

Mr Hamish Hanford
Committee Secretary
Department of the Senate
Parliament House
Canberra ACT

LegCon.Sen@aph.gov.au

Inquiry into Sex and Age Discrimination Legislation Amendment Bill 2010

This submission

The following is a submission by the LFAA to the Senate Inquiry into the Sex and Age Discrimination Legislation Amendment Bill 2010.

What the Bill purports to do

As outlined by the Attorney General in his Second Reading Speech, the Bill seeks to implement an election promise by the Gillard Government, namely, “to strengthen protection against sex discrimination and sexual harassment by improving on the existing Sex Discrimination Act 1984, and to introduce a new dedicated position of Age Discrimination Commissioner in the Australian Human Rights Commission, as part of the Government's commitment to ensure that all Australians are able to participate in Australian society, regardless of their age.”

These amendments form part of the Government's response to the Senate Legal and Constitutional Affairs Committee's 2008 inquiry into the effectiveness of the Sex Discrimination Act in eliminating discrimination and promoting gender equality. Other recommendations in that report are proposed to be considered by the Government as part of its review of anti-discrimination laws in Australia's Human Rights Framework.

There are four key amendments to the Act, which according to the Government will have the following effects.

The first amendment will ensure that the Act will provide equal protection to women and men.

The second amendment will broaden the prohibition on discrimination on the ground of family responsibilities to provide equal protection from discrimination, including indirect discrimination, to both men and women in all areas of their work.

The third amendment will establish breast-feeding as a separate ground of discrimination rather than as a subset of sex discrimination.

And the fourth amendment will strengthen the protection around sexual harassment in workplaces and schools.

Failure of the Bill to address issues relating to the removal of discrimination against men

There are some worthwhile and important measures in the Bill, particularly Item 24, which widens the number of international instruments which are relevant to the Act (that is, has the effect that these instruments are no longer confined to CEDAW).

The Bill fails, however, to address most of the anti-discrimination issues raised in the LFAA's submission to the 2008 Senate Inquiry. That submission pointed out that by ignoring the experience of men the Sex Discrimination Act 1984 has helped to entrench and intensify many serious forms of discrimination against men.

These forms of discrimination against men, inter alia, include:

- the dismissal of men's equal reproductive rights,
- the denial by courts of the rights of hundreds of thousands of children to the love and guidance of their fathers,
- the higher age-specific male rates of illness, trauma, and death, especially suicide,
- the imposition on male youth of educational methods deliberately biased towards assisting females, and
 - the much more severe sentences typically imposed on men for the same crimes.

In view of the omission by in the 2008 Senate Committee Report of any reference to most of these areas of discrimination, and the only minimal reference to the others, it is necessary to repeat them, with some additional important points - see below.

The LFAA, a third of whose membership is female, applauds and supports the many improvements that have occurred in the lives of Australian women in recent decades. But the extension of the rights of one group in society should not be allowed to unduly and unnecessarily damage the rights of other groups, e.g., men and children. All human rights must be bounded by the human rights of others.

The "politically correct" bias underlying the current Act

The interests of men and women do not always coincide exactly, and it is therefore both appropriate and necessary that there should be a fair balance in the allocation of public resources on behalf of these interests.

It is arguable that in recent decades in Australia the balance has come to strongly favour women financially in the areas of social security, family law, and health.

Part of the impetus for this lack of a proper balance has come from a longstanding campaign by gender theoreticians to promote the idea that Australian society is a “patriarchy” which dominates and victimises females and that far-reaching steps must therefore be taken to empower women relative to men. Whatever may have been the situation in the past, this concept is no longer appropriate in Australia.

In line with the ideological campaign, there has been a very large and growing transfer over recent decades of financial resources from male taxpayers to females in the areas of social security, family law, and health (see below). These transfers are especially significant in the case of women who have separated from their husbands/partners and now benefit directly from a very wide range of taxpayer-funded subsidies.

The agenda for the transfer of financial resources from men to women is managed within the APS by the Office of Women in the Department of Families, Housing, Community Services, and Indigenous Affairs (FaHCSIA). The Office is a policy secretariat designed to secure advantages for women, in some cases at the expense of men.

