? Has SCAG given you a year in which to report back?

**Mr Arnaudo**—The next report is due to be with SCAG at the next meeting in November, and that will be where we will be updating the SCAG ministers as to the progress of the exercise.

**CHAIR**—Is it at stage 1 at this stage?

**Mr Arnaudo**—Yes.

**Senator BARNETT**—Have you come up with any recommendations that would be classed as priorities, and was this decided in March or in July?

**Mr Arnaudo**—It very much started off in March. In July it was further refined in terms of the actual project itself, and that is what SCAG ministers agreed to in July. The proposals are still being developed—not virtually as we speak but in recent weeks—in terms of formalising the ideas around them. We are working towards going to the SCAG meeting in November with a more concrete set of ideas to put to ministers there.

As described in the communique, the first category is ‘identifying and progressing non-legislative options’. That is a broad description of it—non-legislative options of ways to enhance access by individuals and businesses to the different complaints processes that are in the various jurisdictions. That is a broad description of the sorts of things that we are looking at.

**CHAIR**—Going back to matters that are more immediate before us, I assume that you have had a chance to look at HREOC’s submission to us. Apparently, that is the pre-eminent submission and the one that has driven most of the investigation and discussions for the last two days. Along with a number of submissions, they say that the act does not fully implement article 1 of CEDAW. Has any work been done in the department that looks at our international obligations versus, say, the Sex Discrimination Act? That is the first issue. The second issue is that it has been suggested that other international obligations should be reflected in the SDA so that discrimination against men is also avoided these days.

**Mr Arnaudo**—In response to your first question, the Office of International Law in the department provides advice to government as to whether Australia is meeting its international obligations under the conventions. As I highlighted before, the general policy approach to this of many Australian governments in the past has been that we will not sign up to an international instrument unless we are confident that we are meeting its obligations. In one sense, the Sex Discrimination Act is a key plank that meets Australia’s obligations under the CEDAW, but it is not the only law or program that ensures that we meet those obligations. The concept of equality is clearly there in the convention and the government, when we ratified that convention, would have been satisfied that we would meet those obligations.

By way of having the Sex Discrimination Act there, if someone feels they are not being treated equally and are being discriminated against, it clearly gives them an avenue of complaint and redress. There are always different ways of meeting that obligation. The Sex Discrimination Act might be one way, but it is not the only way. There is always an area of debate as to whether we have or not or whether we could do it better. The general approach is—

**CHAIR**—In what other piece of legislation is article 1 of CEDAW reflected, if not in the SDA?

**Mr Arnaudo**—It is very much about making sure that you retain equality. For example, equal opportunity for women also forms part of the Employment Agencies Act and the EO Act. Also, legislation at a state and territory level would need to be taken into account. It also goes to ensuring that legislation you create does not make a distinction between and ensures the equality of men and women. You would look at that legislation as a whole. Your second question has just skipped my mind.

**CHAIR**—It was about the ICCPR.

**Mr Arnaudo**—Yes, the coverage of men in the Sex Discrimination Act.

**CHAIR**—Yes, to look at expanding the objects of the act to include men now. Certainly, an overwhelming view from witnesses in the last two days is that an SDA written in 1984 should have a very different form now in 2008. Has any work been done in the department to look at extending the SDA to include both men and women?

**Mr Arnaudo**—At the moment, a man can complain under the Sex Discrimination Act but, because it is Commonwealth law and relies on powers under the Constitution, a complaint by a man is very much limited in such areas as corporations and the Commonwealth. Section 9 of the Sex Discrimination Act sets out those grounds on which it relies.

The Sex Discrimination Act relies on CEDAW only in terms of its external affairs power, so that gives it that broader power that enables it to enter the discrimination field, in one sense. Because CEDAW is a convention that really only relates to discrimination against women, you have to see it through that lens in terms of how the Sex Discrimination Act works. There will be examples and there is case law that demonstrates them. For example, a university was found to be a trading corporation, so a man was able to take a sex discrimination complaint against that university. But a group of men who took a complaint against an unincorporated golf club, for example, found that the Sex Discrimination Act did not provide them with a remedy, in a sense, because the constitutional power of the Commonwealth did not extend to unincorporated associations. That does not mean to say that, under Australian law, they do not have any remedy at all. It is very likely and possible that, if they took an action under the state or territory law, because they do not have the same constitutional limitations that apply at the Commonwealth level, they would be able to get a remedy or have their complaint heard.

**CHAIR**—We know that. We know what currently exists.

**Mr Arnaudo**—Yes. In terms of the answer as to whether the department is doing any work on that or not, at the moment, as part of the reforms to legislation for removing same-sex discrimination, we do have an amendment to the Sex Discrimination Act before the parliament that would expand the definition of ‘family responsibilities’ to take account of same-sex couples and same-sex families.

**CHAIR**—But what about a man who is not in that relationship?

**Mr Arnaudo**—In order to give that some power, we will have to use other international conventions, such as the International Labour Organisation conventions, that eliminate discrimination in the work context—they apply to men and women—and the International Covenant on Civil and Political Rights, which applies to men as well as women.

**CHAIR**—Will we see a change to the objects of the SDA?

**Mr Arnaudo**—Not in relation to that, no, because the definition relates only to ‘family responsibilities’ and is quite narrow. It does not cover—

**CHAIR**—Witnesses have put to us that it should be much broader than that and that the objects of the act should be amended to reflect those other international provisions.

**Mr Arnaudo**—I appreciate that view. Really, it is a matter for government regarding how you then structure the act and what constitutional bases you put in place to support the act. The ICCPR is used in a range of other laws to support other human rights frameworks. It is open to supporting any other law, as long as it meets those objects as well.

**CHAIR**—The social justice commissioner reports each year to parliament.

**Mr Arnaudo**—That is right.

**CHAIR**—We do not have something similar happening with the Sex Discrimination Commissioner other than through HREOC's annual report, essentially, so there is limited capacity for the Sex Discrimination Commissioner to take an area and provide an investigation and a report.

**Mr Arnaudo**—Yes.

**CHAIR**—In addition, views have been put to us that the commissioner has no power to instigate an investigation when it comes to systemic discrimination. I have got two questions for you. Do you get a regular briefing from the Sex Discrimination Commissioner about what work they are doing, problems with the act or restrictions in the act? Secondly, has any work been done to look at expanding the investigative or regulatory role of the commissioner at HREOC?

**Mr Arnaudo**—In relation to your first question, we have frequent and sometimes almost daily contact with the commission and its officers on a whole range or gamut of human rights issues, such as disability, race, sex and language, so we talk very frequently to them. We also tend to have fairly regular liaison meetings between the officials of my branch and officials of the Human Rights and Equal Opportunity Commission. The Attorney-General also meets with the commissioners and the president on a fairly regular basis. In those discussion, a broad range of issues is addressed, including sex discrimination issues. So there is always an opportunity there for the commission to make its views known about how the legislation is operating or not operating.

**CHAIR**—What do you do about that internally? Is some register, record or file note kept? Do you pull a file out of the filing cabinet and say, 'Gosh, this is what is wrong with the act', or do you just leave it?

**Mr Arnaudo**—Again, whether or not to make an amendment is a matter for government, but we are always exchanging views about how the act is or is not operating. There are ways in which the commission can raise issues, such as in the annual report. But the commission and the commissioner also have functions under the Sex Discrimination Act and the Human Rights and Equal Opportunity Commission Act to investigate matters, make reports and hold public inquiries. Those reports are then tabled in parliament, and they can make recommendations. There is a fair scope in its ability to run a debate or raise issues in the community.

**CHAIR**—But not to investigate matters of discrimination, though. I know, for example, that Elizabeth Broderick has done her listening tour about a whole range of issues, but there is no real investigative power to look at systemic discrimination, say, in a certain area. That is the view that has been put to us.

**Mr Arnaudo**—In the context of the Sex Discrimination Act, there are limited powers because of the way the complaints process is developed. That was in the light of the Brandy High Court decision, which said that the commission could not make binding decisions out of complaints. However, I believe that the commission still has an important role in advocating for the objects of the acts—not only the Sex Discrimination Act but the other acts as well—and in raising awareness of those sorts of issues. Not only are there things like the listening tour, but also the

commission can report on and hold inquiries into, for example, work-family time balance, paid maternity leave and those sorts of issues. Again, those reports, in a sense, are recommendatory only. In terms of individual complaints, it very much has a conciliation role.

**CHAIR**—That is not the kind of work that I am talking about; I do not know if you have misunderstood my question. When we talk about an investigative role, you might have 10 individuals coming to the commission with complaints of sexual harassment. There is no power then for the commissioner to go to, say, that workplace or industry and investigate the systemic nature of the discrimination.

**Mr Arnaudo**—The commission does have the ability to pursue such complaints and does have an option for doing representative complaints. In one sense, it is not as though it has the power to go into workplaces or investigate those sorts of things. It probably would not have that sort of power at the moment under the Sex Discrimination Act.

**CHAIR**—No, that is right. But has any work now been done within your department, such as through discussions with the Human Rights Commission, about whether an options paper, discussion paper or analysis of that should be undertaken?

**Mr Arnaudo**—Only in the last week or so, after their submission to the committee had been published, we had a meeting with them and went through their ideas and suggestions. I know that the commissioner also met with representatives of the Attorney's office. We have had that discussion. Clearly, the government will seriously consider any of the outcomes from this committee's consideration of HREOC's submission.

In terms of whether we are doing work on it right now, I have to say no. In one sense, that is because this committee's inquiry into the processes underway will come out of it also. That concern is also raised in other areas of discrimination, such as disability. In one sense, we look at that area; but we also look at the Sex Discrimination Act, because they all share the same complaint process. Whatever changes are made in relation to how you handle a sex discrimination complaint might apply equally to other areas, such as disability or race.

**Senator BARNETT**—In terms of the constitutional issues you raised before, you mentioned possible reliance on the ILO and the ICCPR. Does the act adequately cover the interests of males in this country, or does it need to be amended to adequately cover the interests of that gender?

**Mr Arnaudo**—As I said before, men are covered in that at the moment if they are within a ground of constitution power; that is, say, if they work in a corporation or a trading or financial corporation.

**Senator BARNETT**—I am aware of that and I am aware of the Corporations Law. That is why I am asking the question. There are unincorporated associations, church groups and charity groups. There are so many areas that are not covered by the Corporations Law. You have CEDAW, which covers women. What about men? Do you have a view with respect to fixing the act in that regard?

**Mr Arnaudo**—In one sense, how you do that is a policy question and is really a matter for government. If the committee recommends looking at that area, the government can give serious consideration to that recommendation.

**Senator BARNETT**—Is it currently deficient in that regard?

**Mr Arnaudo**—It is hard for me to say that, in a sense, because a man can make a complaint if they are covered by those corporations or other coverage, such as Commonwealth acts, practices and those sorts of things.

**Senator BARNETT**—What other coverage is there? You only have the Corporations Law.

**Mr Arnaudo**—It also applies to territories. It uses the gamut of the usual constitutional powers—for example, Commonwealth employees in connection with their work; and the Commonwealth's administration of territories, not including the ACT or the Northern Territory. It is very much foreign corporations.

**Senator FISHER**—It may assist if we asked Mr Arnaudo to take on notice advising the committee what gaps exist in respect of males more generally. I feel that we are discussing this issue without knowing the size of the potential problem.

**Mr Arnaudo**—That is certainly an option that we would very much support.

**CHAIR**—We have had a lot of issues with that in the last few days.

**Mr Arnaudo**—We can give you an explanation of how the current act applies to men, if that would assist the committee.

**Senator BARNETT**—No, we do not need that. We need you to respond to whether the act currently covers the field. The advice that we have received to date is that it does not cover the field for men. Recommendations to this committee are that the act would need to be amended to bring in the ILO and the ICCPR, as in external affairs power, so that it can cover men adequately and remove any doubt. We are seeking your response to that.

**CHAIR**—Also, to be fair to Senator Barnett, the main representation we have had from witnesses has been about ensuring there is no discrimination against men when it comes to family responsibilities or caring responsibilities.

**Mr Arnaudo**—That is right. At the moment, the main power that the Sex Discrimination Act relies on, in terms of its broad scope under the external affairs power, is a convention that is limited to discrimination against women; it clearly does not encompass men. In that respect, there are areas—I gave examples before of unincorporated associations—that fall outside the scope of the SDA. A man would not be able to take a complaint for different areas like that.

The issue as to whether you would then amend the act to bring in other international instruments to provide broader support for the Sex Discrimination Act is very much a matter of policy and something that the government would consider in due course. With the examples you have given before about family responsibilities and those other sorts of areas, if the legislation

starts developing into producing other grounds of discrimination that clearly do not just involve discrimination against women, we would have to find other ways of trying to make sure that the external affairs power that the act relies on covers both men and women.

**Senator BARNETT**—We could go on. I could give you examples of men who currently work in an unincorporated association or charity and they are discriminated against on the basis of family responsibilities, for example. I presume your answer would be that the act does not cover that scenario.

**Senator FISHER**—But, Senator Barnett, in respect of employment, the Workplace Relations Act would cover that, male or female? Is that right, Mr Arnaudo?

**Mr Arnaudo**—In terms of the Sex Discrimination Act, there are the workplace relations ones, but there are also state and territory laws that might be able to provide that person with a remedy.

**Senator FISHER**—And family responsibilities.

**Mr Arnaudo**—It is very much a matter of then trying to make sure that you pick your jurisdiction. That is probably part of an issue going back to the harmonising exercise. SCAG ministers have recognised that, because of the constitutional basis of different acts, it can be difficult sometimes for people to know which jurisdiction they should be going into.

**Senator BARNETT**—We are limited for time. Senator Fisher has asked whether you are happy to take that on notice. If you can assist the committee with that in any respect, it would be great.

**Mr Arnaudo**—Sure.

**Senator BARNETT**—Regarding the first optional protocol, what would your response be to the merit or otherwise of the government signing it?

**Mr Arnaudo**—The Attorney and Minister Plibersek have issued a media release, after tabling a national interest analysis that sets forward the government's view as to whether or not it is in Australia's national interest to ratify the optional protocol. Effectively, it is my understanding that the government is looking at that in a positive sense. I am sorry, but I am struggling because I cannot remember what the national interest analysis actually says about that. It does propose that Australia accede to the optional protocol. The national interest analysis, under the optional protocol, is considered by the Joint Standing Committee on Treaties considers as part of its normal treaty consideration process. That is the government's view, basically.

**Senator BARNETT**—Did you just say that the government would cede to the optional protocol?

**Mr Arnaudo**—Subject to the recommendations of the Joint Standing Committee on Treaties and its consideration of that process; it is a standard treating-making process. But, effectively, that national interest analysis does propose that Australia cede to the optional protocol. Having done that, it would have looked at all the issues that a national interest analysis would have to

look at in terms of the impact it would have on our laws—economic impacts, social impacts and those sorts of things.

**Senator BARNETT**—In terms of the national interest that you have referred to, can you give the committee that document?

**Mr Arnaudo**—That document was tabled in parliament and it is now going to be considered. I do not have it in front of me, but it was tabled in parliament around 26 August. I can find a way of getting it to you or the secretariat.

**Senator BARNETT**—We will dig it up. We need to get a copy of that. In terms of the federal-state differences and the harmonisation, do any states or territories stand out to you as being vastly different from other states and territories with respect to their laws on these matters?

**Mr Arnaudo**—It is hard for me to say off the top of my head. I might have to take that on notice in terms of providing you with an answer. In one sense, they are not completely different schemes; it is much more the way they are administered or perhaps their grounds and coverage where there might be some slight differences between them.

**Senator BARNETT**—I do not know whether you have looked at the submission from ACCI, the Australian Chamber of Commerce and Industry. They express a number of concerns about the act and its implementation and also refer to spurious claims that are sometimes made and the cost imposed on small businesses and businesses alike. They refer to concerns with forum shopping and the issue of double jeopardy. Senator Fisher has noted correctly the impact of the Workplace Relations Act, and then you have the Sex Discrimination Act. In their submission, they give three scenarios. They are very interesting examples and I draw them to your attention. Have you had a chance to consider those concerns and respond to them?

**Mr Arnaudo**—Very briefly. With state and territory anti-discrimination laws, there is a process within our own legislation that basically says, for example, if you have gone to a state law process, you cannot then go to the Commonwealth process for the same matter. I am not sure whether there is a double-dipping provision in the workplace relations law system and the discrimination law. I can take that on notice and work out whether or not there is. Just off the top of my head, there might be. That then might not stop someone saying, ‘Well, I’ll launch three or four actions all at the same time,’ or something like that.

**Senator FISHER**—The extent to which that provision is effective, I think, is the subject of debate.

**Mr Arnaudo**—That is right. I think that is something in the Workplace Relations law. I am happy to take on notice to just confirm that as well.

**Senator FISHER**—Technically.

**Mr Arnaudo**—There is a range of areas. It is an issue that we are mindful of in terms of ensuring, with the obligations that employers have regarding how they manage their workplaces, there is consistency not only at a state and Commonwealth level but also within the laws that might apply within that workplace.

**Senator BARNETT**—If you are happy to take that on notice and review the ACCI submission and those three case studies, which are real live case studies that have been to court—they comment on those in their submission—that would be welcome.

**Mr Arnaudo**—Sure.

**CHAIR**—Senator Farrell, do you have a question?

**Senator FARRELL**—No.

**CHAIR**—Thank you very much for your appearance today. It is probably a bit strange, because we are not looking at a bit of legislation.

