

CHAPTER 1

INTRODUCTION

Reference

1.1 On 26 June 2008, the Senate referred an inquiry into the effectiveness of the Commonwealth *Sex Discrimination Act 1984* (the Act¹) in eliminating discrimination and promoting gender equality, to the Standing Committee on Legal and Constitutional Affairs.

1.2 The Senate directed the committee to inquire into and report on the effectiveness of the Act, 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:
 - (i) the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); and
 - (ii) the International Labour Organization (ILO); or
 - (iii) under other international instruments, including the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR);
- (c) the powers and capacity of the Human Rights and Equal Opportunity Commission (HREOC)² 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;

1 Note that some witnesses and submissions referred to the Act as ‘the SDA’.

2 On 4 September 2008, HREOC announced it had changed its name to the Australian Human Rights Commission. Under the *Human Rights and Equal Opportunity Commission Act 1986* and other relevant legislation, the name of the commission remains the Human Rights and Equal Opportunity Commission. The committee has used the acronym HREOC in this report as most of the evidence received by the committee refers to ‘HREOC’.

- (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.

Conduct of the inquiry

1.3 The committee advertised the inquiry in *The Australian* newspaper on 2, 16 and 30 July 2008. Details of the inquiry were placed on the committee's website. The committee also wrote to over 140 organisations and individuals inviting submissions by 1 August 2008.

1.4 The committee received 81 submissions. These are listed at Appendix 1. All submissions published by the committee were placed on the committee's website.

1.5 The committee held public hearings in Sydney on 9 September 2008, in Melbourne on 10 September 2008 and in Canberra on 11 September 2008. A list of witnesses who appeared at the hearings is at Appendix 2 and copies of the Hansard transcript are available through the Internet at <http://www.aph.gov.au/hansard>

Acknowledgement

1.6 The committee thanks those organisations and individuals who made submissions and gave evidence at the public hearings.

Structure of the report

1.7 The committee's report is structured in the following way:

- Chapter 2 provides an overview of the Act and its history.
- Chapter 3 considers the objects of the Act and how some key terms are defined by the Act.
- Chapter 4 examines the scope of the Act or the areas in which it provides coverage.
- Chapter 5 looks at the overall effectiveness of the Act and the extent to which it implements Australia's international obligations to eliminate sex discrimination.

- Chapter 6 considers evidence the committee received concerning difficulties with the complaints process under the Act.
- Chapter 7 reviews the exemptions provided for under the Act.
- Chapter 8 considers the economic impact of the Act and, in particular, the impact of inconsistency between the Act and other state, territory and Commonwealth legislation.
- Chapter 9 examines means of preventing sex discrimination.
- Chapter 10 looks at the powers and resources available to the Sex Discrimination Commissioner and HREOC.
- Chapter 11 contains a summary of the views of the committee and its recommendations.

Note on references

1.8 References in this report are to individual submissions as received by the committee, not to a bound volume. References to Committee Hansard are to the proof Hansard: page numbers may vary between the proof and the official Hansard.