The Office “provides high level advice to the Minister for the Status of Women to improve outcomes for women in three priority areas, namely, reducing violence against women; improving economic outcomes for women; and ensuring women's equal place in society”. The Office costs more than \$50,000,000 per annum. The budget for the Office and the various programs which it invents and administers continue to grow strongly from year to year.

The interests of women as interpreted by the Office of Women do not necessarily correspond with the best interests of Australian children.

According to Save the Children Australia, “Australia is the *3rd* best place in the world to be a mother, a new global report that rates the well-being of mothers and children has found. The well-being of Australian mums jumped from sixth place last year to three this year, underpinned by a strong performance of the women's index. Australian women ranked *first* on the women's index, up from fourth place last year, because on average, they spend more than 20 years in formal education, have one of the smallest wage gaps between men and women and have a life expectancy of 84 years.

“But the research from Save the Children reveals a less rosy picture for children, whose well-being was ranked *27th* out of the 43 developed countries surveyed across the globe... Early childhood development rated poorly in Australia, meeting only two of the 10 benchmarks considered necessary to give children the best start in life ...” Australia's position of *27th* on the children's index was unchanged from the previous year's performance.

There are many activities other than the Office of Women, partly State- and Territory-funded, which assist women but not men, such as women's refuges (\$150,000,000 per annum), domestic violence crisis services (\$100,000,000 per annum), and women's legal services (\$10,000,000).

There is, however, no body in the Commonwealth or in the States and Territories charged with responsibility for improving the outcomes for men in areas of priority interest to men.

The Office for the Status of Men and Their Families (OSMTF), conducted by the LFAA, works with an annual budget one four-hundredth of that available to The Office of Women (\$120,000 per annum compared with more than \$50,000,000 per annum) to advocate for measure to be taken to deal with this huge area of neglect by the Australian Parliament.

There are many forms of discrimination against men and their children not at present being addressed by the Australian Government, and this discrimination against men and their children needs to be urgently addressed and a fairer balance introduced into Commonwealth funding arrangements in many areas.

The response to this state of affairs by the Bill before the Parliament is, in the LFAA's view, very inadequate.

Transfers of income from male taxpayers to females

The net financial transfers made by male taxpayers to females through the social security, health, and education systems in 2008-09 benefited females to the extent of approximately \$53,000,000,000. This was made up of \$34,000,000,000 per annum through social security, \$14,000,000,000 through health, and \$5,000,000,000 through education programs.

The LFAA hopes, time permitting, to make a further submission on this issue.

As an example of the type of calculations involved, estimates of social security transfers from male taxpayers to females are as follows.

Social security payment type	Receipts by females (per annum)	Receipts by males (per annum)
	\$ billion	\$ billion
Parenting-related payments -		
Parenting payments, single parents	6.0	0.5
Family tax benefit	15.6	1.6
Child care benefit	2.2	0.2
Income support for carers	3.1	1.5
<i>Total parenting-related payments</i>	26.9	3.8
Old age and disability pensions -		
Old age pension	16.3	12.3
Disability pension	4.9	6.3
<i>Total old age and disability pensions</i>	21.2	18.6
<i>Total of above</i>	48.1	22.4

On the (conservatively estimated) basis that 80% of total income taxes are paid by males, the social security payments of \$70 billion per annum above were financed by male taxpayers to the extent of \$56 billion and by female taxpayers to the extent of \$14 billion.

Males paid \$56 billion through taxation and received \$22 billion in benefits, while females paid \$14 billion in taxation and received \$48 billion in benefits.

Reproductive rights

In practice, in Australia men do not have equal reproductive rights to women.

As remarked by commentator Cathy Young:

“In the old days, a woman’s biology was a woman’s destiny. Today, woman’s biology is a man’s destiny (W. Farrell). The rhetoric of pro-choice advocates rarely mentions a man at all, except to celebrate women’s freedom from male control over their reproductive lives. Many men and some women see a very different situation – one in which women have rights and choices while men have responsibilities and are expected to support any choice a woman makes. The expectation that men will switch to support a woman’s change of heart is a fundamental denial of men’s humanity. One in six men are never even told about the pregnancy”.