**Mr Arnaudo**—I know, but there will always be another opportunity for that.

**CHAIR**—It is a bit of legal reform that we thought the committee might do in a proactive way. I understand that it is probably a bit difficult to put a submission about this matter to the committee, but hopefully we will have some dialogue with you once we have handed down our report, and we might see some changes. Was any thought given to the fact that, with the SDA being 25 years old next year, it should have been reviewed or it was time to be reviewed?

**Mr Arnaudo**—Over those 25 years, the act itself has been amended in different areas. In fact, the number of times it has been amended is noted at the back of the act—and that is a quite significant number. I remember a couple of years ago an amendment being made to make it clear that breastfeeding is a characteristic that pertains generally to women and to make it absolutely clear that discrimination on the ground of breastfeeding was discrimination on the ground of sex; therefore, you could take a complaint on that basis. So amendments to the act have been made over time. But the act was enacted in 1984, and making significant wholesale change is quite a large exercise in terms of making sure that you not only do not diminish any of the existing rights but also at the same time do not create any inconsistencies.

**CHAIR**—Thank you for your time today. It has been appreciated.

**Mr Arnaudo**—Thank you. We will get those questions on notice answered as soon as we can.

**CHAIR**—We are reporting on 30 November. Senator Barnett might have said 30 September before, but it is actually 30 September.

**Mr Arnaudo**—There is a bit more time; that is good. Thank you.

[9.47 am]

**ASHTON, Ms Annemarie, Policy Advisor, Carers ACT**

**CHAIR**—Welcome. Your submission has been lodged with us and, for our purposes, we have numbered it 33. Before I invite you to make an opening statement, do you need to make any changes or amendments to that submission?

**Ms Ashton**—No.

**CHAIR**—You might like to provide us with a brief statement or summary to begin with, and then we will go questions.

**Ms Ashton**—Thank you and good morning. I would like to thank the chair and the members of the committee for inviting Carers Australia to speak at this hearing today. Carers Australia is the national peak body representing those Australians who provide ongoing unpaid support to family members and friends with a disability, a mental illness, a chronic condition or a terminal illness or who are aged and frail. Australia has almost 2.6 million carers, of which around 500,000 are primary carers. Primary carers are the people who provide the most care to those who need it and they will often provide that care on a full-time basis. The way a society cares for its most vulnerable or disadvantaged people is a key measure of that society's values. Carers are the foundation of Australia's health, disability and community care systems. Their contribution underpins the overall social and economic wellbeing of individuals, of families and of communities.

We know that 71 per cent of primary carers are women. Disadvantage is generated by a culture that sees caring responsibilities as largely the province of women. It is also generated by a perception that caring is of less economic and social value than participation in paid employment. Women who care, particularly at the high-intensity end, are more likely to be limited or excluded from participation in the workforce. They are more likely to experience poverty, social exclusion, poor health and wellbeing, as a result of their caring responsibilities. Community attitudes, gender expectations, workplace cultures and issues around pay equity also disadvantage men. Many feel locked into breadwinner roles and they have reduced options for work-life balance. They are often less able to reduce their paid work in order to provide the needed level of care in their homes.

Sex discrimination legislation by itself cannot promote the systemic and social changes required to promote gender equity and more-appropriate legislation is needed to effectively address the issue of family and caring responsibilities. There are several key shortfalls in the current Sex Discrimination Act that do not take into account the totality of caring relationships. Caring relationships cannot depend upon narrow definitions of 'near relative'. Australia's social structures are changing. We tend to have smaller families now and our patterns of social connection are changing too. We may often live out our lives in places very far from where we were born and where our birth families are. More than ever, we find people in the community who do not have any family at all around them and they rely on the support of close friends or neighbours for care when they need it.

Caring relationships take many forms. The exclusion of gay, lesbian, bisexual and transgender carers from the definitions contained within the Sex Discrimination Act creates a strong disadvantage for all who are balancing work commitments while also caring for their same-sex partners or the non-biological children within their family. Carers Australia contends that it is the provision of care that matters, not the type of relationship in which that care takes place. The Sex Discrimination Act is also limited in its application. It does prohibit direct discrimination so that an employee cannot be dismissed on the ground of family responsibilities, yet evidence suggests to us that people are more likely to experience indirect discrimination from the effect of workplace policies and practices, such as being looked over for promotion or being ineligible for benefits or training due to having a status of part-time. These inequities need to be redressed.

Carers Australia believes that reformed legislation should include a positive duty upon employers to accommodate fair requests for flexible work arrangements from employees with family and care responsibilities. Anti-discrimination legislation alone has traditionally resulted in little in the way of wide scale reform. A requirement to accommodate will have a much more substantive effect for workers. Education also helps employers to better understand the needs of carers. Innovative programs are proving that carer-friendly workplaces are not only achievable but can be more productive and more profitable. There is a need for workplace support for carers and for education programs for carers and employers to be rolled out on a national basis. Such programs would be strengthened by appropriate legislation.

Across the board, there is increased government recognition that the national interest is better served by integrating social and economic policy. It is a matter of simple math for us: poor or inadequate social policy costs more in the long-term because negative effects accrue and flow on with greater impact into the health system. With the national interest in mind, Carers Australia supports the Human Rights and Equal Opportunity Commission's proposal for a separate specialised family responsibilities and carers' rights act. This act will better enable the recognition of carer responsibilities. It will provide coverage against discriminatory practices in areas within and beyond the workplace. In addition, it can sit alongside other appropriate workplace legislation in the industrial relations arena. Such an act would be an important step towards the establishment of a universal caregiver model which offers greater equity between men and women.

**CHAIR**—Thank you. Can you give us an outline of the type of discrimination that carers might face that would then lead to them taking action under the Sex Discrimination Act?

**Ms Ashton**—Between male carers and female carers, there is quite a difference in the workplace. Under the existing act, men probably have greater opportunity if they can prove there is direct discrimination. The difficulty with a lot of the discrimination that occurs is that carers are passed over for promotion; they will not be eligible for training. That can be proved where the employer of those who have caring responsibilities and are in a part-time role says, 'Training is only going to be provided to full-time people here.' Those people have action under the act but under the caring role. It is hard to prove that it is related to their gender. The fact that more women happen to be working part-time is the indirect connection. It is very difficult for carers to take action under the act as it stands at the moment.

**CHAIR**—I understand where you are coming from with some of your recommendations on page 2 but, for the purposes of our inquiry, I am having a bit of difficulty in seeing where they

sit. I suppose the main tenet of your submission to us is that carers have particular and specialised needs; therefore, a particular carers' rights act might be the way to go. HREOC, have put to us in a number of submissions that there should be two stages to reforming the Sex Discrimination Act. One is to make some technical changes that could be done in the next year or so. But the second stage is to have national consultations about an equality act, which would bring together the race, disability and sex discrimination acts into one. I guess that would be a chance to have an equality act that could also extend to carers, or do you believe that should still sit outside of and stand alone from any other process?

**Ms Ashton**—It would probably depend on the detail within the act as to whether it adequately covers carers or not. At the moment we have such existing gaps in the legislation because it does not recognise how our social patterns have changed. The fact is that many more people now have to provide care; increasingly, more men especially are providing care. It is hitting within the working age bracket of 45 to 65. Great demands are being placed on the ageing population cohort and they are going to get greater and greater, and our legislation is not keeping up with that. Immediate changes in relation to technical aspects of the act need to be addressed urgently. But those aspects are not the ones that will have the greater effect on carers; they are the ones where you have these particular cases of defined discrimination. Carers urgently need that long-term reform. We see this problem becoming much more significant and these issues increasing greatly as the effects of the ageing population kick in.

**Senator KROGER**—Thank you for your submission.

**Ms Ashton**—You are welcome.

**Senator KROGER**—Can you expand on that last point? You suggest that it is the 45 to 65 age group that is being caught in discriminatory practices. I presumed we were looking at a younger age bracket, with younger families. My assumption must be wrong.

**Ms Ashton**—That is the generation that we call the 'sandwich carers'. They are the ones who are caring for ageing parents and often, still, ageing grandparents. Many people who are now in their 40s still have two older generations who are alive and in their 80s and 90s but who are incredibly frail. We find that women especially are forced to give up work—to actually leave work. At the moment I am working with a carer whose mother got early-stage dementia; her mother, unfortunately, has now passed away. That carer had many years of caring for her mum. Over that time she had to reduce her time in the work force—because, with the way the law is structured at the moment, there is very little accommodation to insist that employers must address this issue. Now her grandmother is aged, frail and completely blind, so this lady has had to remain out of the workforce. She is very highly qualified, and she is not the only one. This is just one particular case. We find that women are withdrawing from the workforce because they cannot be accommodated.

So we have that sandwich generation. This lady also has a son who is in his teenage years. She is combining family responsibilities, trying to manage and maintain a home and also caring for older family members. That is not uncommon. As the population ages, we will find more and more of our well-trained professional classes, especially, trying very desperately to juggle maintaining their workplace activity and their care for their older generations. That problem is going to get bigger and bigger.

If they also have a child with a disability or a spouse with a chronic illness, we have people in care at the moment who at the age of 39 have contracted dementia. MS and other chronic degenerative conditions, such as heart conditions, can kick in when people, including spouses, are in their 40s. In such circumstances, people have to limit their workforce participation. At the moment, the greater load falls on women. But also, where their wife is diagnosed with MS, they have small children and both they and their wife may still have older parents alive, men are finding that there is very little capacity within the workforce. There is a culture that says, 'No, you can't take time off,' and there is an expectation: 'Well, surely there is someone else who can do this?' The fact is that most community services are working at capacity. There is very limited option and support for workplace carers.

We have an excellent program here in the ACT that supports those who are caring for people over 65. That is funded federally and has been an innovation pilot. That is hugely successful because it goes into the workplace and negotiates with employers; it educates them about the needs of their carers.

Carers may not necessarily identify. We know people who have gone in and asked for time off—which, under Fair Pay Standards, they are fully entitled to do—which they can take as sick leave, to undertake caring responsibilities, and they have been confronted with the expectation, 'Surely your partner, your wife, should be doing this and, if you ask for this again, it will be a problem.' So there is that intimidation. It is very hard for people to take action in those circumstances—and especially for men, because there is a lot of pressure on them to be the breadwinner and to keep going full time. Unfortunately, with so much pressure being placed on families, we find that there is a huge risk of family breakdown. Say that, as a man, you have a child with a disability and have been doing this sort of thing since that child was born, you are juggling the care of ageing parents and you are also trying to be the breadwinner. We find that more people end up completely separated and then have to try to deal with being a single parent as well. But we also find that the long-term health outcomes for men and women are huge. Unfortunately, once men hit their 40s, this accumulated stress comes out. Our carers are much more likely to have heart conditions and what would be called chronic lifestyle-related issues because they cannot get time out to exercise, because the demands on them are so great. We now see higher rates of things like diabetes creeping in, which are the accumulated effects of years of providing care.

**Senator KROGER**—You have given examples of the problems that people are facing. Is there the opportunity to look at any statistical data so that we can do an empirical analysis of the scope of the issues and concerns that are there? Is there any way that you can input the experiences that you are finding at the state level? I presume that it is a coordinated national body. Has there been any opportunity to put empirical data together so that you can help us get a handle on the size of the problem that you are talking about—for instance, the size of the workforce that is affected by what you are raising here?

**Ms Ashton**—Some national figures are done by the ABS. The last SDAC in 2003 gave us some workforce figures; I have them here. Regarding workforce participation, 76 per cent of carers are of workforce age yet they have a lower participation rate in the paid workforce than non-carers—this all comes out of the 2003 Survey of Disability, Ageing and Carers from the Australian Bureau of Statistics—and 33 per cent of all carers were not in the paid labour force compared to 22.4 per cent of non-carers.

**Senator KROGER**—Could you please repeat that figure?

**Ms Ashton**—Of the population, 22.4 per cent will not be in the paid labour force, which rises to 33 per cent of all carers who will not be in the paid workforce. Among carers in the paid labour force, primary carers are least likely to be employed full time and more like to be employed part-time compared to other carers and non-carers. Clearly, there is a strong link between your capacity to participate and the demand of caring responsibilities within the home. This survey asked about primary carers who were unemployed or not in the labour force and 66,700 indicated that they would like to work, the majority of whom wanted part-time work. However, because no alternative care arrangements are available in many cases or they have difficulty arranging work hours to suit the demands of the caring role, there are significant barriers.

**Senator KROGER**—You have said that 33 per cent are in the paid workforce, but what percentage of the total workforce are carers?

**Ms Ashton**—Of all carers, 58.9 per cent are employed full time, whereas you would expect 67.3 per cent of those who are not carers to be employed full time.

**Senator BARNETT**—I am sorry; would you please repeat that percentage?

**Ms Ashton**—If you are not a carer, it would be 67.3 per cent. If you are a carer in any form, it would be 58.9 per cent. If you are a primary carer in full-time work—I think SDAC measures primary carers as providing more than the equivalent of 50 per cent of the care—that figure drops to 44.2 per cent. For primary carers in full-time work, there is a significant question as to how long they can maintain being in full-time work because of the incredible number of demands made on their time.

In the general population, 27.3 per cent are in part-time work. Of all carers, 35.2 per cent are in part-time work and 52.7 per cent of primary carers are employed in part-time work. We have a larger number of primary carers in part-time work than in full-time, but also we have more primary carers—another 66,000—who are not but certainly would like to be in the workforce on a part-time basis. We are very concerned about this because not being in the workforce affects you economically and also restricts you socially. People achieve a better balance that way. But, because of the associated health issues, we would like to see people who are working full time having a greater opportunity to put more flexibility into their workplace participation.

**Senator KROGER**—It would be good if you could provide that information to us so that we could look at it. Is there a breakdown by age there as well? That would be an indication of whether you are talking about young family carers or extended family care.

**Ms Ashton**—Certainly the ABS has broken them down across workforce age. I would have to go back to the original documentation and see whether we could find those figures for you.

**Senator KROGER**—That would be terrific. Thank you.

**Ms Ashton**—We did a study, through the Deakin University, called the Australian Unity Wellbeing Index, and we can also provide that to the committee. That looked at the impact on

carers across Australia. As a national body for carers, we have offices in each state around Australia; they do direct care support. The national peak body coordinates that information and it is far more of a policy and research base.

Unfortunately, due to funding, we have very little capacity throughout the states. Most of our money goes into brokerage and direct service provision. I work for the ACT office, so that is my policy and research area. We have just started looking at trying to start some research projects within the ACT alone and we are encouraging the other states to do the same, because we need to have a better understanding of how the current situation is going to worsen, including for our own business, to make sure that we can adequately anticipate, address and support that need and also convey that to government.

**Senator BARNETT**—Thank you for what you do and the work of Carers Australia. It is tremendous, particularly in Tasmania. I have had contact with them there in the past 12 months, in particular; we have worked quite closely together and they have done a wonderful job. I just want to put that on the record.

**Ms Ashton**—Thank you.

**Senator BARNETT**—Is it 2.6 million that you represent across the country?

**Ms Ashton**—Yes, that is right.

**Senator BARNETT**—Can you provide a breakdown of that 2.6 million into primary carers and other carers?

**Ms Ashton**—In 2003, there were 2.6 million primary carers. The next survey of disability and caring is due to happen next year and the ABS are formulating that now, and we do expect the figure to have increased greatly.

**Senator BARNETT**—Are the next figures due to come out next year?

**Ms Ashton**—The detailed figures are due to come out in 2009; they are conducting the survey next year. In 2003, we had almost 500,000 primary carers; the exact figure was 474,600.

**Senator BARNETT**—The rest you just call ‘carers’. Is that right?

**Ms Ashton**—Yes.

**Senator BARNETT**—I am slightly confused about the figures. Of primary carers, 44 per cent are in the workforce full time; and then I thought you said that 52 per cent are in the workforce part time. That seems to amount to 96 per cent.

**Ms Ashton**—With the percentages of part-time workers, 52 per cent will be primary carers—not 52 per cent of primary carers will be part-time workers.

**Senator KROGER**—With that figure you have just given us, one in five carers are primary carers.

**Ms Ashton**—A lot of carers will not identify in the workplace. It is still seen as a private issue to be dealt with in the home. So carers can be hesitant because, firstly, they may think, ‘Gee, if this employer thinks that I’m going to be ducking out every five minutes to take mum to the doctors, that’s really going to affect my career.’ A lot of people struggle with it. A lot of people think they are alone in doing this, and that is the problem in the workplace.

We have found that, when we start to work with an employer in a workplace, a lot more people self-identify. People do not recognise themselves as carers first; they are a mum, a dad, a daughter, a sister, a brother, a son—the family relationships come first—or they are a neighbour, a friend or a partner. They do not take that label well. In fact, most of us do not take that label well. I am a parent first. The fact that I have a son with a disability is part of my life just as the disability is part of his life; it is not the totality of it. You do not wear it like a label. So people are less likely to identify. They also fear the consequences of that because, if they are not coping at work and they are struggling, they feel more vulnerable anyway.

By opening it up, we find that more people start to identify. They connect with other people at work who are carers. Within a few government departments that we work with across the ACT, they end up starting an informal little carers group that can meet in their lunchtime. Lo and behold, they might get a few managers in that group and, suddenly, that starts breaking down the barriers at the local level. But, to get that started, workplaces often need encouragement and support.

