

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
AUSTRALIAN HUMAN RIGHTS COMMISSION

Question No. AE16/063

Senator Xenophon asked the following question at the hearing on 9 February 2016:

The VCDF informed the Senate Foreign Affairs, Defence and Trade Committee in September 2014 that Defence had put limitations on when SeMPRO could accept reports of sexual assault to ensure compliance with the Sex Discrimination Act 2014.

1. Does the AHRC accept that the Sex Discrimination Act requires Defence to put the limitations on when SeMPRO can accept reports of sexual assault on a confidential basis?

The answer to the honourable senator's question is as follows:

It would be necessary to consider the vicarious liability provisions of the *Sex Discrimination Act 1984* (Cth) prior to implementing a restricted reporting regime.

Under s 106 of the *Sex Discrimination Act 1984* an employer is vicariously liable for conduct of its employees and agents that amounts to discrimination or sexual harassment. Vicarious liability does not apply if the employer took all reasonable steps to prevent the employee or agent from doing the act.

If an employer receives a complaint involving discrimination of a kind covered by the *Sex Discrimination Act 1984* or of sexual harassment, he or she would be required to take all reasonable steps to avoid a repetition of the conduct.

In order for employers to show that they have taken all reasonable steps to prevent discrimination and harassment, they would usually be expected to have in place an effective means of dealing with complaints.