As noted by Dads on the Air:

“In Australia today, only women have reproductive rights. Upon becoming pregnant, a woman can choose to have the baby, have an abortion, or put the baby up for adoption. A man has no legal right to choose whether he will become a father or even be notified that he has become a father.”

This form of discrimination relates to decisions about the very procreation of life itself. The LFAA considers it to be a more important and fundamental issue than, for example, a person being discouraged from breast feeding in the office (see below).

Families and family law

Anti-discrimination laws and the operation of the Family Law Act should be linked in an appropriate way. Men in Australia have in recent decades taken on a much more hands-on parenting role than in the past. This has often led to difficulties in relationships, with a consequently increased probability of separation.

And, as research clearly indicates, separation usually impacts much more severely emotionally on men than women. Work done by the Queensland University of Technology (Prof Frijters) has recently thrown some interesting light on this question, through “mining” a unique set of data that has tracked the happiness and major life events of about 10,000 Australians once a year since 2001. QUT has been able to find a way of putting dollar values on the effects on happiness of major events such as marriage, divorce, and birth, or as they put it to calculate their “psychic costs” or “psychic benefits”. These figures are considered to give at least a broad idea of relative magnitude in comparisons.

Prof Frijters puts low dollar values on the lifetime boost to happiness that flows from a birth – for the mother around \$8,200, and for the father \$32,600 ... The death of a spouse or a child causes a woman \$130,900 worth of grief and costs a man \$627,300. What is a marriage worth? When it comes to divorce the Aussie male will be so devastated it would be as if he had lost \$110,000. An Aussie woman would be less traumatised, feeling as if she had lost only \$9,000. It is clear that the gender outcomes of divorce are certainly nothing like equal as between men and women.

Hands-on parenting activities by fathers have become a risky option for them. There are now more than 1,000,000 children in Australia not living with their father, and 400,000 who only see their father once a year or not at all. This risk of men being separated from their children would be ameliorated if the family law system, and in particular the judiciary, properly supported the 2006 endorsement by the Australian Parliament of shared parenting. There has been some recent improvement in this area, but considerably more is required. Fathers are still much less likely to be the residential parent of children after separation.

The Sex Discrimination Act needs to recognise that the procreation of children is not something which is exclusively a matter for the mother. There is always a *father* also involved. It follows that consideration of the impact of pregnancy on a family must take into account the father's role as much as that of the mother in care-giving. Discrimination against men in this area is of equal importance to any discrimination against women.

Overtly sexist and misleading propaganda campaigns that seek to give the impression that all domestic violence is perpetrated by men expose innocent men to the risk of being victimised by the judicial and law enforcement system through unjust restraining orders, often resulting in the loss of contact with their children.

The number of divorces in Australia increased between 1970 and the present from about 12,000 to about 50,000. Meanwhile the crude birth rate (i.e., number of births per 1,000 population per annum) declined from 20.6% to 13.0%, and the percentage of extra nuptial births increased from 8.3% to 27.4%. These statistics are illustrations of the extent to which the institution of marriage has declined in Australia since the 1976 legislation which introduced the concept of no-fault divorce.

Education

Higher School Certificate results in Australia have for years emphasised a trend for girls to do significantly better than boys in almost all subjects and almost all levels. Average TER is now 54 for girls and 46 for boys – a huge difference - and even for single sex schools it is girls 60 and boys 53.

These numbers reflect the major effort that was made from the 1980's onwards to help female students to complete the final years of their school education and to go on to tertiary education, and the failure to make any corresponding effort to assist male students.

The unrealistically “gender blind” approach to education in Australia is now closely similar to that recently reported on, in respect of the UK, by “The Economist”:

“Boys are doing worse at school at every age. Women dominate the jobs that are growing, while men are trapped in jobs that are declining. Men are not even trying to do women's jobs. Joblessness reduces the attractiveness of men to their partners. Men do not necessarily adopt social behaviour, except through work and marriage. Men are a growing social problem. High unemployment has fallen on the poorer end of the market. Women are taking up a majority of newly created jobs, mostly working part-time.

