Unions NSW Submission to the *Inquiry into the effectiveness of the Commonwealth Sex Discrimination Act 1984 in eliminating discrimination and promoting gender equality.*

Executive Summary

In examining how successful the Act is in,

1. preventing discrimination, including by educative means
2. addressing discrimination on the ground of family responsibilities
3. addressing intersecting forms of discrimination

two key issues arise. The first is that whilst the Act has had a measure of success in dealing with overt discrimination, it does not recognise the nuanced nature of the modern workplace and thus judges discrimination along sectoral and job lines only. The second issue is that whilst the Act has many admirable objects, it fails to provide practical applications for achieving these objects, particularly in a workplace setting.

In light of these two issues, Unions NSW recommends a revision of the objects and an expansion of the SDA. Furthermore, we would like to see a renewed effort to integrate the objects of the SDA into all government legislation, particularly that pertaining to work, education and families.

Introduction

Unions NSW is the peak body for unions in NSW. It has 64 affiliated unions, 10 affiliated trades and labour councils and represents approximately 600 000 union members. It is governed by an elected executive who are assisted in the day-to-day operations of the organisation by a small team of officers and support staff.

The occupations that affiliates have coverage of vary from finance to footwear and construction to communications. Each affiliate sends delegates to a weekly council meeting where policy and positions are developed for a union movement wide response to particular issues.

To mark the centenary of International Women's Day, Unions NSW hosted a conference of 245 rank and file female union delegates. They got together over two days to identify, strategise and develop campaigns for the issues that have the most impact on their lives and those of their workmates. They collectively identified three areas of concern which are addressed to varying degrees by the *Sex Discrimination Act 1984* (SDA). It is for this reason that the Unions NSW submission focuses upon terms of reference G, I and L. The submission will examine these terms in regards to how they impact upon

1. Pay Equity
2. Work/Life Balance
3. Paid Maternity Leave.

"Preventing discrimination, including by educative means"

In examining the issue of pay equity, it becomes apparent that there are limitations to the effectiveness of the SDA in preventing discrimination towards women in the workplace. The International Trade Union Confederation recently found that women on average are only earning 84 cents for every dollar earned by their male counterparts[1].

One of the key issues is that the Act fails to make provisions for work of **comparable** value. This means that whilst men and women who do the same job have some degree of recourse under the Act if there is a disparity in their pay, the Act fails to note the genderised nature of many industries and thus allows for a systematic undervaluing of some work, particularly that performed by women. A key example of this is the significant disparity in pay between apprentice hairdressers and apprentice car mechanics, despite them having to undertake comparable training and purchase comparable trade tools[2].

Under their respective state industrial relations systems, employees in Queensland, NSW and Tasmania have the right to equal remuneration for men and women employees for work of equal or comparable value. The work, classification structures and conditions under which work is performed are able to be examined by those State Industrial Relations Commissions to ensure that Awards and Agreements are able to be adjusted to ensure that equal or comparable worth is recognised.

In order to remedy this situation, Unions NSW proposes that one of the Objects of the Act Must be to prevent and eliminate discrimination in the workplace by ***ensuring equal remuneration for men and women doing work of equal or comparable value***.

Furthermore, there should be a specific section of the Act which ensures that an Award made by an Industrial Relations Commission or an agreement recognised by the same commission provides equal remuneration and other conditions of employment for men and women doing work of equal or comparable value

"Addressing discrimination on the ground of family responsibilities"

One of the problematic aspects of the Act is that it is light on detail in regards to practical legislative entitlements that could achieve the objects of the Act. Whilst the Act acknowledges that discrimination can occur due to familial or carers responsibilities, it does not provide practical means for remedying this discrimination.

The issue of better support for coping with carer responsibilities has arisen in the context of:

- the push for better parental leave arrangements across the community

[1] http://www.ituc-csi.org/IMG/pdf/gap-1.pdf- (accessed 16/07/08)
[2] http://www.workplaceauthority.gov.au/ - (17/07/08)

- the development of 2005 test case standards around the right to request and not be unreasonably refused part time work for a defined period
- the reality that there are many workers who have caring responsibilities for children, aging parents, partners, or other dependents.

One way of remedying this discrimination would be through a legislative enshrinement of the right to flexible working arrangements for all employees with caring responsibilities. This goes beyond a "right to request" and creates a positive right for balancing family responsibilities and work. There should also be a requirement to include this standard in all industrial agreements, awards and contracts of employment. These flexible work arrangements may include, but are not limited to:

- Changing from full time work to part time work
- Changing from part time work to full time work
- Changing starting and finishing times within hours of work as regulated by the relevant Agreement or Award
- Increasing or decreasing hours of work
- Flexi-time arrangements
- Working from home where needed for caring purposes
- Periods of leave without pay.

Applications for flexible working arrangements may only be refused on the ground that the application is unreasonable and the employer is unable to provide the flexible working arrangements sought, in which case the employer must provide detailed reasons to employee. This is a standard common in Europe and the United Kingdom. The onus should lie with the employer to provide a strong business case as to why the flexible work sought by the employee cannot be provided, and the employer must explore every alternative possible with the employee, in order to genuinely attempt to accommodate the request.

Applications for flexible working arrangements should be assessed within a 30 day period. In the event that an employer refuses a right to access flexible working provisions, the employee should have a right to dispute this decision, via Fair Work Australia and/or relevant industrial tribunal.

"Effectiveness in addressing intersecting forms of discrimination"

The objects of the Act include the elimination of discrimination based sex and pregnancy status however the status of Australia as one of only two industrialised countries without a government mandated paid parental leave scheme, illustrates that this is clearly not occurring. The fact that women who have children are made to choose between economic security and time with their baby places women (who are well recognised to still bear the majority of caring responsibilities) at a significant disadvantage both because of their gender and parental status.

A remedy for this discrimination would be a legislative enshrinement of the right to universal paid parental leave, available for a minimum of six months as this length of time has recognised health benefits to parents and children.

Conclusion

In examining how successful the Act is in,

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two key issues arise. The first is that whilst the Act has had a measure of success in dealing with overt discrimination, it does not recognise the nuanced nature of the modern workplace and thus judges discrimination along sectoral and job lines only. The second issue is that whilst the Act has many admirable objects, it fails to provide practical applications for achieving these objects, particularly in a workplace setting.

In light of these two issues, Unions NSW recommends a revision of the objects and an expansion of the SDA in relation to issues of paid maternity leave, flexible working hours and paid maternity leave. Furthermore, we would like to see a renewed effort to integrate the objects of the SDA into all government legislation, particularly that pertaining to work, education and families.