**Senator BARNETT**—I appreciate very much your feedback on that. In essence, an analogy that I use is that, across the board, you are under-recognised and under-valued in the community and all levels of government need to do better across the community to acknowledge the importance of carers. I say the same thing for volunteers in the community and the service that they provide; it is very hard to put a dollar figure on it, but it is invaluable. Without them, the community as we know it would collapse—and likewise with carers. You have outlined their contribution, their numbers, their participation in the workforce, how they contribute for their loved ones and so on. That leads me to my next question, which goes to your first recommendation of a national carer action plan. Can you flesh out a little more for us what would be involved in such an action plan and what progress you have had to date with the government in terms of getting this moving?

**Ms Ashton**—Certainly. Primarily, the national carer action plan is about recognition, increasing education across the community and workplace support. It is about getting all levels of government to recognise that, with the ageing population, sooner or later caring will go beyond a fifth of the population, which means that sooner or later everyone will be either needing care or needing to provide care to somebody else. It is going to become a national problem for a much greater part of the population and eventually for all of the population—because, as much as we would all like to stop it, we are all getting older. We are looking at that initially.

It is also about ways of providing smarter support. With the way the system is set up at the moment, there will be a huge drain in all areas across health, community support and mental illness. With all of those issues, we need to find smarter ways of delivering support, with a greater emphasis on preventative care and early intervention. It is about starting to use the resources that we have in a much smarter way so that we stop this tertiary-level drain on our

health services and our community support services. That is unsustainable, especially with our current skill shortages across the community services sector. I am sorry but I have forgotten the second part of your question.

**Senator BARNETT**—I assume that you have been meeting with government departments, ministers and officials. How that is going? Can you tell us of progress being made in that regard?

**Ms Ashton**—We are finding that there is much greater recognition across the board. Obviously, the federal inquiry for better support into carers is going on across Australia. That is providing a much greater level of community awareness for what we are doing as well, which is very important.

**Senator BARNETT**—When does that report?

**Ms Ashton**—I think it is due to report in October. It has been very quick. They have got through most of it now. ACT is next and then Tasmania. That is about it for the public hearings for that one. We have found there to be a lot more responsiveness and awareness over the last 10 years or so, especially with the money that went into ageing previously; that helped a lot. Now we need to look at the gaps. When you are caring for a child with a disability, you cannot wait for help until you or they hit 65. It is very important that we start early. Especially for families dealing with disability and/or chronic conditions, it is important that we support them at the point before diagnosis, when they are still going through the stage of being told, ‘We think there’s something wrong with your child and we need to put you on this hospital roundabout’—a roundabout that will have you flying between three states to get tests done.’

We are finding there is an increased receptivity from government. We are finding greater avenues, such as this committee, through which we can put in our submissions, our papers and our facts and figures. Our biggest stumbling block in getting our arguments across relates to the Treasury side of things. Unfortunately, our boards do not tend to be filled with lawyers and tax accountants, who are the sorts of people we need; they can give us advice on how to make these economic arguments. But we are starting to get there. We have a report looking into the costs of caring that was commissioned in 2005 through Access Economics. I can also supply that report to the committee, if you would like me to.

**Senator BARNETT**—Thank you for your response. It is very much appreciated. Again, thank you for what you do. In Tasmania, Janis McKenna, whom you probably know, does an excellent job; she really is an excellent advocate for Carers Tasmania.

**Ms Ashton**—I am the policy person for Tasmania also, so I work with Janis very closely. I go between the two, ACT and Tasmania.

**Senator BARNETT**—Excellent.

**CHAIR**—So you have no spare time for yourself.

**Ms Ashton**—I have plenty of spare time. I have great kids, a great family, and they come with me.

**CHAIR**—What actual provisions in the current SDA do you think could be amended or strengthened to provide greater access for carers who might want to take action under that act?

**Ms Ashton**—It would be good for there to be a provision for education around the act so that both men and women would understand how they could use it where they feel that, due to their family responsibilities, an aspect of gender discrimination against them exists in their workplace—people are not aware that they can currently make a case—and to assist employers in recognising that they may be discriminating in their practices. That would be the biggest one that we could see in the existing act. As we said, there are so many—

**CHAIR**—But the Human Rights Commission could do that now.

**Ms Ashton**—Yes.

**CHAIR**—To be able to do that, they do not actually need a change to the act.

**Ms Ashton**—No, but having a change in the act strengthens the rollout. There may be a requirement for compliance. In all fairness, employers are faced with a lot of competing demands. If it does not have a back up with legislation, it tends to get shoved under—'Maybe we'll look at that next year,' or 'Maybe we'll look at that the year after next.' Where there is a little bit of recourse, we find that it is much more likely to be rolled out much faster.

**Senator FISHER**—I join with my colleagues in acknowledging not only the work that your organisation does but also the work that is done by those you represent—and not only in economic terms but also, more significantly, in caring terms. So I acknowledge that—and in no way should this question be taken as diminishing that work, which we could not do without. You have suggested that there be specific legislation for carers in respect of discrimination. Would you provide a little more detail around that, in the context of your other comments about carers currently not identifying themselves as such. I think you have said that it is not the totality of things but only a part of their life, and they do not necessarily identify with being carers. On the one hand, you might say that specific legislation for carers will help achieve that specific identification. But, in asking you to explain a bit more about why you might see that as an appropriate aim, can you also consider whether embarking on that path might entrench the very thing that you are trying to dismantle in terms of carers not identifying themselves as carers?

**Ms Ashton**—That is a very good question. Lack of self-awareness is one of our biggest barriers. When I am out in the community I always say to people, 'The measure of the demands of daily life as opposed to when something becomes an issue is the same as with disability. A disability only becomes a disability when it prevents the normal activity of daily living.' It is the same for caring.

I struggle sometimes with the concept of 'carers'; we always try to find a better word to describe it. I think that, as the population changes, it is more about caring responsibilities. The plus side of appropriate well-written legislation is that it provides protection for those most vulnerable. Typically, carers, especially primary carers, are very time poor and have very many competing in demands; already they are behind the ball financially, they are very socially isolated and often, after long-term caring, they have significant health problems of their own. It is about making sure that we have suitable protection for them. It is about making sure that

obligations are placed on government, on health services and on community support services to ensure they are planning appropriately and providing appropriate levels of support for carers in their own right.

Services for people with disabilities or chronic conditions and illnesses are only half the picture. Physical demands to lift and carry can be placed on carers. They may have to get up several times a night because their child suffers from seizures. They may have to medicate elderly relatives late at night and then through the night or do blood checks for diabetes. A physical load is placed upon a carer; over time that also becomes cumulative. Most carers who come to our state offices are sleep deprived and they may not have seen a doctor for 12 months. It is about having suitable safeguards and facilities to ensure that, when a carer presents at a medical appointment with the person they care for, the doctor can check also check the carer's health. Good legislation places a framework underneath that to get that change moving. We are asking for a change in the way that society deals with caring responsibilities. If you have good legislation to get the ball rolling with that, you have a greater chance of getting in place something that is achievable.

In addition, carers have systemic structural problems such as with access to information; that needs to be dealt with. The Privacy Act created huge problems for carers regarding their accessing of information. There, a definition is needed under legislation so that health providers and other providers can understand when it is okay to bypass the act. Clearer guidelines are needed to ensure that carers have a right to their own information. Not having access to information can leave them without appropriate means to provide the care they need to provide. It puts at risk the person needing the care as well as the carer. Our biggest need for legislation is around caring responsibilities. As I have said, with the ageing of the population continuing, it will become a whole-of-society issue that needs to be addressed. There is a huge challenge for us in caring for all members of our society.

**Senator FISHER**—I will just explore this just a little more. There is so much in what you have said. I will give you some further comments and ask, ultimately, that you take them on notice; you may wish to come back to the committee on them. Your observations are very valuable and instructive as to the way forward. You talk about legislation potentially being a way to assist. When setting public policy, we have to keep in mind the aim, as you have said, of protecting the vulnerable. In protecting the vulnerable, we have to make sure that we do not hamstring the majority who are not so vulnerable. You have given the privacy legislation as an example of that happening with the people you represent. So there are significant risks with legislating and with the legislative proposition that you put up. From that perspective, I ask you to reflect on this: if a government were to do what you suggest in trying to protect a vulnerable minority, you might find there is the risk that you actually hamstring the not-so-vulnerable majority.

I also ask you to consider what you would ask of a government in that way, given, for example, Senator Barnett's comments about volunteers. A government could face a request from the volunteers' organisation and a range of very good representative organisations to legislate specifically for them in the same way as is being sought by carers, and the same issues will apply there.

My end point is: is it not better to work with and improve what we have than to create separate legislation? I will throw into the mix another risk with creating separate legislation for carers—it is one of the very problems that you highlight in your submission—which is inconsistency, duplication and so on with legislation across the states and even within the Commonwealth. We have heard this morning about the interface with Workplace Relations legislation. The more you have separate bits and pieces of legislation, the more you increase the prospects of confusion, duplication and so on. So, personally, I would need convincing in this regard. Could you please reflect on some of those issues and see whether your organisation can provide more information in order to convince me on that aspect. That is a very long question, but there is a lot in it.

**Ms Ashton**—I think I have got most of it. As you say, any legislation is a risk, but to not legislate would mean that you never get anything started. When you introduce new legislation, you must include in it a review period. You could say that, under the Sex Discrimination Act, that is a piece of legislation that identifies certain issues. By identifying such issues, can you create only a narrow band of problems? When cases come against it, you would say, ‘Well, in a way, this has created more problems because we see more issues coming into court from it.’

**Senator FISHER**—I will interrupt you there. To some extent, you are interchanging what you see as an issue with what you see as a problem. You might take the view that legislation should be created to fix a problem. You have also acknowledged it as an issue. In addition, I ask that you expand on your answer to Senator Crossin: give us an analysis of the gaps that exist for your members in the existing legislative framework. That is, what do you say the problem actually is in empirical terms? You have given us workforce numbers, but my question asks for more detail around Senator Crossin’s question. That is, in your organisation’s view, what are the legislative gaps—that is, the problems—that we would be trying to address?

**Ms Ashton**—I will take the empirical question on notice because I will have to go to the other states and check what their specific evidence is on that.

**Senator FISHER**—I guess it is actually more analytical than empirical.

**Ms Ashton**—I was starting to make the analogy that legislation can be used to address specific problems but, because society has changed, we are asking for total reform of legislation in the case of the family and caring responsibilities act. Good legislation is a framework and then a structure that supports good policy. It provides both direction and compliance. Good legislation can be very helpful in addressing issues, when you have a change in social patterns. They are what we see as the positive aspects of legislation. We will probably need to articulate that case for a legislative framework more strongly. We will do that as a process from what comes from the various government reviews that are happening at the moment. At the moment, we are going through that nationally and we will need to address that case more strongly.

As far as having different pieces of legislation, I agree that you cannot legislate in terms of small problems and small splinter groups, as you then create more inequities and more gaps. That is why we are pushing for bigger reform, a comprehensive act that recognises caring responsibilities. However, there are some small amendments within the existing legislation that can be better articulated. A case we brought up, for example, is not recognising same-sex relationships and not recognising people who are caring for friends and neighbours who currently have no action under the present act.

With our limited resources, unless specific cases are brought to us, it is very hard for us to get out there and identify specific ones. People know there is no redress under the act and, when they are time poor, it becomes a problem. If they know there is no recourse for a problem, they are not going to come to us to try to take action with it; we just get it flagged indirectly. We would have to go out and do more research to pull up specific cases where that has happened, and I actually think that is beyond our capacity with what we are funded for at the moment.

**Senator FISHER**—By the same token, you must know that there is a shortfall before you argue that there is one.

**Ms Ashton**—With same-sex couples, we know there is a shortfall.

**Senator FISHER**—Yes, that is a good example.

**Ms Ashton**—I am saying that it is probably beyond our capacity to try to mount a legal challenge based on that in the court arena. We do tend to refer those on to the Human Rights Commission for that sort of action. I am saying that that sort of evidence does not come to us naturally.

**Senator FISHER**—I understand that.

**Ms Ashton**—However, we monitor that very closely and also encourage all carers who come into contact with us to go to the appropriate agencies for that kind of action. Does that help?

**Senator FISHER**—Yes, thank you.

**Senator FARRELL**—I join with the comments of the other senators in terms of your contribution to the community. In one of the earlier questions, you referred to a circumstance where somebody goes into the workplace and seeks to negotiate time off. I was not clear who was doing this negotiation and in what circumstances it applies. Could you go back to that and perhaps clarify it for me?

**Ms Ashton**—Certainly. In certain states and territories, we have started to pilot—and it has been funded by DOHA—a carer support program for the workplace. I have brought along some brochures. Specifically in the ACT, we have a section for those who are caring for people who are over the age of 65. We have two coordinators who can go in at the carer's request—and I would like to make it clear that it is at the carer's request. We do not have the capacity to roll this out across the ACT at the moment. But, at the carer's request, we can go in and provide the employer with information about caring. We have one of these booklets as a guide for employers, and I can present copies of this to the committee. That is to educate the employer about carer needs as well as the benefits of offering a more flexible workplace. That can be simple things such as compressed hours, annualised hours or a smaller amount of unpaid leave per year. It may involve partly working from home. We can help negotiate with the employer putting in place all sorts of solutions so that they are controlled within the workplace, so it is far more of an advocacy role.

However, beyond that advocacy role, the way the support works is also for the carer. For example, it offers support in finding, say, respite care for when it is needed. For someone with a

child with a disability, it may be helping to find a holiday program for when school is out; it may be negotiating what happens if your child gets sick for a long time or you need to take them down to Sydney for tests; it is about how you would work those things out with your employer. It is offering carers that kind of practical support.

That program would only apply if someone were caring for someone aged over 65. That is one of our big gaps. For families with children, especially children with disabilities, we have a huge need at the moment in that they cannot come under this program; it is only for people caring for elderly people. It is advocacy and respite. For example, it will find support for mum with a place in a dementia cottage. It may work in a practical way to provide an at-home alarm through the Red Cross. It is a fantastic program and it is showing huge signs of success, but it has been a two-year pilot in only a few states.

**Senator FARRELL**—I would just like to be clear about this. Is your organisation the one that would make contact with the employer and say, ‘One of your employees is seeking to change their employment arrangements’?

**Ms Ashton**—Yes. The carer normally would come to us and say, ‘I’m struggling and I don’t know what to do,’ and we would say, ‘Would you like us to arrange a meeting?’ Sometimes the carer will go back to their employer and say, ‘I’d like to bring these people in for a meeting or to have a chat.’ We find that employers are very receptive to that. We then go in with a case coordinator who will sit down and lay the information out on the table. So, basically, it becomes a process of establishing a dialogue, with the carer having a bit of support in that process as well. It is not done on an adversarial basis; it is very much, ‘How can we help you to keep this great person employed at your workplace?’ Employers themselves recognise that, every time someone leaves, not only do they have the cost of replacing that person but also they lose a wealth of knowledge. More often than not, we find solutions. Then the employers themselves may start to suggest other solutions that the carer was not aware were there. The employers just look and say, ‘Hey, we can do this differently.’ So negotiations are done very much on a non-adversarial, workplace-by-workplace basis. We get in there, and we can also provide general information to other employees who are in that workplace. For employers it is a free service; they do not have to pay for this help and support, and they really appreciate it.

**Senator FARRELL**—You have talked of the disadvantages that carers are subjected to in the workplace because they might have to leave work early or go part-time and those sorts of issues. Is there also an issue with superannuation where, because the carer cannot work either full time or at all, they suddenly find that when they come to retire they are disadvantaged in terms of their superannuation entitlements?

**Ms Ashton**—There is a huge problem with that, and not only with accruing superannuation. A lot of carers who have to take time out from the workforce and who then cease working altogether will start drawing on their superannuation under the hardship provisions. By the time they go back into the workforce, that can be a significant issue. I know of cases where a carer’s child has been diagnosed with disability. They will be out of the workforce for seven, eight or even 10 years. In that time, they may go through a marital break-up and draw on the hardship provisions to stop themselves from going under. So, by the time they come back into the workforce, typically they can be 40, 50 or close to 60-years-old. They may have only \$10,000 left in their superannuation and there is huge pressure on them. In addition, it affects their

limited ability to build up other assets as well. So you have someone who has been hit in all areas. They may not have any equity in property or, if they have managed to hang onto a mortgage, they will have less equity in that property. It has that snowballing effect. Superannuation is a big problem.

Carers Australia has previously called for a superannuation scheme, based on the federal minimum wage, for carers who have to leave the workforce. That was in our budget submission previously. I can understand the argument that, if you are going to do that, you should do it for all people on disability support pensions et cetera across other areas of the community as well. The problem for carers is that the costs of caring impact on their standard of living as well, so there is a much higher cost involved in providing care. If you take someone to the hospital for dialysis three times a week, you have got to wear the associated petrol cost. We are finding that an increased number of carers, including working carers, are coming in for food and petrol vouchers, saying, 'I've never had to do this before. I'm suddenly here as a charity case, even though I'm working.' That is the biggest change we have seen in the last two years—that we have got an increased number coming in.