“Progressive thinking in education has championed girls, but largely ignored boys. Boys hate school and are very critical of feminist spokespeople. Boys need to release their energy. Boy’s results in English are on average 25% below that of girls.”

Australia’s schools and universities are to a significant extent failing boys and young men. National policy for the education of girls (1987) made a point of neglecting boys’ needs. This attitude has been carried on by the Government in its latest budget, with a small (\$4.9 million) new initiative designed to assist boys’ education being pointlessly axed. 15 years after the first examination of boys’ education issues, the situation continues to worsen, with only 75% of boys completing year 12 in Australia, compared with 81% for girls, and no recognition that single-sex classes are more likely than mixed classes to break down gender stereotypes.

It is worth noting that the proportion of teachers in the primary school system who were females increased from 71% in 1982 to 79% in 2002, and in secondary schools increased from 44% to 55%.

After a proliferation over recent decades of institutions engaged in women’s studies, there are still no institutions engaged in men’s studies.

The work place

In Australia, both men and women work very similar hours in total (7.9 hours a day averaged over a week), with men working a larger proportion of their total hours in often more stressful work outside the home. The still complementary nature of the roles of men and women in families is, however, not recognised in current “equal opportunity” legislation. A large proportion of the male workforce, at least 30%, receives only very low incomes

It has been noted that workplace culture prevents men from taking up part-time work and that they are still viewed as the primary breadwinners. But the reality is that men still are the primary breadwinners in a majority of cases, and this is a rational decision, supported by their partners.

A social researcher (M Wooden) at the University of Melbourne has noted that the pay gap between men and women in Australia “will not close” until women are prepared to work longer hours. The same researcher noted that men are earning an average of 15 percent more than women because they are putting in more time at the workplace. Even if workplaces were family friendly many women would not pursue jobs involving long hours.

Closing the “gap” would require a change in the traditional family structure. The only way that this could be achieved would be if there was a very considerable amount of role reversal, i.e., lots of men acting like women and lots of women acting like men. It seems doubtful that women in Australia would want that, or that women anywhere in the world would want it.

Sickness, injury, and death

Males have much higher illness, injury, and accident and death rates, especially from suicide, and die five years earlier than females. But research funding for male health is less than one third of that for female health.

Life Force has stated that:

“Research suggests that the majority of divorces are initiated by women, and that in most cases married men do not want to separate and have tried to resolve the problems. Further evidence suggests that the period of separation is one of the most stressful periods in a man’s life, and often this anxiety and frustration continues for many years.

“Where children are concerned, there is evidence to suggest that many men sense that they are being discriminated against in Family Court judgments, and often find themselves in financial straits having to pay legal fees and child support payments. The difficulty in maintaining access to children also heightens the frustration and isolation of separated and/or divorced men.

“It seems that stressed fathers will keep killing themselves and (in some especially tragic cases) their children until adequate support services are provided.”

Crime and punishment

A study by the ABS examining the demographics of female prisoners and their involvement in the criminal justice system found that females are much more likely to be discharged or to do community service, and less likely to be sentenced to custody, and when females are sentenced they are given shorter sentences. Even within the particular offence groups, females are treated more leniently than men.

This is another important area of discrimination against men.

Recent deliberations involving the LFAA and Parliamentarians about discrimination against men and their children

The LFAA National Conference at Parliament House Canberra on 16-18 June 2010 followed up on some aspects of its submission to the 2008 Senate Inquiry, specifically addressing the questions:

1. Has there been another generation of stolen children?;
2. Are the 2006 shared care/responsibility laws working in the best interests of our children?;
3. Why does the Family Court not enforce its own orders for access?;

4. Why does the Government continue to claim that domestic violence is only perpetrated by men (against women and children)?; and
5. Why is government funding not provided to women's and men's organisations on an equal basis?

