



WOMEN'S LEGAL SERVICES NSW

**Incorporating  
Women's Legal Resources Centre  
Domestic Violence Advocacy Service  
Indigenous Women's Program**

27 October 2010

Committee Secretary  
Senate Legal and Constitutional Affairs Committee  
Parliament House  
Canberra ACT 2600

By e-mail: [legcon.sen@aph.gov.au](mailto:legcon.sen@aph.gov.au)

Dear Committee Secretary,

### **Inquiry into the Sex and Age Discrimination Legislation Amendment Bill 2010**

1. Women's Legal Services NSW (WLS NSW) thanks the Senate Legal and Constitutional Affairs Committee for the opportunity to comment on the Sex and Age Discrimination Legislation Amendment Bill 2010.
2. WLS NSW is a community legal centre that aims to achieve access to justice and a just legal system for women in NSW. We seek to promote women's human rights, redress inequalities experienced by women and to foster legal and social change through strategic legal services, community development, community legal education and law and policy reform work. We prioritise women who are disadvantaged by their cultural, social and economic circumstances. We provide specialist legal services relating to domestic and family violence, sexual assault, family law, discrimination, victims compensation, care and protection, human rights and access to justice.
3. WLS NSW welcomes the Bill and, in particular, the amendments to:
  - introduce a full-time Age Discrimination Commissioner;
  - strengthen protections against discrimination on the basis of family responsibilities in all areas of employment;
  - strengthen protections from sexual harassment for both workers and students;
  - include breastfeeding as an explicit ground of unlawful discrimination.

*Recommendation 1: The Bill should be passed as a matter of priority.*



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4. However, we are concerned that protections against discrimination on the basis of family responsibilities remain limited to responsibilities of an employee to care for or support only a ‘dependent child’ or ‘immediate family member’ – defined as an adult child, parent, grandchild, or sibling of the employee or spouse of the employee (section 4A of the *Sex Discrimination Act 1984* (Cth)). It does not recognise the reality of other close, personal relationships for whom people may have caring responsibilities, such as those recognised in the definition of ‘domestic relationship’ in section 5 of the *Property (Relationships) Act 1984* (NSW). Further, it does not recognise the different cultural concepts of families and family responsibilities, such as kinship.

*Recommendation 2: The definition of ‘family responsibilities’ in section 4 of the Sex Discrimination Act should be extended to include broader family and personal relationships for whom people may have caring responsibilities.*

5. While WLS NSW is very supportive of the amendments made by the Bill, further changes to the *Sex Discrimination Act* are needed to protect and promote women’s equality in accordance with Australia’s international obligations, such as those under the Convention on the rights of the Elimination of all Forms of Discrimination Against Women (CEDAW). We refer the Committee to the recommendations made in our joint submission (with the National Association of Community Legal Centres, the NSW Combined Group of Community Legal Centres (now Community Legal Centres NSW) and Kingsford Legal Centre) to the Committee’s 2008 Inquiry into the *Sex Discrimination Act*. WLS NSW is concerned that many of the recommendations from that Inquiry remain unimplemented.
6. In particular, the *Sex Discrimination Act* should be amended to:
  - include a general prohibition of discrimination on the basis of sex;
  - include a scheme of positive duties;
  - provide greater power to the Sex Discrimination Commissioner to initiate inquiries without a complainant and monitor gender equality;
  - remove the permanent exemptions;
  - provide for protection against intersectional discrimination, where the discrimination involves an intersection of more than one grounds of discrimination (eg discrimination against a woman with a disability);
  - remove the distinction between direct and indirect discrimination;
  - expand the definitions of ‘de facto spouse’ and ‘marital status’ to include same-sex relationships, and ‘woman’ and ‘man’ to include transgender and intersex;
  - increase the quantum of damages;
  - reverse the onus of proof, for example, as currently operates in the Fair Work Act 2009 in circumstances of adverse action; and
  - cap costs in the Federal Court and the Federal Magistrates Court.
7. Further, new federal discrimination laws should be introduced to protect people from discrimination on the grounds of sexuality and gender identity, as was promised by both the Liberal and Australian Labor parties in the lead up to the election.<sup>1</sup>

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<sup>1</sup> George Brandis in Attorney-General’s Portfolio Debate, Sydney, 13 August 2010, accessed on 26 October 2010 at <<http://www.alp.org.au/federal-government/news/transcript--robert-mcclelland,-debate,-sydney/>>; Julia Gillard, Letter to the Australian Coalition for Equality, extracted in Potts, A, ‘Dual Anti-Discrimination Promise Ahead of Poll’, *Sydney Star Observer*, 10 August 2010, accessed on 26 October 2010 at <<http://www.starobserver.com.au/news/2010/08/10/dual-anti-discrimination-promises-ahead-of-poll/29255>>.

8. In its response to the 2008 Inquiry, the Australian Government committed to considering many of these recommendations in as part of its process of consolidating Commonwealth anti-discrimination legislation (the consolidation project). As such, it is essential that the consolidation project is carried out in a way that strengthens anti-discrimination law (as recommended by the CEDAW Committee)<sup>2</sup> and builds on the work and recommendations of the Committee in the 2008 Inquiry.

*Recommendation 3: The consolidation project should be based on broad consultation and undertaken in a manner that strengthens anti-discrimination laws, including by promoting substantive equality, providing effective remedies against systemic and intersectional discrimination, and implementing the remaining recommendations of the 2008 Inquiry.*

*Recommendation 4: New federal discrimination laws should be introduced to protect people from discrimination on the grounds of sexuality and gender identity*

9. If you would like to discuss any aspect of this submission, please contact Edwina MacDonald, Law Reform and Policy Coordinator, or Janet Loughman, Principal Solicitor, on

Yours sincerely,

Law Reform and Policy Coordinator

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<sup>2</sup> Committee on the Elimination of Discrimination Against Women, 'Concluding Observations' on Australia, CEDAW/C/AUL/CO/7, 30 July 2010, para 25.