This last year has been particularly hard for people who are having home modifications as well. It is a big problem because of the costs involved in that. You have greater utilities' costs as well. If you have someone with MS in your household, they lose their ability to maintain their own internal temperature; so you must keep your house within a certain temperature range, otherwise they get even sicker and end up in hospital. You have to pay for air conditioning in summer and you have to pay for heating in winter. So you have all those extra costs, but you have no capacity, even if you are a working carer, to put extra money into superannuation to make up for the gaps that occurred when you were out of the workforce. That is a big problem.

**CHAIR**—Thank you very much for your time this morning. We have taken up a lot of your time, but it has been very useful. You have presented our inquiry with a different angle that we have not concentrated on in the last couple of days. Thank you; we do appreciate it.

**Ms Ashton**—Thank you very much, Chair and senators.

**Proceedings suspended from 10.46 am to 11.05 am**

**DUNNICLIFF-HAGAN, Ms Ruth (Patricia), Ordination of Catholic Women**

**GREGORY, Ms Josephine, Co-convenor, Ordination of Catholic Women**

**GREGORY, Mr Kevin Noel, Ordination of Catholic Women**

**HATTON, Ms Marilyn, National Convenor, Ordination of Catholic Women**

**JOYCE, Dr Marie Rose, Co-Convenor (Victoria), Ordination of Catholic Women**

**CHAIR**—I extend to you a warm welcome. We have your submission and, for our purposes, have numbered it 9. Do you need to make any changes or amendments to that submission, before going to your opening statement?

**Ms Hatton**—No.

**CHAIR**—If you would like to provide us with a brief statement, I am sure that we will go to questions when you have finished.

**Ms Hatton**—Thank you for the opportunity to present our case at these hearings. We appreciate any opportunity to increase people's understanding of how much this issue cripples the practice of Catholic faith in Australia and throughout the world. The situation today in the Catholic Church is that discussion of ordination of Catholic women is forbidden on church premises, despite the fact that women do 76 per cent of the pastoral care of the Catholic Church and that scholarly evidence indicates that there is no scriptural or otherwise barrier to the ordination of Catholic women. In a petition run in 120 parishes late last year, 16,700 church-going Catholics—including 167 priests, as well as religious women and men—supported encouraging a wide-ranging discussion of the role of women in ministry and in authority structures of the church, including the question of women's ordination. The Australian Catholic Bishops response to this petition was that it was 'beyond our competence as a national Conference of Bishops within the universal church' to address these issues. In such discriminating circumstances, we need the support of civil and human rights legal frameworks. I will now hand over to Dr Marie Joyce.

**Dr Joyce**—I join with Ms Hatton in thanking you and expressing appreciation for the opportunity to contribute to the hearings of this Senate inquiry. We ask that the exemptions for religious bodies under the SDA, as automatic, be removed. We draw attention to the conflicting intersection of law under which Catholic women currently live. That is the unhappy meeting point of international human rights law, federal anti-discrimination law and church canon law. Within the church, regarding the position of women, canon law trumps the others every time.

We would also like to note that religious bodies seek the protection of federal law to uphold the religious freedom upon which they rely, but seek to avoid implication of responsibility under other law, namely anti-discrimination law. To me, this seems at least to lack some coherence. I would also appeal to the important educative role emphasised in CEDAW and suggest that the automatic exemptions have the opposite effect. They socialise young women and men into

discriminatory attitudes against women. Women come to be seen as holding a place that is secondary and inferior, and no justification needs to be made. I will hand over to Mr Gregory.

**Mr Gregory**—Just shortly, the problem with the formulation in section 37 is that it allows the authorities in the Catholic Church to be judges in their own cause. This means that they can be satisfied with irrational arguments. The formulation in section 37, variants of it or formulations with the same effect have been used in legislation in the Australian states and territories, the United Kingdom, New Zealand, Nova Scotia and, as far as I understand them, in British Columbia and Quebec. However, in some Canadian provinces—that is, Ontario, Saskatchewan and Yukon—discrimination in employment on the ground of sex is only justified if it is reasonable. Although the application of the US Civil Rights Act 1964 is limited, presumably by their constitution, the exemption in it is along the same lines—that is, that it must be reasonable.

I am not aware how the formulation of that exemption or any others is played out in those provinces where it is present; however, it seems to me to be just and, in fact, conciliatory to have an exemption along those lines. It does not seem to me to matter who should be the initial arbiter of the reasonableness of the exemption but, at the end of the day, it would probably be necessary for it to go as high as the High Court so that we could know that this is what the country wanted.

**CHAIR**—Thank you for your opening comments. This is a very interesting and really complicated aspect to our part of the inquiry. We have certainly heard over the last couple of days some suggestions about technical amendments to the act, but I think the issue of the exemptions is quite a difficult one to come to terms with.

We have had evidence that goes to exemptions for religious bodies for purposes such as their educational institutions, and I have some sympathy with that. If you have an Islamic school, you would want perhaps people who uphold that faith to be teaching in that school. It has been put to us that the discriminatory nature of gender is quite separate to freedom of religion. I put to you then: how do we separate out that intersection between canon law and removing the exemption? Obviously, you are saying to us in plain English: remove the exemption for religious bodies—for example, the Catholic Church. Does that mean that people then would take action under that law to try to press for women to be ordained, or would canon law be the supreme body that makes decisions here? Let us say that you won an action and somewhere in the High Court a decision was handed down that the Sex Discrimination Act had been breached because, on the face of things, women ought to be able to be ordained, it does not necessarily follow that that would happen, does it?

**Dr Joyce**—That is right. It is very difficult to predict what the immediate consequences would be. My hope is that the questioning of automatic exemptions would start to bring about a shift in culture so that matters currently forbidden to be discussed—such as women's ordination—could be discussed. The law of the land now suggests that following the path that has been followed up until now is no longer acceptable as things stand and there needs to be consultation, dialogue and discussion. With that occurring, I would hope an appropriate forum evolved, where all the views within the church—and they are by no means unitary—could come to be heard and discussed and that change could slowly happen.

**CHAIR**—Does the current SDA prevent that discussion from happening now?

**Dr Joyce**—It does not. But, given that CEDAW is looking for the law to have an educative role, I would hope there could be an educative purpose in amendment to the law, which would then guide and support the development of a new culture of dialogue, and that does not happen at the moment.

**Mr Gregory**—It is a matter of educating not so much the people but the authorities in the church. The authorities in the church say, ‘No discussion.’ My wife and Marilyn wanted to go and see the Archbishop to talk about ordination of Catholic women. He said, ‘You can come, but we’re not going to talk about that.’ The late Pope said, ‘There will be no discussion.’ He said, ‘I am ruling, as a matter of faith and morals, that ordination of Catholic women is not an issue; it is settled.’ That is our problem.

**CHAIR**—I am not so sure that a change to the act would assist.

**Mr Gregory**—Yes, it would.

**CHAIR**—Do you think it would assist in changing some views?

**Mr Gregory**—Yes, if the church is in the situation where it is told that it has to justify an exemption. Firstly, the legislation takes time to get through. Secondly, you have the debate before whatever body makes up its mind on what is reasonable. Thirdly, if you run a prerogative writ in the High Court, there is further time for discussion. As Dr Joyce has said, the whole thing can proceed quite slowly and people can have time to come to grips with the new world.

**Ms Hatton**—In terms of the enormous shift there has to be in culture, we need the support of the legal framework. I give the example of inclusive language. The Social Justice Statement of 2000 said that we need to be looking at inclusive language and to be setting up a committee to look at guidelines for inclusive language in liturgy. That was in the year 2000 and that has not happened yet. That was the published Social Justice Statement. Things like that would happen, and inclusive language creates the meaning in our life.

**CHAIR**—HREOC have put the view to us that they think the SDA should be reviewed in two stages: firstly, some technical changes that can be done fairly quickly through changes to the act, which I hope might occur next year; and, secondly, a further stage of reform whereby the whole issue of exemptions is put on the table and a national discussion to be had about it along with the need for an equity act rather than three separate acts. That is one view—that we have a three-year period of further discussion about whether exemptions should go permanently or not. In that debate, other witnesses have put to us that exemptions should be given for only a one- or two-year period and should be re-applied for. Do you have a view about either or both of those models?

**Dr Joyce**—I like the staged model. The law is a blunt instrument for protecting or establishing rights, and I think what is needed is that consultation time. In talking to many of my peers about being involved in this process, it has surprised me that they are totally ignorant that automatic exemptions exist. There is little understanding of it in the wider community. I think to have a debate at the national level about them is really needed for everyone and everyone involved would learn from it.

**CHAIR**—Could part of that debate be whether exemptions should be given for a period of time?

**Dr Joyce**—It could be part of that debate.

**CHAIR**—There are exemptions for volunteers and for sub-contractors, so it is not just religious bodies. There is quite a range of exemptions.

**Dr Joyce**—Yes, it is complex. I agree with Mr Gregory's statement that the process of applying for an exemption would put the people who at the moment enjoy those exemptions in a position of having to think through differently and make a clear rationale and justification for their claims in a way that is not required at the moment. So I would support that.

**Senator FARRELL**—Thank you for your presentation. There are some Christian churches, of course, that have changed their position in respect to women; one most recent example is the Anglican Church. Can you give us any information about how they went about changing their position from one where women could not be ordained to one where they could be?

**Dr Joyce**—I do not feel that I am an expert on the ordination of women in the Anglican Church, but do you want me to speak from the anecdotal level?

**Senator FARRELL**—Yes.

**Dr Joyce**—It was a long and painful process for them. They started some decades before we did. They have said that it only began to change really when men joined the movement. I am very happy that Mr Gregory is here today.

**Senator KROGER**—So he is not a token male at all.

**Dr Joyce**—No.

**Ms Hatton**—There is a member at the back of the room also.

**Mr Gregory**—Part of another point about it would be that the Anglican Church, as we have seen because of the situation with Sydney, is not as monolithic as the Catholic Church. The Catholic Church is a very autocratic top-down organisation. The Anglican Church, as we can see with the fight at Lambeth and all the rest of it, is much less autocratic.

**Ms Hatton**—Their infrastructure allows for mechanisms of accountability, and we do not have that in the Catholic Church.

**Dr Joyce**—The synods allow discussion; they have a forum for discussion where laypeople, including women, participate. That is a different possibility from what we currently have.

**Senator FARRELL**—Do you know when the Anglicans decided that women could become priests? Somebody in the back seems to know.

**Mrs Gregory**—The first women were ordained in the Anglican Church in Australia in 1992, but there have been ordinations in places like Hong Kong since the 1940s.

**Senator FARRELL**—I suppose the point is that it is possible, even with current sex discrimination legislation, for Christian churches to change their position in respect to women. It is not an obstacle as such. The other thing I was going to ask you about is what the consequence is. Let us say that the legislation was changed and the result of that legislation was some obligation on the Catholic Church to change its position. Where would that leave the church in Australia in respect to the church internationally?

**Dr Joyce**—It would leave the church in a position of entering into an additional form of dialogue, not just with the whole church in Australia but opening up the dialogue internationally. I see that as a good thing also.

**Senator FARRELL**—Does it present any difficulties for the church?

**Dr Joyce**—Yes, it would present numerous difficulties. But no change ever comes without difficulties, with respect.

**CHAIR**—Surely we cannot be the only country in the world that has a group wanting women ordained.

**Dr Joyce**—No.

**Ms Hatton**—No.

**CHAIR**—So you have a network that spreads around the world.

**Ms Hatton**—Yes. We are represented on the Women's Ordination Worldwide group. That has 20 representatives from a range of countries—Japan, the United States and various European countries. They meet on an annual basis and we usually send representatives to those meetings. We are on their steering committee.

**CHAIR**—In respect to Senator Farrell's question, is your network just part of a larger network?

**Ms Hatton**—Yes, a much larger network.

**Senator FARRELL**—Obviously, you have a particular interest in women becoming priests and the legislation changing for that purpose. But would there be other consequences for religious orders if exemptions were removed? Would there be other consequences for the church in other areas?

**Dr Joyce**—Consideration would need to be given to the other areas. In some areas we would be particularly positive about hoping for change, as in the use of language and a number of other areas associated with ritual and liturgy. Depending upon how the law was changed, it would have implications for religious orders. I assume that, if they continued to want to have male- or

female-only orders, they would have to apply and give a rationale for that, although many of them are diminishing.

**Senator FARRELL**—I was thinking not so much of the issue of women priests. There is an exemption for religious orders in the Sex Discrimination Act; are there other areas in which the Catholic Church or your group might want to maintain that exemption?

**Dr Joyce**—Are you asking whether our group would want to maintain that exemption?

**Senator FARRELL**—Yes. Are there other aspects to Catholic life that you may wish to maintain?

**Dr Joyce**—No. Others within the church may wish to maintain it. We do not look to maintain women-only or men-only groupings within the church, but we respect that view.

**Senator FISHER**—Thank you for your submission. I am Anglican. Can you clarify the purpose for which you seek the removal of this exemption? Is it only for the ordaining of women priests?

**Dr Joyce**—No. That is what the name of our organisation tells the world, but we do want equality for men and women within the church. That spells out a lot more than ordination.

**Senator FISHER**—Indeed; therefore, your submission somewhat sensibly talks about, in your view, what issues are raised for women, for example, in six different ways in the Catholic Church as a result of this exemption.

**Dr Joyce**—Yes.

**Senator FISHER**—I ask that because Senator Farrell, in his questioning—and I am sure you will correct me, Senator Farrell, if I get this wrong—essentially put that the exemption is not an obstacle to the ordaining of women in religious organisations, with which you agreed.

**Dr Joyce**—May I qualify that?

**Senator FISHER**—I thought you might wish to.

**Dr Joyce**—Thank you. It is not a legal obstacle, but it does provide cultural support for the stance they take. It also enables them to persist in the stereotyped and discriminatory views upon which they base their decisions.

**Senator FISHER**—And the sorts of things that you refer to in your submission on page 2.

**Dr Joyce**—Yes.

**Senator FISHER**—Perhaps then it would be more accurate to say that the Anglican experience demonstrates that the exemption is not an insurmountable obstacle to the ordaining of women in a religious organisation.

**Dr Joyce**—Thank you; that correction is very helpful.

**CHAIR**—For the record, I should probably state that I am from the Catholic Church. I did not know that your organisation existed so extensively around the country, and that is useful to know. On Tuesday, Christian schools put to us that exemptions were needed so that, in respect of education institutions, you could ensure that, with all else being equal, schools or education institutions had a ‘right to employ’—for example, in the case of Catholic schools, people of the Catholic faith—and that is why the exemption exists. How would that sit alongside your request to have those exemptions removed? How do you balance the two?

**Mr Gregory**—I would say that is a completely different issue.

**CHAIR**—It is a different issue?

**Mr Gregory**—It is a different section in the act and a different issue altogether.

**CHAIR**—So could you still get an exemption for the purposes of education institutions?

**Mr Gregory**—I do not think we could say that we are arguing about or discussing that issue at all.

**Dr Joyce**—No.

**CHAIR**—You are right. Section 37 relates to religious bodies. Section 38 relates to educational institutions established for religious purposes. Your submission talks about sections 37 and 38, but predominantly you are seeking that section 37 be scrutinised.

**Ms Dunncliff-Hagan**—Perhaps I could comment on this issue. As well as being a coopted member of the national executive of OCW, I am employed as a casual teacher with the Catholic Education Office here in this archdiocese and have a friend who also is employed as a teacher and is not Catholic. You might well be aware of this, Senator Crossin.

**CHAIR**—Yes,

**Ms Dunncliff-Hagan**—That is all I wanted to add. Although the exemption is there, it is not necessarily exercised. If exemptions were removed, I guess that it would not necessarily pose a problem.

**CHAIR**—Yes, you are right. I am aware of plenty of practice of educational institutions employing on merit. However, with due respect, when it comes to principals or senior teachers, there is a bias towards people who would uphold the faith.

**Ms Dunncliff-Hagan**—Absolutely.

**CHAIR**—Perhaps, for that purpose, the exemption still needs to be there.

**Dr Joyce**—I wonder whether the exemptions still might not be automatic but might be applied for so that the way in which they are then implemented could be justified and a reasonable

rationale given. I say that because I have seen exemptions used and I think misused to appoint or exclude people from appointment on grounds that are not really those intended by the law.

**CHAIR**—I do not think we have any more question. That is not because we are not interested, but it is such a single-focus issue that we have probably exhausted what we need to know and use.

**Dr Joyce**—I would like to table two documents. I mentioned to your committee secretary that I would like to table this document in particular. It is very large and I could not email to him, as I explained. But I have copied for members of the committee the outside page and the executive summary.

**CHAIR**—Yes, we have those already. They have been distributed.

**Dr Joyce**—It is a very important research document that was initiated by the Catholic Bishops in a process of consultation with women and men in the church about the situation of women—how they participate in the church and what the barriers were to their participation; we could talk about anything except ordination—although, of course, ordination was mentioned. This document is very important, as it reflects a diversity of views within the church from people who are church attendees—that was one group—and the people who presented written and oral submissions. If you are looking for what is going on in terms of people's thinking within the church, this is very valuable research.

The other document, which I have not copied, is a small book entitled *Her Lips Moved, but Her Voice Was Not Heard*, which was edited by Jane Baker, a former national conveyor. This is a collection of stories of women who feel deeply that they are called to the vocation of priestly ministry but who have been unable to have their sense of vocation tested in the way that men are able to. I think they are important documents.

**CHAIR**—Thank you very much. Are those copies for the committee? If they are not, perhaps we could source them through the Library.