These themes were addressed by a number of the invited speakers, in particular Anthony Byrne MP, Alby Schultz MP, George Brandis (Shadow Attorney General), Senator Stephen Fielding, and Messrs Warwick Marsh (Fatherhood Foundation), and Wayne Butler (Shared Parenting Council of Australia).

In other addresses, speakers dealt in some detail with:

- the policies and/or administrative activities for which they were responsible (Jenny Macklin MP, Robert McClelland MP, Warren Snowdon MP, and Chris Bowen MP);
- the services delivery for which they were responsible (Justice John Faulks DCJ, Philippa Godwin, CSA, Samantha Page, FRSA, and Paul Lodge (FCA); and
- technical and business activities relevant to family law.

Following on the above addresses and subsequent discussions, the Conference concluded that:

1. and 2. The 2006 changes to the Family Law Act have definitely encouraged the greater application of shared parenting responsibility/care in Australia, and have received overwhelming support from the Australian public. There is, however, still a long way to go in overcoming the massive problem of 1,000,000 children growing up without their fathers. There is also a minority feminist backlash against the 2006 reforms under way ...
3. The poor performance of the Family Court in enforcing its own orders for access will require major reform. This should include the establishment of a child access support agency with similar functions to the CSA, and the empowering of State Police to enforce orders.
4. An Office of Men and Families should be established to bring about a more gender-neutral approach to Government policy advice. As an example of this, educational programs such as the publicity campaign "Violence against women, Australia says 'No!'" should be extended to include also male victims and recognise that women are more likely than men to abuse children.
5. Funding for men's advocacy services and organisations should be made comparable to funding for women's groups. This will require a major change away from the present ratio of 20 to 1 in favour of women's organisations.

To expand on the above.

Gender-based advocacy and services organisations

The Australian Government has for decades been operating an Office of Women (previously the Office of the Status of Women) - which puts all men at a disadvantage. There should be a corresponding Office for Men and Families, and/or a Men's Minister.

The Australian Government funds women's services to the extent of hundreds of millions of dollars per annum. LFAA supports this funding for women's services. But there should be a comparable amount of taxpayers' dollars spent on men's services

There are hundreds of Women's Refuges and many Women's Legal Services throughout Australia. The LFAA supports these services. However, there should be corresponding services on a similar scale for men. Many men and their children are on the street because of no services or refuges. The Australian Capital Territory is an example, where the LFAA has had to put men up in motel accommodation because the ACT Government has claimed that they have no accommodation available. This, problem is occurring also in every State.

Gender-biased publicity campaigns

The Australian Government uses tens of millions of tax payers dollars in TV and media advocating an end to violence against women and children, but not recognising that there is family violence also against men. This is direct discrimination, which sends a message that most men are violent, but women are not, when studies properly conducted by social scientists around the world show that violence is perpetrated to a similar extent by men and women.

The Australian government should in publicity campaigns use the words "no violence against women, men, and children", or "no violence against the family."

The family court system and denial of access

The Australian Government funds the Family Court of Australia and Federal Magistrate's Court out of taxpayer's dollars. But the Family Court has no effective mechanism to enforce their orders for access when these orders are flouted. Access orders are made and broken in hundreds of thousands of cases with virtually no punishment by the court of the parent who deliberately breaks them. Thousands of men have suicided over this – one of the biggest areas of male suicide.

Two years ago the Attorney General informed the LFAA that his Department was working on enforcement orders, but nothing has yet eventuated. The LFAA recommends that the Australian Government should immediately move to establish a Bureau to deal with denial of access orders, away from the court system. This Bureau would contact the Federal or State Police to go to the home of the children and find out why the access has been denied. The Police would sum up the situation and unless the child or children were sexually or physically assaulted, they would enforce

the order. Otherwise the rights of the child will continue to be violated not only by the guilty parent but by the courts and the Government.

The Government states that it seeks to operate in “the best interests of the child”, and enforces payment of child support (and the LFAA agrees with that in principle). But when it comes to enforcing the child’s rights to have access to the other parent the Government and the courts close their eyes.

It should be noted that Article 16 of the Universal Declaration of Human Rights states that:

“Men and women of full age ... have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution ... The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”

Australia is a signatory to this document.

