

Additional comments by Senator Hanson-Young

Australian Greens

Introduction

1.1 The Australian Greens commend the Chair and Committee Secretariat on the comprehensive nature of the Committee's report.

1.2 We believe that the inquiry into the Commonwealth *Sex Discrimination Act 1984* (SDA) has provided the committee with the opportunity to recommend to the Government ways to strengthen and tighten the federal SDA to ensure that we are eliminating discrimination – on all levels - and promoting gender equality.

1.3 However, the Greens have a number of additional concerns which we consider should be addressed to ensure that Australia's international obligations with respect to gender and equality are completely realised.

Background

1.4 The issue of gender equality and sexual discrimination has been at the forefront of Greens policy for years.

1.5 We have argued for women to have the right to equal respect, responsibilities and rewards in society; the right to equal access and participation in decision-making processes in all areas of political, social, intellectual and economic endeavour; the right to freedom from violence; the right to equal pay for work of equal value, and to have their unpaid caring responsibilities acknowledged and properly valued throughout their lifetime; the right to make informed, supported choices about all aspects of their lives, including sexual identity, health, reproductive health processes, birthing and child-bearing, and how they balance participation in paid work with caring responsibilities.

1.6 The Australian Greens further believe that freedom of sexual orientation and gender identity are fundamental human rights.¹ The need for acceptance and celebration of diversity, including sexual orientation and gender diversity, is essential for genuine social justice and equality.

¹ United Nations Universal Declaration of Human Rights <http://www.unhchr.ch/udhr/lang/eng.htm>

Same-Sex recognition

1.7 The Australian Greens strongly support the recommendation from The Australian Coalition for Equality, for the inclusion of registered relationships in the definition of relationships within the SDA.

1.8 While the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws – General Law Reform) Act 2008* has made amendments to recognise same-sex couples in federal law, the Australian Greens have some concerns about the approach taken when amending the Commonwealth SDA.

1.9 While the Greens are indeed supportive of the amendments removing discrimination against same-sex couples on the basis of family responsibilities, we are concerned that the provisions of the SDA relating to discrimination on the basis of marital status have not been amended.

1.10 Section 6 of the SDA explicitly prohibits discrimination on the grounds of marital status, which is defined as being:

- (a) single;
- (b) married;
- (c) married but living separately and apart from one's spouse;
- (d) divorced;
- (e) widowed; or
- (f) the de facto spouse of another person

1.11 The Greens are concerned that the definition of de facto spouse that is separately defined, only recognises opposite-sex couples, which effectively only provides protection from discrimination for people in an opposite-sex relationship. The Greens believe that that the SDA should be amended to provide equal protection to both same-sex and opposite-sex couples from discrimination on the basis of being in a de facto relationship, and also include another subsection identifying registered relationships.

Recommendation 1

- **The Greens recommend that the *Sex Discrimination Act 1984* be amended to replace the term "marital status" with "couple status".**
- **The Greens further recommend that the definition of de facto relationship outlined in the recent *Same-Sex Relationships (Equal Treatment in Commonwealth Laws – General Law Reform) Act 2008*, be adopted into the SDA, with a category that also recognises registered relationships as another form of a relationship.**

1.12 There are currently no federal laws which provide comprehensive protection from discrimination on the grounds of sexual orientation and gender identity.

1.13 The Australian Greens believe that the Government should support the establishment of a comprehensive sexual orientation and gender identity anti-discrimination Act to ensure for the protection for all Australians.

1.14 In line with the evidence provided to the Legal and Constitutional Committee, we believe that this could either be done by amendment to the SDA, or by the enactment of a new sexual orientation and gender identity-specific anti-discrimination instrument, with the latter being our preference.

Recommendation 2

1.15 The Australian Greens believe the most appropriate avenue to prevent discrimination on the grounds of sexual orientation and gender identity is to establish a new a new sexual orientation and gender identity-specific anti-discrimination instrument. This would not only address gaps in state and territory law, but it would also send out a clear message about the equal importance of tackling sexual orientation and gender identity discrimination.

Provision for parental leave

1.16 Australia is a signatory to the Convention of the Elimination of All Forms of Discrimination against Women (CEDAW), yet entered into two reservations in relation to the participation in direct armed combat and the provision for paid maternity leave.

1.17 The provision of 14 weeks paid maternity leave, with a compulsory minimum period of six weeks immediately after the birth, is the international standard for paid maternity leave, as outlined within the International Labour Organisation Maternity Leave Convention.

1.18 Despite Australia entering into a reservation to CEDAW on the issue of maternity leave, the International Covenant on Economic, Social and Cultural Rights (ICESCR) also contains an international obligation to provide paid maternity leave, yet no reservation has been registered by the Australian government in relation to this provision. Thus, the Australian government is obligated to provide paid maternity leave for working women.

Recommendation 3

1.19 The Australian Greens recommend that the Government urgently act on introducing a nationally-funded paid maternity leave scheme. While we would support the introduction of a paid maternity leave scheme, the Greens believe that twenty-six weeks of paid parental leave shared between both parents is what we should be aiming for, a figure that is backed by a broad range of stakeholder organisations, from unions, to women's groups and health organisations.

Reporting dates for Sex Discrimination Commissioner:

1.20 In order to ensure renewed progress towards gender equality, new agendas are needed as well as new monitoring mechanisms to ensure that attention is paid to any shortfalls.

1.21 While the Committee recognises that the need for the Sex Discrimination Commissioner to report to Parliament in respect to the progress towards eliminating discrimination and achieving gender equality, it is disappointing that the report only believes this should occur every four years.

1.22 The Australian Greens believe that in order to ensure that new monitoring mechanisms are established to ensure that there are no longer any shortfalls in relation to gender equality; the Sex Discrimination Commissioner should monitor and report annually to parliament on this progress.

1.23 The Greens further believe that to ensure that the reports are not lost on being tabled in Parliament, there should be a statutory responsibility for the Government to respond to them within 15 sitting days.

Recommendation 4

- **The Australian Greens believe that the Sex Discrimination Commissioner be given the statutory duty to monitor and report to Parliament annually on progress towards gender equality.**
- **The Australian Greens further recommend that the Government respond within 15 sitting days to such reports.**

Female employees and religious discrimination:

1.24 During the course of the inquiry, the Committee heard evidence, on a number of occasions, that section 37 of the Sex Discrimination Act appears to deny female clergy and non-ordained female employees of religious organisations protection against discrimination on the basis of their sex, specifically in relation to their employment.

Recommendation 5

- **The Australian Greens recommend that section 37 of the Act be amended to ensure that female clergy and non-ordained female employees of religious organisations are protected from discrimination on the basis of their sex in relation to their employment.**
- **We further recommend that section 38 of the Act be amended to remove the exemption in relation to discrimination on the grounds of sex and pregnancy.**

**Sarah Hanson-Young
Senator for South Australia**