**Dr Joyce**—If you need them, I will give them to you. They are my copies, but this is so important that I will give them to you if that is helpful. This is out of print, so I could not buy a copy to give to you.

**CHAIR**—There may well be copies of this either in this library or a library that we can source.

**Dr Joyce**—I will leave them with you.

**CHAIR**—We have the executive summary and you have mentioned them on *Hansard*. If the secretariat needs to source them, we could probably find them.

**Dr Joyce**—If not, I am happy to give you mine.

**CHAIR**—Please keep those and, if we need to refer to them in addition to what you have provided to us, I have no doubt that the federal parliament could source copies. We have a wonderful library here and I am sure that they will be able to source them.

**Ms Hatton**—I think you have the documents I tabled. I do not know whether I need to mention for the *Hansard* what they are. They are our latest publication with the positions against the arguments that the church puts.

**CHAIR**—Thank you very much once again for travelling to Canberra and being with us and for providing us with your evidence.

**Dr Joyce**—Thank you, and good luck with your continued work and good endeavours.

[11.35 am]

**SAWER, Professor Marian, Women's Electoral Lobby**

**THORNTON, Professor Margaret, Women's Electoral Lobby**

**CHAIR**—Welcome. We have received a submission from you which, for our purposes, has been numbered 8. Before I ask you to make a short opening statement, do you want to make any amendments or alterations to that submission?

**Prof. Sawer**—We do not want to make any amendments, but I do want to mention that our colleague Dr Kathy MacDermott, who was one of the principal authors of the submission and who is an expert on gender equality indicators, unfortunately is unable to be here today because her daughter has been seriously injured in a hit-and-run car accident; but she has sent a message saying that she will be very happy to provide later any further information that the committee might require.

**CHAIR**—Thank you. Certainly, on behalf of the Senate Legal and Constitutional Committee, can you pass on our regards and our thoughts to her and her family during this time?

**Prof. Sawer**—Yes, thank you.

**CHAIR**—Perhaps you might make a short opening statement and then we will go to questioning.

**Prof. Sawer**—Women's Electoral Lobby is a non-party women's advocacy organisation, founded in 1972, with a commitment to creating a society where women's participation and potential are unrestricted, acknowledged and respected. Women's Electoral Lobby was a moving force behind the introduction of anti-discrimination legislation at Commonwealth, state and territory levels and behind the development of government machinery to monitor the impact of policy on women and to promote responsiveness in government to women's needs. That means, of course, that we have had a very close interest in this particular inquiry and the opportunity it presents to renew progress towards gender equality and to catch up with some of the developments that have been taking place overseas. In particular, we welcome the opportunity to address some of the weaknesses in the existing Sex Discrimination Act which have become increasingly apparent over the last 24 years. My colleague Professor Thornton is a leading expert on this act and will respond to the committee's questions concerning current deficiencies.

We also welcome the opportunity to propose a new framework for measuring progress towards gender equality within Australia. We propose in our submission a new statutory duty for the Sex Discrimination Commissioner to monitor progress against key performance indicators and to report annually to parliament against those indicators. We note that this new statutory function must be accompanied by new resources and that resources not be stripped away from other essential functions, including complaint handling, education, inquiries and interventions.

President von Doussa has recently informed the estimates committee that the commission's appropriation has been cut already by 12.5 per cent as a result of this year's additional efficiency dividend. We also note that the enhanced role being proposed for the Sex Discrimination Commissioner in monitoring progress towards gender equality means that the current additional role being carried by the commissioner in relation to age discrimination would no longer be viable. We propose that age discrimination, which is a large and growing portfolio, be reallocated to a specialist commissioner with statutory responsibility for it. That concludes my opening statement.

**CHAIR**—Thank you. Professor Thornton, would you like to say anything, or will we just go to questions?

**Prof. Thornton**—I am happy for you to start your questions.

**CHAIR**—Senator Farrell, do you want to start?

**Senator FARRELL**—I do not have any questions.

**Senator KROGER**—Could you just expand on your last statement? You have said that you recommend that age discrimination should be separated out under its own statutory authority. One of the things put to us yesterday was more a simplification of the act and moving towards what was termed an equality act rather than having a number of different judicial authorities dealing with different aspects such as race, sex and so on. Am I right in saying that you are suggesting broadening and separating it out even more?

**Prof. Sawyer**—That is not quite the thrust of what we are suggesting. We strongly support the existence of specialist commissioners within an overall human rights body. We believe that the expertise and commitment of specialist commissioners are quite essential to the effectiveness of anti-discrimination work and the promotion of equality. However, at the moment, the commissioners are doubling up their responsibilities. The Sex Discrimination Commissioner also has responsibilities relating to age discrimination, which is covered by a separate act and not by the Sex Discrimination Act. We recommend that the Sex Discrimination Commissioner be given additional responsibilities, both in monitoring progress towards gender equality and in relation to family responsibilities. At the moment, as you would know, the coverage of family responsibilities in the Sex Discrimination Act is quite limited and I think it is fairly universally acknowledged that that needs to be broadened, so the Sex Discrimination Commissioner would have additional responsibilities in that area. Also, we suggest that the act might be amended in ways which would give the commissioner a more proactive role. We recommend that, rather than relying on complaints coming in, the commissioner have a more proactive role in relation to issues of systemic discrimination and so on; that the commissioner be given the power to initiate inquiries without their being complaint driven.

Given all of that, that is a big portfolio in itself. Then when you have age discrimination, which is a growing area of concern, we think that is too much. Really, for age discrimination responsibilities to be performed effectively, a dedicated commissioner is needed. That is the thrust of our submission in relation to those matters.

In our submission, we do not really canvas the merits of an equality act. We see that as something a bit down the track and it would require very extensive consultations and so on. The British consultations took place over three years before they introduced their act. It is a big undertaking to think about how you can most effectively, in a comprehensive and umbrella way, address issues of both human rights and equality across the board. In our submission, we have focused on some relatively straightforward improvements to the Sex Discrimination Act and to the monitoring of progress towards gender equality, which we think might not be subject to as much controversy or require as much consultation as this move to an equality act might.

**Senator KROGER**—So you have put forward in your submission what you would consider to be short- to medium-term recommendations that could be achieved, in the main, without any real legislative change.

**Prof. Sawyer**—They would require legislative change; they would require amendments to the act.

**Senator KROGER**—No. 2 states that the provision of the SDA be strengthened to eliminate, so far as possible, those areas. Systemic discrimination was something that was also covered at length yesterday. One of the issues that arose in relation to it particularly was conflict that we have in various arrangements where someone can be dismissed under the SDA for sexual discrimination, assault or whatever in a workplace. Three instances were provided to us by the Australian Chamber of Commerce where they had to be reinstated due to the Workplace Relations Act in terms of unfair dismissal. Do you have any thoughts about that? Harmonisation of the various authorities has been discussed.

**Prof. Sawyer**—I would like to pass that question, if I may, to my colleague, who is the real expert on the operation of this act.

**Prof. Thornton**—It is very hard to have precise harmonisation and there are always going to be those conflicts. For example, in the Canadian Charter of Rights, there is ostensibly a fundamental conflict between two provisions. One is in terms of a notion of equality but, on the other hand, there is a notion of affirmative or positive action, which actually recognises that some groups and members of society may not be equally situated and need you to do something special for them. There is always going to be that conflict. I think it is impossible to eradicate that, but one can still express a strong commitment to equality and then the special case will probably be judicially determined.

**Senator KROGER**—This is, I guess, a professional and personal question: how far do you think we have gone in the last two decades in addressing equality through SDA and other measures? Do you think we are halfway, two-thirds or 90 per cent of the way there? As I said, this is very much a personal judgement call.

**Prof. Thornton**—Certainly, there has been some progress with where women are located within the workplace, for example, in terms of authoritative and professional positions. On its face, that looks quite positive. If you take a position that focuses on numbers, it looks quite good. But I would suggest that much more than numbers are involved. One has to look beneath the surface at the substantive aspects. That means that it is not just formal but substantive equality that is, of course, concerned with the outcome, the actual result of how much more

difficult it is for women. Indeed, I think it has become more difficult in the present climate. For example, with the move to deregulation of the workplace, the move to more and more precarious work and the casualisation of the workplace, it is more difficult for an individual complainant to lodge a complaint. They are going to feel very vulnerable in terms of their position, so they are more likely to leave the workplace.

The nature of the workplace has changed also in terms of a propensity towards restructuring, the movement in terms of large multinational companies and so on. It has always been very difficult for an individual complainant to take on the big corporation and succeed, because obviously there will be a disparity in terms of bargaining power, resources and so on. That means that the burden of proof on the individual almost always has been insuperable really, particularly in authoritative positions where hardly any complaints have gone to formal hearing. I think all of those factors have made it more difficult at the moment.

We have had a fairly conservative High Court, which has made quite a difference. Not a single discrimination complaint has succeeded over the last 12 or 15 years. Every bona fide case that has gone up and succeeded in the first instance has eventually failed because of the very narrow, technocratic approach that has been taken in interpreting the legislation. This is why I think a much broader approach should be taken and there should be much more guidance to the court in the objects clause. That is why it is suggested that the wording be stronger there in terms of a prohibition and not this very weak 'to eliminate so far as possible', which suggests a half-hearted commitment.

To answer your question, which is a big question, the answer is yes and no. Certainly, there has been some progress, but it is really limited and has become more muted over time because of the socio-political context in which we operate.

**Senator FISHER**—I will follow on from that. Does that not beg the question: are you suggesting that the actual discrimination of which you are complaining has increased, decreased or stabilised?

**Prof. Thornton**—That is hard to answer simply. Discrimination itself is not quantifiable; it emerges from a particular socioeconomic context.

**Senator FISHER**—Hence the difficulty in legislating to prevent it, of course.

**Prof. Thornton**—Yes. But I think a stronger stance can be taken and more things can be done rather than to just stand back and say, 'This is the invisible hand of the market at work'—or something like that—and deferring to market forces. It is possible to intervene, and we have already seen that in a whole range of areas, such as domestic violence or whatever, that were seen to be extraordinarily difficult before that began. I say that the conditions are such that it actually does legitimate discrimination. That is what I am suggesting rather than just a yes or no to your question about the increase in discrimination.

**Senator FISHER**—Are you suggesting that it has, in fact, increased? If you regard legitimisation of discrimination as part of discrimination, which is undesirable, are you saying that undesirable discrimination has increased since the advent of the legislation?

**Prof. Thornton**—If I have to answer yes or no, I think I would say yes. I think there was a high political moment where there was a consciousness about discrimination. But, with our moving out to a sort of neoliberal free market orientation, which includes the phenomenon of free trade at the global level and Australia believing that it has to compete with other nation-states, it means that the poorer Third World nations will be able to do jobs much more cheaply than Australian workers. That is the reality. So we have seen a lowering of the standards of work within Australia. So my concern is that discrimination legislation is really becoming a casualty as we move to embracing more free trade agreements.

**Senator FISHER**—So, if it were to be argued that undesirable discrimination is increasing, your view would be that it is due, part and parcel, to the labour market and globalisation.

**Prof. Thornton**—Yes.

**Senator FISHER**—That may be your view. I will put it this way. Let me not try to redescribe, because you have put to the committee far more ably than I could your views as to the forces that have been impacting. But could there not be a contrary view, which is that legislation just does not help?

**Prof. Thornton**—I am very familiar with those arguments about legislation; they go back to the 19th century. They are that legislation does not change the hearts and minds of men; that was the expression at the time. That is something that belongs in the realm of the social, which is somehow outside the political realm.

**Senator FISHER**—Let us recast it. Perhaps the legislation has done its job thus far since its inception. Maybe the work that it has to do is reducing or has reduced discrimination. Maybe the good that it can achieve in this context has been done. I am just throwing up some suggestions and playing the role of a devil's advocate, I suppose.

**Prof. Sawyer**—I want to go back to the way that Senator Kroger originally put the phrase about whether we had gone beyond halfway to equal or not, which I think is where another committee diagnosed we were in 1992. It seems to me that you have to focus on progress towards gender equality. If you relax your focus, you are not likely to make progress and things are likely to slide a bit. I think things have slid in a number of areas. Look at the gender pay gap of 28 per cent that has opened up in Western Australia—and this is on ordinary hours earnings of full-time men and women workers. This is a huge gap that has opened up. I think those gaps open up when we do not really focus. That is why we are proposing so strongly in our submission that the Sex Discrimination Act be amended to give the Sex Discrimination Commissioner a statutory duty to monitor and report on progress overall towards gender equality.

**CHAIR**—Similar to the Social Justice Commissioner?

**Prof. Sawyer**—Yes, but with new resources to go with the new duty—which, I am afraid, did not happen with the social justice commissioner. I think that is a trap that needs to be avoided, because you cannot take resources away from other prime functions, including complaint handling and education. A new function such as this needs new resources. But I think it is crucial that you focus attention on how you close the gap.

I think the Sex Discrimination Commissioner, in her tour around Australia, has found enormous concern about issues such as sexual harassment in the workplace. It has not gone away. It has not decreased; But at the moment there are barriers to bringing complaints. The act is not set up in a way which makes it easy for complainants. So we want a more proactive role for the commission, both in education and in initiating inquiries. In addition, we want this monitoring to occur so that we can tell whether we are making progress beyond halfway. We can see that women are still so far behind in so many areas. For example, there are no women on 50 per cent of the private sector boards of our top 200 companies.

**Senator KROGER**—I am a new Senator; I came to the parliament on 1 July. Can you tell me whether there been any systematic collection of data in relation to this? Information collected by the ABS was given to us this morning, but has there been any systematic collection of data relating directly to this act at any point in time? When the act was first established, was there a broad scope?

**CHAIR**—I think it would be only through HREOC's annual report.

**Prof. Thornton**—Yes. I am conducting a project at the moment that looks at the entire trajectory of anti-discrimination legislation across the country, and I do not think that has been done before. I have had a look at a few jurisdictions and there has been a decline in the lodgement of complaints; I think one can say that. Another issue is that there has been a decline in the number of complaints that go to formal hearing. I think that is partly due to the reasons that I have mentioned—that it is more difficult now for complainants. We have had a shift away from specialised tribunals to generalist tribunals. That means that the normal rule is that loser pays in terms of costs, so the individual complainant is less likely to initiate a formal hearing. This has happened at the federal level, for example. Compare that with a specialist tribunal that was set up to operate within a particular jurisdiction, where the individual could appear without being legally represented.

**Senator KROGER**—By virtue of that response, I take it that you do not believe there have been fewer complaints because of effective conciliatory resolutions or whatever.

**Prof. Thornton**—This, of course, is a very tricky question and I cannot provide a precise answer. One might argue, apropos Senator Fisher's question, that maybe there is less discrimination, if you are going to be able to quantify it. But I am suggesting that there are these other reasons. Just to come back to Senator Fisher's point—

**Senator FISHER**—Devilish advocacy.

**Prof. Thornton**—Is that what it is? I think we are looking at different forms of discrimination as well. It is not just the simplistic form of, say, letting in a women or someone being told, 'You are the best qualified but of the wrong sex', which happened to me when I graduated in law. No-one would say that any more, but it would be in a more subtle form. It is more difficult to deal with and harder to prove. I think those factors help to explain the changing profile of complaints.

**Senator FISHER**—Indeed. Perhaps that hits on one of the undesirable consequences of legislation like this, which arguably is that it drives the alleged crime underground, does it not? That is a question, Chair.

**CHAIR**—It probably does.

**Senator FISHER**—Could it not and has it not, in some respects?

**CHAIR**—I suppose you would argue that, without any monitoring or powers from the commissioner to look at that, we can only speculate about the amount of underreporting.

**Senator FISHER**—I think that goes back to Senator Kroger's entree into this discussion. That was that, without essentially empirical data, it is a matter of opinion. But the Women's Electoral Lobby has had some experience in this area.

**CHAIR**—I would like to go to some of your recommendations. Your recommendation that the Sex Discrimination Commissioner be empowered to intervene in whatever proceedings she thinks fit is fairly broad. Could you clarify for me why it is so broad?

**Prof. Thornton**—I think the idea was that the Sex Discrimination Commissioner could appear in numerous courts. Obviously, that would be subject to the permission of the relevant court, be it a court or industrial tribunal at the state level or whatever. There may be relevant issues, but they are not being addressed, which again comes back to that question. We find that issues are dealt with in discrete packages if two jurisdictions are not talking to each other, and it might be very helpful to have input from the specialist Sex Discrimination Commissioner.

**CHAIR**—Yes. You have raised an interesting point. ACCI, the Australian Chamber of Commerce and Industry, yesterday in Melbourne raised with us an issue that I do not think we had thought of. That is that some employers and businesses have very good sexual harassment policies, for example, or even a no-tolerance policy. They gave us three examples of a person having been dismissed for breaching those policies—in quite a severe way, I have to say—and the Industrial Relations Commission actually ordering the reinstatement of that person. They put to us that, in those instances, the SDA Act and the Industrial Relations Act are not talking to each other because perhaps it is not in the best interest of that business, that employer and those employees, to have that person back in that workplace. ACCI would suggest that perhaps your recommendation 3 does not go far enough. In fact, they have suggested an amendment that the Workplace Relations Act, particularly the unfair dismissal provisions, should be amended to recognise the SDA and actions under it.