Some specific comments on the 2010 Bill

Family responsibilities

The Bill currently before the Parliament purports to extend protection from discrimination on the grounds of family responsibilities to “both women and men in all areas of work.”

However, it remains to be seen whether the new provisions would be followed up in a gender-neutral manner. The Sex Discrimination Commissioner has created a strong impression in her reports that men’s issues would only be pursued with any vigour where they are also a high priority for women. (See comments on this point in the 2008 LFAA submission.)

Breast-feeding

Breastfeeding is described in the Bill as specifically including the act of expressing milk, single acts of breastfeeding, and breast feeding over a period of time.

There is a question about how the “reasonableness” test would be interpreted in relation to indirect discrimination against breast-feeding women. Would it be illegal to seek to restrict in some way breast-feeding by a woman on a train, in church, at a football match, or a cinema, or to require a breast-feeding woman to make use of a special room provided at the workplace for that purpose?

It is not clear whether the real concern addressed in the Bill is that, in the absence of the proposed legislation, (1) some babies might not be able to be fed on demand, or (2) an ideological point needs to be made about women’s rights. If it is the former, comparable protection should be provided to fathers’ bottle-feeding their infants. Ideology should not be featured in legislation.

Breastfeeding is already included in the scope of the existing legislation.

Sexual harassment of students and workers

Item 54 of the Bill will amend the test for sexual harassment provided by section 28A of the SDA by inserting a new 28A(1A). This subsection will provide an indicative list of circumstances which may be relevant to determining whether a reasonable person would have anticipated that the person harassed would be offended, humiliated, or intimidated.

Under Item 53, an amendment will strengthen the protection against sexual harassment by requiring that a reasonable person need only anticipate the *possibility* that the person harassed would be offended, humiliated, or intimidated by the conduct.

The provision would therefore stipulate that the only defence against an accusation by a complainant (who could choose to be as unreasonable as they wished) would be to *prove* that there was *no possibility* that the person allegedly harassed could be offended. Logically, this defence could never be successful; and no amount of reasonableness on the part of the accused would ever be sufficient, since there would always be at least a possibility that the “harassed” one would choose to be offended, no matter how small that possibility might be. (By analogy, there is always a possibility that if one crosses a road with traffic, one could be hit by a vehicle, but this does not mean that it should never be proper for someone to choose to cross a road.)

The proposed provision in the Bill would reinforce the impression already held by many that “It is only sexual harassment if the person is not dateable!”, and would be likely to bring the legislation into a degree of ridicule and contempt. There are other phrases used elsewhere in the law which would be more appropriate. Perhaps something like “there would be a reasonable likelihood that the ‘victim’ would ...” would be suitable.

The young, in particular, must be given a reasonable opportunity to experiment and learn from their mistakes without being threatened with being visited with the full force of the law if they miscue. Gilbert and Sullivan wrote a well-known opera about the laughable absurdity of proposing to punish flirting by death. But maybe people were more worldly-wise then than they are now.

Possible action

The LFAA and Parents Without Partners Australia Inc. are the two largest voluntary organisations in Australia involved in family law, both in terms of number of members and number of Branches throughout the country. The LFAA and PWP, together with representatives of Dads in Distress, the Shared Parenting Council of Australia, Grandparents Association, and others recently resolved to record that the Australian Government and its Departments are supporting and encouraging direct discrimination against men and their children, and are consequently in direct contravention of the human rights and civil liberties of men and their children.

The LFAA has been criticising the above kind of discrimination for nearly four decades, but its concerns have largely fallen on deaf ears on both sides of the

Parliament. Now more people are taking these matters seriously and demanding that the Government immediately take action to halt the discrimination. If significant progress is not made, the LFAA and other organisations mentioned will be seeking advice from senior counsel, contacting all media outlets and current affair programs, newspapers, etc., and requesting the United Nations for support.

The LFAA will be pleased to answer questions on this submission if the Committee wishes.

B C Williams BEM
President
Lone Fathers' Association (Australia) Inc.

J B Carter
Policy Adviser

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