**Prof. Thornton**—That would be one way of dealing with it. This is going back to the antecedent point, the actual hearing, and it would be excellent to have that dialogue. Indeed, for a long time in New South Wales in the 1980s, there was enormous dissension between the Anti-Discrimination Act and the state industrial commission. The industrial arena actually saw the Anti-Discrimination Act as trespassing on its territory. It felt that it should have nothing to do with issues of employment in terms of, say, dismissal, promotion or anything like that. I think things settled down after a time, but it was salutary that inadequate attention was given to the fact that there were two jurisdictions at odds with each other and no attempt had been made to recognise that there may be conflicts.

**CHAIR**—A lot of your other recommendations are self-evident. They have been covered and overwhelmingly re-endorsed by many witnesses that we have heard and received submissions

from. Your recommendation 11 refers to de-identified data being collected and published. Could that be done by a commissioner in a monitoring role?

**Prof. Thornton**—Yes. To some extent, that is the case. But it has always been very difficult because conciliation is the main mode of dispute resolution in this jurisdiction. That means that about 98 per cent of complaints never go beyond the conciliation level and there is agreement that conciliation occurs behind closed doors.

So that idea of confidentiality has been a very strong norm. Material is published now—it is a little bit better than it used to be—that tends to focus on statistics and so on. I think having more material available to help other complainants would serve a very important educative function. What is the point of having a jurisdiction that operates almost entirely in private, behind closed doors, and then has very little money to communicate to the general public the outcome of those decisions or settlements that have been effected that way?

**CHAIR**—Your submission recommends legal aid being amended to include the funding of equality test cases. How would that apply?

**Prof. Thornton**—One of the difficulties is in the jurisprudence that emerges from this jurisdiction. As suggested, very few cases have gone on to public hearing, unless it is a well-to-do respondent. Often a state government or a multinational has challenged a decision in a complainant's favour at the lower level. As a result of domination by powerful respondents, the jurisprudence has become skewed in a particular way so that the focus tends to be on the form of the legislation rather than on the substance. That is why there is the suggestion that there be some guidance within the act.

To keep skewing the interpretation of the legislation in a particular way over time, I think, is not at all beneficial for complainants. For it to be possible to have legal aid in this regard, I think, would help redress the balance. There is no legal aid, as we know, other than for criminal matters and perhaps a little bit in terms of custody and family law matters. There really is no money in terms of civil litigation, even though it may be in the public interest.

Just to illustrate that point, I will refer to the Schou case, which was quite significant in terms of sex discrimination, although it did come under the Victorian Act. In that case, there was support for the complainant from a firm that would have appeared before the High Court pro bono, provided that the respondent, which happened to be the State of Victoria, agreed not to sue for costs. They never provided that agreement; so it was impossible to bring this very important case about where one carried out the work, if one had a sick child. It went to a sort of sex-plus-carer responsibility. There was an issue of great public moment, but it could never go on to the High Court. Cases like that, I think, are very significant.

**CHAIR**—Quite a number of submissions have been put to us that there should be further consultations about having an equality act in this country that, under the one umbrella, might have areas of discrimination such as race, disability and sex discrimination. I note here that age discrimination has been identified in your recommendation 14. What views do you have on an equality act? Could it also encompass age discrimination? How might that compare with research done, say, in Canada and particularly in the United Kingdom—where, as I understand it, an equality act was introduced recently?

**Prof. Thornton**—It has been somewhat problematic.

**CHAIR**—In the United Kingdom?

**Prof. Thornton**—Yes, although it is very recent there is talk about changing it already, after only a couple of years. One of the problems with a so-called omnibus act having a whole range of grounds within the legislation—sex, race, sexuality, age, disability and so on—is that they end up being treated as mirror images of the other. That, I think, can have a distorting effect. We see this happen with state acts, which do follow the omnibus model. I suppose it is both a strength and a weakness of the federal legislation that it has adopted a different model of having the discrete pieces of legislation so that one is not necessarily seen as a mirror image of the other, although the form of the legislation often does have that effect. So there is a problem there. I understand that, with the operation of the UK equality act, there has been something of a minimisation effect in terms of the inclusion of sex.

**CHAIR**—So it devalues or downplays the significance

**Prof. Thornton**—Yes.

**CHAIR**—HREOC suggests that there should be a second phase of reform and one of the questions out there for debate is whether there should be an equality act. You would be aware of that in their submission, no doubt.

**Prof. Thornton**—Yes.

**Prof. Sawyer**—Women’s Electoral Lobby has always adopted the position that, regardless of whether you have an umbrella act, you need specialist commissioners with specialist expertise; and ring-fenced resources are very crucial to addressing issues such as sex discrimination, which otherwise can be crowded out by other very serious issues of discrimination on the basis of race or whatever.

**CHAIR**—I want to ask you about a proactive means of addressing sex discrimination and sexual harassment, which is by having work plans or work policies even, say, for equal opportunity for women in the workplace as to what you might monitor. Like occupational health and safety, where businesses are required to have an OH&S plan, it has been put to us that perhaps a way to go in this country would be to have affirmative action or sexual harassment policies and plans. Businesses may well do that, but it is not necessary mandated or monitored; that is my understanding. What is your response to having that kind of model in this country vis-a-vis what you would know of what is happening internationally?

**Prof. Thornton**—Certainly, I think the EOWA could be strengthened. It has been described as being edentulous, or toothless, legislation at the moment. It is largely up to business what they do. It is little more than self-regulation that is mandated under that act. The agency does not have the resources or the power to follow up what is happening within workplaces. So I agree strongly that that would be something that would be a means of taking a more proactive approach to deal with discrimination. Symbolically, it is very important to have that responsibility within a workplace. Someone is going to have to be responsible for it. If it is going to be followed up by the agency, it is not just a matter of ticking the box or perhaps being

aspirational about their good intentions and not really doing anything much. I saw a recent study that had been done over 15 years. It looked at two years, the second year being 15 years after the first year. That study showed that there had been absolutely no change at all in the practices of something like 40 organisations.

**CHAIR**—We have covered a lot of areas. As there are no further questions, we thank you for your submission and for making yourselves available to appear today before the committee.

**CHAIR**—Please pass our thoughts on to your colleague Dr MacDermott.

**Prof. Thornton**—Thank you very much.

**Prof. Sawyer**—Thank you. We look forward to your report and to any initiatives that may flow from it in time for the 25th birthday of the act.

**Proceedings suspended from 12.19 pm to 1.34 pm**

**WALLACE, Mr James, Managing Director, Australian Christian Lobby**

**WILLIAMS, Mr Benjamin Peter, Research Officer, Australian Christian Lobby**

**CHAIR**—Welcome. ACL have lodged a submission with us and, for our purposes, we have numbered that 71. Do you wish to make any amendments or changes before you start?

**Mr Wallace**—No.

**CHAIR**—We would welcome your making an opening statement, after which we will go to questions.

**Mr Wallace**—Thank you very much for allowing us to appear before the committee; we really do appreciate it. This particular act does cause us some problems, and we are particularly keen that the original intent of the act be preserved. Right at the outset, we would say that we are supportive of the broad aims of the act, particularly its intent to give effect to the elimination of all forms of discrimination against women. I feel that, in the way the act has been operating, that intent needs to be re-established. We are particularly interested to see the act promoting equality between men and women, eliminating sexual harassment and protecting employees from dismissal on the grounds of family responsibilities. However, we are not supportive of using the anti-discrimination legislation to further ideological agendas or as a vehicle for social engineering—which, as we see it, the act has been used for.

Our concerns focus on two issues raised in the terms of reference. The first issue is the significant judicial rulings of the interpretation of the act and their consequences, which is subparagraph (e), and the scope of existing exemptions, which is subparagraph (n). We believe that the states and territories, if they desire to do so, should have the capacity to restrict access to IVF and other reproductive services to married women and women in heterosexual de facto relationships. In fact, we believe that they have a responsibility to ensure, by restricting that access to those two categories of people, the best interests of the child. But, due to poor drafting of the SDA and judicial activism, this has not been possible, as a restrictive provision in Victoria's Infertility Treatment Act 1995 was deemed inconsistent with Section 22 of the SDA in *McBain v State of Victoria* and therefore ruled inoperative.

The current arrangements whereby states and territories cannot restrict access in this way is clearly unacceptable. It prevents states and territories from setting their own criteria for the provision of reproductive services. They are unable to review, alter, amend or restrict the provision of these services, as the SDA does not permit it. The parameters have already been set for them, even though reproductive services are not a Commonwealth responsibility under the Constitution. Clearly, it was never the intention of the act, we believe, to do this or to facilitate this being done. Current arrangements allowing IVF access to single women and lesbians are not in the best interest of children. Any discussion of reproductive technology necessarily involves the rights of children. ACL strongly contends, and evidence supports the fact, that children do best when raised by both a mother and a father. This is a fact that the judicial interpretation of the SDA clearly ignores and is a departure from the original stated intent of the legislation.

More recently, for us, there have been even sadder implications of this looseness in the drafting of the legislation, with developments in surrogacy and now with one state and one territory allowing the adoption of children by homosexual couples. We can see that the exception that was used in the *McBain v State of Victoria* case will soon be used again to overturn any state legislation that might prohibit the availability of alternate parenting services to men such as adoption or, indeed, if it is passed in its various states, surrogacy. Once again, we believe that this is quite outside the intent of the legislation.

Our first recommendation is that the loophole in the legislation that prevents states and territories from restricting IVF access to married women and women in de facto relationships should be closed. We would like to see something similar to the Sex Discrimination Amendment Bill 2002 be reintroduced so that the *McBain* injunction could be suspended. We also want the committee to ensure that any unintended and similar consequence that might affect alternative parenting services and their availability, particularly to men, be similarly dealt with, I refer here particularly to surrogacy and adoption.

Our second issue is that of religious freedom. The Sex Discrimination Act is a balancing act between the right to freedom of religion and the right to equal treatment of men and women. Exemptions in sections 37 and 38 effectively strike that balance, providing a necessary safeguard for religious bodies and education institutions established for religious purposes to conduct their business, as the act says, in accordance with the doctrines, tenants, beliefs or teachings of the particular religion or creed. In fact, I am referring there to article 18 of the United Nations Convention on the Universal Declaration of Human Rights. Our second recommendation, therefore, is that the exemptions in sections 37 and 38 must remain in the Sex Discrimination Act. They allow religious organisations to engage in their own theological debates and religious observances without the 'illegitimate' interference of government. That concludes my opening statement.

**CHAIR**—Mr Williams, do you want to add anything?

**Mr Williams**—No, thank you.

**CHAIR**—Thank you again for your efforts in making yourself available; we do appreciate it. I go to the exemptions. We have had representations about the exemptions in sections 37 and 38 and, as you would appreciate, a wide range of views on them has been expressed. But this morning, interestingly enough, we heard from women in the Catholic faith who were seeking to have equal treatment for men and women in that religion. I am paraphrasing; I do not want to box them into a corner here.

**Mr Wallace**—Sure.

**CHAIR**—It might boil down perhaps to an exemption remaining for educational institutions. That is, it could be quite valid in ensuring that, say, an Islamic or Uniting Church based school, for religious and education purposes, is able to employ people who uphold those beliefs—although there is some evidence to say that church groups are moving away from that and are going on teaching merit rather than philosophy. Nevertheless, in respect to religious bodies, a view was put this morning that that exemption now should be seriously reviewed or, in fact, deleted and that religious freedom should not be masked by sex discrimination and vice versa.

The view was put that the rights of men and women inside a religion is different from what you might want in an educational institution. Do you see a difference between the two and do you have any comments about that?

**Mr Wallace**—I do. First, I would ask the committee to look very closely at the actual support that those sorts of ideas have. I believe that there has been a submission by a group representing a number of people from the Catholic faith—

**CHAIR**—That is right. We heard from them this morning.

**Mr Wallace**—and, I think, a number of people from the Anglican faith. But I ask you to look at how representative those groups are and at the number of people who put their signature to that submission. I know that those particular people, in both cases, are not representative, in any authoritative sense, of those religions. They are not a delegation of the Catholic Church or of the Anglican Church, and I think that is very important.

**CHAIR**—That is true. They are a group of people agitating for change within their religion.

**Mr Wallace**—That is right. You have mentioned also that you thought there perhaps has been a move away from necessarily looking at philosophy or theology in the selection of teachers at religious schools, for instance, and that it is now being done more on merit. Obviously, merit has always been a consideration for religious schools, just as it has been a consideration anywhere else; but certainly the need to have people who reflect the theology and the discipline of the school itself is seen by schools to be of equally importance. So I do not think it is a matter of trading off merit for theology. I certainly would hate to think that was the case and I do not think you intended to suggest that.

To address this issue more particularly, I note that the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion, a UN declaration, states:

It includes the freedom to train, to appoint, to elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief.

I understand that we are a signatory to that particular declaration, which requires us to understand that different religions have different requirements. Some of the requirements of the orthodox religions perhaps would be seen as more extreme by people in a liberal society; nonetheless, they have requirements in terms of the selection and succession of people, as the declaration says, to leadership positions. In the first instance, I would think we are bound to abide by and to honour that, but I also think that it is totally appropriate because in Australia, perhaps more than in most other countries, we have a great selection of denominations.

For example, I am a Baptist. I changed and became a Baptist because I did not happen to agree with some of the particular theology of the Anglican Church in the area where I was at the particular time. In some Baptist churches a woman, for instance, can become a pastor; in others they cannot. It is the specific congregation that decides, because congregational governance is the nature of the governance system of the Baptist Church. In other religions or denominations, that particular decision is reserved for the superior authority of the denomination. But if someone disagrees with that, just as I changed from Anglican to Baptist, they have the freedom

to move between denominations. That is not available necessarily in other countries, but certainly in Australia they have the opportunity and freedom to move between denominations. So I think there is really no proper reason to expect that this particular exemption should be removed on that basis.

**CHAIR**—I am a Catholic and I cannot imagine I would be jumping to other religions.

**Mr Wallace**—I understand that in England a whole lot of Anglicans are about to jump to the Catholic Church on the matter of theology.

**CHAIR**—We welcome anyone at any time. I will just clarify a point with regard to educational institutions. There is a trend these days that, all else being equal, even if there is religious faith, merit is taken on board. We have had examples of where, even at Catholic schools, employment now occurs with the best teacher who might not necessarily hold the Catholic faith. Some witnesses have told us that they think this exemption no longer need apply, as religious based educational institutions are employing people who are not of that religion.

This leads me to ask you another question, which goes to the HREOC submission—HREOC now being known as the Human Rights Commission. That suggests there should be a much broader review of this act in terms of exemptions. Far be it from a Senate committee after three days to recommend whether we should or should not have exemptions, but that submission suggests there should be a national discussion about this debate: whether the exemptions in the act are still valid and, if they are, whether they should be there permanently, or whether organisations should have to apply for such exemptions every one, two or five years. I do not know whether you have turned your mind to that. As for whether exemptions are valid, it is not so much about the religious bodies but more about volunteers and subcontractors, for example. In the act they are also exempt. There is a view that, after 25 years, perhaps religious bodies should not be exempt anymore. Do you have a view about whether this incurs a much broader national debate about exemptions and whether they should have time limits?

**Mr Wallace**—I do have some understanding of this, as I have had quite a close association with religious schools through the upbringing of my own children and I also work very closely with a lot of religious schooling bodies, particularly in their provision of chaplains and that sort of thing. My experience is that, while religious schools may admit people who may not be every-Sunday attendees at their particular religious ceremonies, they are very keen to maintain a balance, which they see as a critical balance, within their teaching staff. I feel that, if this exemption were to be removed, that would remove from them the prerogative and the discretion to maintain that balance. I think that would be very unfortunate. I would not disagree at all that religious schools might employ one or a number of people who do not have the particular skills or relative merit to be employed just on the basis of theology, but I do know that they would be keen to maintain the balance. This also goes to allowing them to retain flexibility in terms of janitorial staff and contractors because, again, some of these people have very frequent access to the school and a lot of access to the students. It is important to give the school the opportunity to make that decision.

If we come back to both the reference to religion in article 18 of the Universal Declaration of Human Rights and the Declaration on the Elimination of All Forms of Intolerance of Discrimination Based on Religion or Belief, I believe that the government—and I hope that the

committee would recommend this—is required to acknowledge both those declarations. In doing that, it would need to preserve that right and, therefore, section 37 within the Sex Discrimination Act.

**Senator BARNETT**—Thank you for your submission and for what you do more generally; it is greatly appreciated. In terms of your two main recommendations, I will deal with the exemptions issue first and your understanding of the position of the Catholic Church, the Anglican Church and churches generally with respect to the importance of maintaining those exemptions. To the best of your ability, can you advise the committee of your understanding of their position?

**Mr Wallace**—We certainly would not seek to represent them, because we do not; we represent our supporters. Obviously, I am very conversant with the view of the formal part of the church. I know there is a real concern among a lot of churches that, with the various people applying for jobs in their schools and churches, they might be required to admit into those staffs, for instance, not only people whose theology is inconsistent with that belief system, what is being taught there and the community being created there but also people whose way of life may not be consistent with that theology. I know there is a real fear amongst schools and church denominations that they could lose this right to control who works in their schools and churches.

**Senator BARNETT**—You have shared with the committee that that view is strongly held. If this committee were to recommend the removal of the exemption and government were to consider such a recommendation, do you think there would be a strong response to that approach?

**Mr Wallace**—There would be, absolutely. I feel they would find it totally inconsistent with the two declarations I have quoted before. People would find it amazing that we would sign up to a declaration and not implement it. They would also find it amazing that we, as a government, would try to encourage religious freedom overseas but not allow it in Australia. I find it quite interesting that there was recently an Atheist conference in Sydney. I was very interested in this. I saw reported in quite a large article—I think it was in the *Sydney Morning Herald*—that it was going to have a national conference. I got someone to go down and check out this conference; there were less than 20 people there. I have just come from Western Australia, where 800 to 1,100 people in a hall were being briefed by the Deputy Premier and the Opposition Leader about why those people should vote for them at the Western Australian election.

**Senator BARNETT**—You are expecting 1,000 people next week in the ACT. Is that right?

**Mr Wallace**—I am, at least. However, my point is that, through removing something like this, we give a lot of leverage to people who are often small in number but working very energetically against religious belief, and these declarations are there to protect that.

**Senator BARNETT**—Your second recommendation regarding the Sex Discrimination Act amendment relates to IVF and access to IVF, and I think you also referred to surrogacy and related matters. I would like to get it straight. The Federal Court case in *McBain v the State of Victoria* 2000 struck down the part of the Victorian Infertility Act 1995 that said that IVF services in that state were restricted in some way to married couples or people in a heterosexual

de facto relationship for a certain period of time. Is it your understanding that that was struck down as being in breach of the Sex Discrimination Act?

**Mr Wallace**—That is exactly right.

**Senator BARNETT**—The government at the time, which was the Howard government, introduced the Sex Discrimination Amendment Bill 2002 to fix that so that the state of Victoria and, indeed, other states would then have the ability to go down that track and provide those restrictions, if they deemed fit. You are not asking us to override the states and territories, are you, to say ‘it must be’ for certain categories of people?

**Mr Wallace**—No.

**Senator BARNETT**—I am just getting it clear. You are asking us to allow the states and territories to make their own decisions about what is in the best interests of their state or territory, are you?

**Mr Wallace**—That is right. I am asking the committee to restore what is the constitutional responsibility of state and territory governments and allow them to make this decision without what really is an illegitimate interference by the federal government, which does not have power to legislate in this particular area. Yet, by what has been judicial activism, a Commonwealth law has been used—admittedly because of its loose drafting; I do not think there was any expectation when it was drafted that it would be used in this way—to stop the states doing what they have the constitutional authority and responsibility for doing.

I would also say that very emotive public debates surround a lot of these issues. The availability of IVF to single women and to lesbians is an emotive debate. I believe that the greater part of the Australian community would think that a child is best brought up with a father and mother. We know that it does not always work—and it does not always work in churches. But reality is that a child is best brought up with a father and a mother. With it being the case, both by convention and also in various UN declarations, that we should never do anything that is not in the best interest of the child, obviously there is a huge debate to be had when a state wants to not only introduce surrogacy but also make it available to people who are not natural families.

**Senator BARNETT**—My point is that you are not asking us to strike down and require states and territories to ensure that these services, which are available to people in America and elsewhere—

**Mr Wallace**—I would, if I thought it was within your purview to do so. But I understand that it is not in your purview and I simply ask that the committee make sure that the SDA is amended so that it restores that decision to the states and territories.

**Senator BARNETT**—Are you happy with the previous Sex Discrimination Act Amendment Bill? Do you have other words, or have you considered any form of amendment that may be appropriate?

**Mr Wallace**—We have not. We recommend that the previous bill appears to be right. I think it does need to be reviewed—we are not in a position to do it—with the committee looking

particularly at the advances that have been made in alternate parenting arrangements. For instance, we now have, as I said, a state and a territory that permit homosexuals to adopt children. Once again, I think you have to make sure that the amendment restores to the states and territories the right to make that decision. In other words, someone cannot challenge it, on the basis of the SDA, because their state decides not to give that particular option.

Just very quickly, I would say that I was moved also by the area of surrogacy. This is a very emotional debate again. It involves sometimes up to five parents for a child. As has been recorded by one author, Bishop Tom Frame, who himself is an adopted child, this creates incredible identity confusion for the child. So, quite apart from a whole lot of other moral issues that pertain to that particular procedure, this is a huge debate that has to be had. It is best had down in the states and that decision, once it has been made, should not be allowed to be circumvented.

**Senator BARNETT**—Your views are that the amendment should cover, obviously, reproductive services, as in IVF, but also surrogacy, adoption and matters related thereto.

**Mr Wallace**—That is right. I would encourage the committee to review it and to look further to see whether any other similar procedures need to be covered.

**Senator BARNETT**—My final area of questioning relates to boys' education and a reference in the submission that we have received from Family Voice Australia. I note that they support your view of the amendment regarding IVF and reproductive services, adoption and surrogacy. However, I just wonder whether you would like to respond to their views relating to a coalition government bill in 2004, the Sex Discrimination Amendment (Teaching Profession) Bill 2004. With the bill, there was much concern about boys' education. In fact, that bill was in response to a 2002 House of Representatives committee report entitled *Boys: getting it right*.

The concern was that there were not enough male role models and male teachers. At the time the government wanted to advertise, promote and market themselves to get more male teachers and to provide scholarships for them. In summary, this is it—and I stand to be corrected on the detail. That was a coalition bill at the time to amend the Sex Discrimination Act. Do you think that is still valid? Do you still hold the view that, if there is a gender imbalance or a need to advertise for male teachers or, for that matter, female teachers, should be able to do so?

**Mr Wallace**—I agree 100 per cent. I am glad you have raised this because I was going to take the opportunity to raise it right at the end. There is a concern with the teaching of boys. As you have mentioned, a number of studies have shown that boys respond perhaps best, but certainly well, to teaching by male teachers; they respond well in the sense that the male teacher provides a role model. But it is equally as important in our public school system at large because we are underrepresented with males there; therefore, it is not just in our boys' schools but also in our co-ed schools. I do not think an act of this nature should be so loose or so prescriptive in its intent to remove sexual discrimination against women, with which I agree, to cause a situation where a state government, for instance, cannot offer scholarships specifically to males to get more of them into schools. Clearly, we need more male teachers in schools. Once again, this is about restoring the intent of the bill. It is not about allowing it to be used as it probably would be in that case, I would suggest, by a very active feminist movement, which I am sure would like to

see men's schools opened up to female teachers and would not want to see consideration or encouragement being given to one particular sex as a matter of principle.

**CHAIR**—I will ask a follow-up question. The Sex Discrimination Amendment (Teaching Profession) Bill 2004, which Senator Barnett has just referred to, was put into the federal parliament by the previous government, the now coalition. It did not get through the parliament in 2005; it was blocked.

**Senator BARNETT**—In the Senate.

**CHAIR**—Yes, that is right. However, once the coalition gained the balance of power in the Senate in July 2005, did they make any representations to the ACL about this bill between 2005 and July 2008? Were you approached about that bill?

**Mr Wallace**—No, they did not make representations to us. But I must admit that it is probably not something that necessarily would have been seen as an immediate concern of ours.

**CHAIR**—Did you make representations to the government about putting this bill back into the parliament once they had control of the Senate?

**Mr Wallace**—No. I am afraid that, in all the things we are trying to cover, we did not. We were not aware of it enough. I would certainly support the need to make sure that the Sex Discrimination Act cannot be used to stop a government advantaging males or females so that they might encourage more into a particular stream. It might not be only in teaching, but certainly teaching is an obvious one for me; there is a balance needed there.

**CHAIR**—That is not something that you lobbied the Coalition on proactively prior to July this year?

**Mr Wallace**—No.

**Senator BARNETT**—I draw your attention to the report of this committee, the Legal and Constitutional Affairs Committee, of May 2004 into the Sex Discrimination Amendment (Teaching Profession) Bill 2004. The first recommendation stated that the committee recommended:

... that the bill proceed, subject to it being evaluated and reviewed after two years as to its effectiveness in addressing the gender imbalance in the teaching profession.

So the Senate committee supported it proceeding. The coalition obviously introduced the bill but then, for whatever reason, the bill stalled, and I do know that it was opposed in the Senate. The bottom line is whether you support that bill now proceeding.

**Mr Wallace**—I certainly support it. I have a daughter in teaching at the moment and I know the problems there, so I would certainly support it.

**Senator BARNETT**—I am happy to continue, but I would prefer to allow others to ask questions. Thank you very much indeed.

**Senator FARRELL**—You have been asked a few questions about the attitude of religious schools to the proposed or potential changes. Is religion still taught in Christian schools?

**Mr Wallace**—I am not talking here as an expert witness on Christian education specifically, but I think you will find it varies across schools—in fact, I know that it does. One way or another, there is a religious component in every religious school. It varies from being a session of prayers at the beginning of the day through to periods of instruction in various elements of the doctrine or the theology of the church that might be sponsoring the school. I am aware that you do get that variation.

**Senator FARRELL**—So it is certainly true to say that religion is still taught in Christian schools.

**Mr Wallace**—Yes. But, more importantly, relating to this particular act, the environment that the schools seek to create is one that will encourage the students to adopt a Christian character in their life. It is for that reason, as much as for anything else, that I think you will find they try to make sure they have people of a theology and a world view that is consistent with the denomination or religious body that is sponsoring the school.

**Senator FARRELL**—But churches or Christian schools have a view as to who they would want to do that instruction, might they not?

**Mr Wallace**—They would absolutely have a view.

**Senator FARRELL**—They might want somebody to do the instruction who actually believes in those values.

**Mr Wallace**—Absolutely. I would anticipate and be pretty confident that, as you get to schools like the Catholic Schools, for instance, their view on that would be even stronger. As I mentioned before, through my knowledge and my experience in schools—I have moved a lot around Australia because I was in the Army and I took kids between these sorts of schools—there is a very great concern to maintain at least an appropriate balance so that the influence of the teachers in the school and the staff who support the teachers in the school is very much reinforcing the environment and the world view that they are trying to establish around the children to nurture them throughout their development in their school years.

**Senator FARRELL**—That is all I have to ask.

**CHAIR**—Senator Kroger, do you have any questions?

**Senator KROGER**—Not really, and I apologise for not being here for the beginning of your submission. I have had a lesser experience of Christian schools than you have had, but I have had some experience. I would suggest that, even in those that I have had engagement with—these were non-Catholic schools—they did not necessarily push a particular theological end. It was more that they presented an exposure to different religions and theologies and they certainly encouraged living a Christian way of life without necessarily driving one particular theological view.

**Mr Wallace**—I think there is a difference here, which is probably lost in the definitions, between religious schools and schools such as the Church of England Girls Grammar School and whatever. Christian schools have generally been started by people who have wanted to take their children out of the public school system because of their disappointment with it. I understand that. I have had my children in both the Church of England Girls Grammar School here in Canberra—which now is called, I think, the Canberra Girls Grammar School, which in itself is indicative of its moving away from its religious roots—and Christian schools. The environment in each of those is quite different. The intent or purpose of the people who established the Christian school was to create and preserve a Christian environment and influence for the children. So, while I acknowledge very much what you say as being relevant to those religious schools, as I would call them, I think you would find that the Christian schools—and that is very much a growing sector in Australia—are quite different. They really are trying to preserve very much a Christian character and instruction.

**Senator KROGER**—Yes. As you have said so advisedly, there is quite a difference between them—

**Mr Wallace**—Yes, PLC, MLC and so on.

**Senator KROGER**—and those fairly recently formed Christian schools; you are absolutely right. As I came in on the end of your presentation, I would like to follow up on your comments and observations about limiting the act so that it does not provide for social engineering, to use your words. How would you suggest that the act be defined so that it did not become so overly prescriptive as to make it possible for people to read into it and develop other things? Do you understand what I am saying?

**Mr Wallace**—Yes.

**Senator KROGER**—For me, part of this is that we are not too prescriptive here and that it is not overly structured so that it can be manipulated in ways for which it might not have been intended.

**Mr Wallace**—I will make a statement on that, while giving my colleague a chance to think about it. I will ask him to make a comment as well because he has looked at the act in more detail. For the general purposes of the act, I think it is sufficient. The act operates—except for the way in which it has been exploited, which we have identified—and is quite sufficient, particularly if it retains sections 37 and 38 and, therefore, acknowledges its obligations under those UN declarations to protect the religious observances of people. I think we would all see the McBain case as being a complete anomaly. As a layman, it is not what I would see as the logical outcome of the case; it is typical judicial activism. I think what needs to be done is to ensure that the opportunities for that sort of judicial activism are removed. I think the act itself does achieve what you are saying, in that it is general enough and non-specific enough to operate quite successfully.

**Mr Williams**—Obviously, back in 2002, with the Sex Discrimination Amendment Bill 2002, the former coalition government attempted to block IVF access to lesbians and single women. We are not legally trained, so we cannot tell you how to write the legislation to be able to bring out the intent of that particular bill, but obviously we would review that particular piece of

proposed legislation favourably. Let me just point to the explanatory memorandum, which backs up the justification for revisiting this particular issue. At point 9 on page 3, it states:

The government has consistently maintained that the SDA was never intended to prevent the states and territories to be able to restrict access to assisted reproductive technology services to women who are married or living in de facto relationships if the state or territory wishes to do so. The amendments to the SDA will ensure that can occur.

So presently, at this point in time, the SDA is blocking the states and territories from placing restrictions on access to IVF services. We think that is a completely illegitimate block and should be removed, thereby allowing the states themselves to decide on their own parameters for allowing access to IVF and other reproductive services.

**Mr Wallace**—I guess we are saying that we think the intent of the bill is fine because it is meant to devolve that decision down to the states, but the McBain case has confused all of that.

**Senator KROGER**—Senator Barnett raised the point that there are sometimes plausible reasons as to why an organisation would want to employ a woman or a man and it is hard for them to do so. This applies not just in the teaching industry. In other professions in which I have held a position, I have had to frame advertisements very carefully because, for a particular area, I was seeking to employ a woman over a man. Likewise, in hospitals, I know of places that would love to be able to put in ads for male nurses in order to increase their number of nurses who would have greater physical strength to carry out some of the services that they provide. I just want to make the point that it is very much an issue not only in the teaching profession but also in other organisations and professions. Also, it may be either way; it may be male or female.

**Mr Wallace**—I have been in the army for 32 years—

**Senator KROGER**—That is a great example.

**Mr Wallace**—and we have troops in Afghanistan at the moment and particularly special forces, which operate in small groups. I know that the combat effectiveness of those groups relies on morale, and morale—I am sorry to say, for all the feminists—relies on the mateship bond between these fellows. They will die for each other, and they all know it. As the Israelis found out in 1973, if you inject into that scenario one female or, I have to say, even two homosexuals and you suddenly have a love relationship, that breaks down the morale or the compact, if you like, between the members of that group and it definitely affects the combat capability of that group.

To take your example a bit further, I can see examples such as we have had in our own church, where we may want to employ a woman, for instance, to do pastoral care because they generally do that better. I would hate to think we were constrained to employing males to do that, and yet we place a pastoral carer on the pastoral staff along with the preachers of the church. There could be all sorts of unfortunate implications and unintended consequences, if we are not careful with this bill.

**CHAIR**—Mr Wallace and Mr Williams, thank you very much for your time this afternoon.

**Mr Wallace**—Thank you.

[2.20 pm]

**INGLIS, Ms Shivaun, Network Coordinator, WomenSpeak**

**LAMBERT, Ms Caroline, Executive Director, YWCA Australia**

**CHAIR**—Welcome Are there any further details about your appearance here that you would like to give to the committee?

**Ms Lambert**—Yes. The YWCA is a member of the WomenSpeak Network.

**CHAIR**—You have lodged a submission with the committee and, for our purposes, we have numbered it 60. Do you want to make any amendments or changes before you make a statement?

**Ms Lambert**—No.

**CHAIR**—Please begin with a brief opening statement, which will be very useful. We will then go to questioning.

**Ms Lambert**—Thank you for the opportunity to appear on behalf of the 42 individuals and organisations that contributed to or endorsed the submission. I would like to acknowledge that we are meeting on the Ngunnawal land and I pay my respect to elders past, present and future.

We welcome the parliament's recognition that the 25th anniversary of the Sex Discrimination Act affords us an excellent opportunity to assess the contributions of the Sex Discrimination Act to the achievement of equality in the Australian community. Our collaborative submission was prepared by some of the leading experts in the country, drawing on a strong evidence base of rigorous analytical research into the day-to-day application of the act. It also reflects the lessons learned on a daily basis by organisations who work to create positive change in the lives of women and their families and communities. In the view of the people who contributed to this submission, the SDA can be strengthened to enable it to better contribute to the realisation of substantive equality in Australia. We framed our analysis of the SDA in the context of international legal obligations, particularly those found in the UN Convention on the Elimination of All Forms of Discrimination against Women, which I will refer to as CEDAW.

**CHAIR**—Yes, we are familiar with it.

**Ms Lambert**—CEDAW is the leading treaty on women's human rights in the UN treaty system. It calls for the realisation of formal equality—that is, there are legalistic obligations for the equal treatment of women and men—and it calls for the realisation of substantive equality. That is that our laws and policies result in equal opportunities for women and men and take into account biological differences between women and men, the ongoing impact of historical inequities and inequalities between women and men, the importance of non-identical treatment of women and men in certain circumstances and the transformation of harmful social, political, economic and cultural mores based on stereotypical assumptions about women and men.

CEDAW also calls for the elimination of sexual harassment; the recognition that substantive equality cannot be realised if we do not enable families to reconcile work and family commitments; the importance of measures to achieve substantive equality—temporary special measures; and the importance of measures to address intersectional discrimination, which in our submission we describe by way of an analogy to cake.

Intersectional discrimination is the moment when your gender, your race, your age, where you live and your abilities intersect. It is not simply the layering; it is actually the new point—and, because I like cake, we use cake as an analogy. When you make a chocolate cake, you have flour, cocoa powder, eggs, butter, sugar—whatever. At the beginning, you can find all of the separate elements; at the end, you just have an excellent chocolate cake. That, in a sense, is intersectional discrimination. I cannot pull out the cocoa powder, the eggs or the flour; it is cake. I cannot tell you why I am being discriminated against; it is because somebody has had a go at my age, my race, where I live or my abilities. I cannot point to the particular reason.

We can strengthen the equality provisions in the Sex Discrimination Act in a number of ways. In the phrasing of the act, we can replace the phrase ‘to eliminate so far as possible discrimination’ and replace it with ‘prohibit.’ Our colleagues from the Women’s Electoral Lobby, I thought, came up with an excellent analogy. We do not say, ‘Drive on the left-hand side of the road so far as possible’; we prohibit driving on the right-hand side of the road. We should do the same with the prohibition on sex discrimination.

We should provide greater guidance for judicial interpretation to ensure that the legal system furthers the objects of the act rather than hinders them. We should strengthen protections for workers with family responsibilities, extending protection beyond the termination of employment. We should strengthen the capacity of the act to respond to cases of intersectional discrimination. We could reconceptualise special measures as actions towards substantive equality to help create the shift in the community about the types of measures that are needed. We can review the role of the comparator requirement. We can review the definition of sexual harassment, removing the requirement that ‘the harassed person be offended, humiliated or intimidated’ with the requirement that ‘the person harassed finds the conduct unwelcome’.

We can also look to strengthen the enforcement mechanisms. We could empower the Australian Human Rights Commission and the Sex Discrimination Commissioner to be authorised to initiate inquiries into systemic discrimination. We could expand the *amicus curiae* function of the Sex Discrimination Commissioner beyond the jurisdictions of the Federal Court and the Federal Magistrates Court. We could enable the Director of the Equal Opportunities at Work Agency to be empowered to refer matters to the Sex Discrimination Commissioner where matters of systemic discrimination are engaged in.

We could introduce a statutory duty to monitor and report to parliament on progress towards equality, prescribing a period within which the government must respond to such reports and providing mechanisms to enable the Australian Human Rights Commission to conduct necessary monitoring and research. We could establish an equality duty, including the preparation of equality action plans and a supporting compliance mechanism. We find the UK model particularly useful in this regard. We could strengthen government procurement policies to better achieve equality outcomes in our community. We could strengthen the complaints process, including through increasing the timeliness of complaints procedures, the transparency of

complaints procedures, the scope of individual remedies and the introduction of systemic remedies or recommendations.

We could review or remove existing exemptions: section 37, exemptions granted to religious bodies; and section 38, exemptions granted to educational institutions established for religious purposes. Failing that, we could remove the automatic nature of the exemptions and require a review of the exemptions to ensure that they enable the changes that occur within our faith-based communities to also reflect the changes within the broader community. We could also extend coverage of the anti-discrimination legislation to volunteers by removing exemptions for voluntary bodies in Section 39; currently, volunteers do not have the protection of anti-discrimination legislation.

Finally, in a big picture, we have more work you. We ask that the committee look to the idea of an equality act, which would give us an opportunity to bring all forms of discrimination into one act, strengthen the enforcement mechanisms and increase the transparency. That concludes my introductory comments.

**CHAIR**—Ms Inglis, do you wish to add anything?

**Ms Inglis**—No.

**Senator BARNETT**—Thank you for your presentation and your submission. In one of your last points, you referred to volunteers not being covered. Can you expand on that and the impact of that on volunteers?

**Ms Lambert**—Yes. It means that, if a volunteer is experiencing sexual harassment or sex discrimination in the organisation to which they give their time, they cannot lodge a complaint under the Sex Discrimination Act, because volunteer organisations have been exempted. That means that, with all of this volunteer labour that we rely on, we are exposing these people to a level of risk that they have no remedy for. I used to volunteer in an organisation and there was an instance once where a volunteer felt they had been sexually harassed. We had no mechanism at law to be able to address that. We addressed it within the context of the organisation, but there was no ability for them to go to an anti-discrimination body and say, ‘I experienced sexual harassment when I was volunteering and I need something to be done about it.’

**Senator BARNETT**—Doesn’t that depend on whether the volunteer organisation is a religious entity or charity?

**Ms Lambert**—No.

**Senator BARNETT**—Is it a blanket exemption?

**Ms Lambert**—Yes, that is my understanding.

**Senator KROGER**—That comes under section 39.

**Mr Lambert**—Yes.

**Senator BARNETT**—Is it your view that we should remove the section 38 and 39 exemptions altogether?

**Ms Lambert**—Yes, sections 37, 38 and 39, because they defeat the purpose of the act, which is to eliminate discrimination in our community.

**Senator BARNETT**—Witnesses from the Australian Christian Lobby, who appeared just before you—you may heard what they said to us—expressed a view, which we have heard also from other witnesses, regarding rights to religious freedom. They expressed a view accordingly along those lines in terms of their faith, belief and tenets. Mr Wallace referred to a couple of international declarations. What would you say to that argument?

**Ms Lambert**—The International Human Rights Law addresses both the right to practise a religion and the right to be free from discrimination, so there is a tension between the two. It was a tremendous opportunity to work with such a broad group of organisations, and I certainly learned a lot from the churchwomen who engaged in our process. They said that one of the impacts of the automatic exemptions is that it does not enable religious communities to stop and reflect for a moment on whether or not they need a blanket exemption. That is one element of it. But they also spoke to the fact that it did nothing to challenge the behaviours that some people within church communities are seeking to challenge—within the Anglican Church, say, the movement for the ordination of women. They referred to the fact that, when they had a blanket exemption that was just automatically granted, they could go to nothing within the Sex Discrimination Act to encourage the church hierarchy to reflect on the fact that, for example, within the Anglican communion, there was a move to reflect the fact that women could be ordained. The automatic exemption actually continued to justify behaviour that, indeed, elements of the communion found not to reflect their personal faith.

**Senator BARNETT**—As a committee, another area that we have had discussion on relates to the employment of—and I will use this as an example—male teachers. There was a gender imbalance some years ago, even as there is today. Yesterday we talked to the Education Union and their estimate is that it is about 70-30 or thereabouts across the country. Do you have a view as to whether entities, such as religious schools or public schools, or anybody could employ or put scholarships out specifically for male teachers?

**Ms Lambert**—CEDAW is a schedule to the Sex Discrimination Act and CEDAW is about eliminating discrimination against women. It is interesting because that document was negotiated at the UN in the 1970s, and our ideas and understandings of how gender relations work have changed over the past 30 years. I do think that what CEDAW does in its scheduling to the Sex Discrimination Act is give us a particular ability to focus in the Sex Discrimination Act on measures which discriminate against women. However, having said that, there is also a need to recognise that gender inequality is not going to be best served if you do not address the factors that result in more women than men going into the teaching profession. The interesting aspect of it is the opportunity that this review affords us to look at systemic responses and to say to ourselves, ‘What is it that is causing the inequality in the teaching profession?’ Is it ideas about who cares and who can teach properly? Is it the fact that teaching continues to be underpaid and does that have something to do with the fact that teaching continues to attract more women than men? We know that there is a continuing gender wage gap. The interesting thing that the SDA

could do better, which it has not done, is address some of these systemic factors. That is why our submission calls for the systemic inquiry function.

**Senator BARNETT**—I appreciate where you are coming from. Let us say that we were to address all of those issues.

**Ms Lambert**—Then you would have equal men and equal women teaching.

**Senator BARNETT**—This is my point. Supposing we did that and then found there was still a gender imbalance—let us say that hypothetically—would you say that a group or school, whether church or non-church based, could then advertise and seek out male teachers?

**Ms Lambert**—My view would be that, if we had addressed the structural inequality, we would have equal numbers of men and women in the teaching profession; therefore, you would not need to have an ad calling for one sex or the other to be involved in that particular teaching position. One of the reasons for introducing an amendment three or four years ago was that there was that ongoing imbalance in teaching stock. Looking at role of school principal, you will see that more men than women are involved. Through a structural inequality mechanism, we need to look at why more men do not choose to go into teaching. I think that is a better mechanism.

**Senator BARNETT**—If we did go down that track—and we have spent a good deal of time addressing those concerns that you are identifying—my concern is that that might take a while and, in the meantime, boys are being prejudiced by not having enough male teachers. That is a serious concern in this country and has been highlighted.

**Ms Lambert**—It is an interesting moment to reflect on where there are other imbalances as well. That is one of the reasons why our submission calls for a general equality duty so that we can address the ongoing inequality between women and men. The fact is that inequality in our community is substantially weighed against women in comparison to men. The purpose of this act, because CEDAW is scheduled to it, is to address the majority form of discrimination, which is against women in our community.

**CHAIR**—But, if we were to have a special exemption to allow scholarships for male teachers, we should probably have exemptions to allow scholarships for female electricians or plumbers.

**Ms Lambert**—Absolutely.

**CHAIR**—Where do you draw the line? In reality, if men applied for a scholarship in the teaching profession, I am sure they would get it.

**Ms Lambert**—If we want to do that, why haven't we taken steps to address inequality in the engineering profession? In their previous report to the CEDAW committee, the Australian government recognised that as being one of the areas where women in Australia were limited. We need to take a range of measures. But I do tend to think that a broad structural inequality mechanism is going to be something that will enable us to get at the basis of why we have the inequality in our community.

**CHAIR**—Your submission is very comprehensive and your recommendations are very detailed. There is a lot of duplication with what we have received from other witnesses, and that is fine because it just supports evidence that we have heard. Some of your recommendations are fairly obvious, but I would like you to clarify a couple for me. One is your recommendation 8, which is to amend the act to address shortcomings pertaining to judicial rulings on motive and onus of proof in sex discrimination cases. You quote the UK Sex Discrimination Act. Hasn't that act now been surpassed by the Equality Act in the UK?

**Ms Lambert**—I believe it has been. This is the moment where I am representing experts from around the country—

**CHAIR**—And they have all had input?

**Ms Lambert**—and they have all had input. Ms Gaze wrote that section, and I can certainly have a look at it.

**CHAIR**—But, essentially, the onus or burden of proof is on someone to prove they did not sexually harass rather than to prove they did. Is that right?

**Ms Lambert**—Yes. So, at the moment, it is up to the individual to improve that their employer discriminated against them. That has significantly reduced the efficacy of the act in being able to address the level of discrimination that women experience in the workforce. The UK shifted the onus of proof on to the employer to prove that they did not discriminate.

**CHAIR**—I am jumping around now to recommendations of yours that I think would benefit us with further discussion. Looking at recommendation 17, you are not the only witnesses that have put to us that Equal Opportunity for Women in the Workplace Agency—EOWA, which it is known as—could have further and better roles, in particular, or that the roles of that agency could be strengthened. One of them you see as intersecting with the Sex Discrimination Commissioner in a more effective way. Is that right?

**Ms Lambert**—Yes. I think there is a lot of opportunity to strengthen interactions between the agencies. EOWA have a vast resource of information that they gather from employers who voluntarily report. It is beyond the scope of this committee to consider whether or not it should be a voluntary reporting requirement; but, because they have that information, they are able to see trends that are emerging. It would be very useful and would strengthen our machineries for the advancement of women if we could enable the director of the agency to bring to the attention of the Sex Discrimination Commissioner those trends that they see emerging. That would enable her to launch an inquiry into the systemic elements of discrimination that are being experienced by women in the workplace.

**CHAIR**—You have placed an emphasis on giving the Sex Discrimination Commissioner a role or statutory duty to monitor what is happening under the act and to provide that report to parliament. As with the Social Justice Commissioner, is it along the lines of taking a more proactive reporting role?

**Ms Lambert**—Yes.

**CHAIR**—Do you think what is in HREOC’s annual report is not adequate, or do you think it needs to be more single-focussed?

**Ms Lambert**—By having such a requirement to report, we would achieve a moment to sit down and take the pulse of equality in Australia and ask ourselves what measures we will use to assess whether or not we are achieving equality in our community. With our colleagues, we would identify a range of measures that we would use. Then you would get a formal moment in parliament to consider what we are doing on an annual basis. It would give a bit more structure to the process. It would also be a very useful function in terms of our quadrennial reporting to the UN Committee on the Elimination of Discrimination against Women, if they could see that the Australian parliament had assessed 10 factors towards equality. One of the things that the CEDAW committee speaks to is the importance of being able to see where improvements have occurred and what other areas are still going. Where you have those measurable standards—and we know that is the case for any issue—it is much easier to say, ‘This is the area that we need to focus our attention on for the next four years.’

**Senator KROGER**—Ms Inglis, can you give me an understanding of the role of WomenSpeak Network?

**Ms Inglis**—It is one of the four secretariats funded by the Office for Women to represent the voices of women to government. The membership of the network is predominantly national organisations that focus on women’s issues.

**Senator KROGER**—Do organisations subscribe?

**Ms Inglis**—They can become members.

**Senator KROGER**—So, if you like, you are an agency of national members.

**Ms Inglis**—A network of national members.

**Senator KROGER**—What service do you provide?

**Ms Inglis**—Dissemination of information. We administer a list of organisations and distribute the information. We also have a list of priorities, the sorts of areas that we will look into generally, but we also have a specific area that we look into for each year of funding. For example, the current year is looking at Aboriginal and Torres Strait Islander women and how non-Indigenous women can work with Aboriginal and Torres Strait Islander women.

**CHAIR**—Just to put this in context, WomenSpeak now has five national secretariats. Is that right?

**Ms Inglis**—Four.

**CHAIR**—There were about 180 national peak women’s groups in the country all lobbying the previous federal government individually and at different times. So three and then four national secretariats were set up. Each of those 180-or-so bodies was expected to affiliate with one of

those four peak groups. Some have and some have not. What is appearing before us today is one of those peak national secretariats of WomenSpeak.

**Ms Lambert**—Yes.

**CHAIR**—If you look at the back of their submission or certainly on the Office for Women website, you will get an idea of which organisations belong to the WomenSpeak Network. Of the other networks, there is BPW.

**Ms Lambert**—There is Security for Women.

**CHAIR**—Yes, which is predominantly BPW.

**Ms Lambert**—Yes.

**CHAIR**—There is Women in Agriculture.

**Ms Lambert**—The National Rural Women's Coalition and the Australian Women's Coalition.

**CHAIR**—Yes.

**Ms Lambert**—One of the exciting things about this submission is that we worked across the secretariats to bring the voices together.

**Senator KROGER**—I can see that, and I think your submission is tremendous. It is clear that you have done that. At the very least, when something enforces you to get together with all your different parties to go through a process like this, it becomes a very informing process.

**CHAIR**—At the back of your submission, 42 are listed.

**Ms Lambert**—Yes.

**CHAIR**—They are not 42 in WomenSpeak, are they?

**Ms Lambert**—No.

**CHAIR**—They are 42 that contributed to this submission, are they?

**Ms Lambert**—They contributed to or endorsed it, and it was across the secretariats. As there is a plurality of voices and views within the women's sector, we do not just say that this is from all members of the WomenSpeak, Security for Women or AWC; we give them the opportunity to say, 'Yes, I would like to be aligned to the views in this document.' What is pleasing for us is that the model has been evolving over the years and we now have a situation where, more commonly, organisations are signing up and wanting to engage in the political processes.

**CHAIR**—So would it be fair and accurate for us to say that this submission from you reflects the views of, for example, the Australian Federation of Medical Women, the BPW Alliance,

Children by Choice, the Mothers Union of Australia and the National Council of Jewish Women—

**Ms Lambert**—Yes.

**Ms Inglis**—So they have all seen the final submission.

**Ms Lambert**—Yes, they all saw it. It was an opt-in endorsement process. If we received an email from them, their name was put on the endorsement list; if we did not, they were not included.

**CHAIR**—I think that adds a lot of weight and a lot of broad acceptance from all of those groups in the views that you have put to us today, which is important.

**Ms Lambert**—Yes. It is also a really important educative function. Not everybody within the organisations knows about the Sex Discrimination Act, although most of them have a basic understanding of it. But this process has really enabled us to engage with the provisions again, and that is an important feature.

**CHAIR**—That probably explains why some of the views are similar, because some of the people on this list have also contributed to the inquiry, which is fine.

**Ms Lambert**—We cherry picked the best bits of everybody's submissions and put them in here. The bit that I think is quite unique is the extensive assessment of the international legal obligations against the Sex Discrimination Act. We pulled that together through the expertise of the group.

**Senator KROGER**—How long did the process take?

**Ms Lambert**—We had two teleconferences with over 30 people on the phone each time, with individuals contributing certain sections of it. There was probably about two days of editing in it; we wanted to present you with as unified a voice as possible, as there had been 12 or 13 different authors.

**CHAIR**—As there are no further questions, I thank you, certainly for the effort that has gone into putting the submission together and also for your time in appearing before the committee this afternoon.

**Ms Lambert**—Thank you for inviting us.

**Committee adjourned at 2.52 pm**