

(a) The scope of the Act, and the manner in which key terms and concepts are defined

When the Commonwealth Sex Discrimination Act was drafted, Australian society was quite a different place from the one which we inhabit today. It was widely assumed that men occupied most of society's positions of power and privilege, and that therefore legislation was required in order to change society so that women could reach parity with men. In other words, gender equality was synonymous with addressing sex discrimination *against women*.

The landscape of gender, however, has changed remarkably over the past 25 years or so. There are still, of course, areas in which women lag behind men - underrepresentation in government and the higher levels of business, and overrepresentation as victims of sexual violence are just two examples. However, there are many areas in which men lag behind women. For example,

- ❖ Males have much higher illness, injury, accident and death rates and die 5 years earlier than females, yet research funding for male health is less than one-third of that for female health
- ❖ Males suicide at almost four times the rate of females. More males kill themselves each year than the entire Australian road toll
- ❖ More than twice as many males as females experience work-related injuries and illnesses, and over ninety percent of work-related deaths are males
- ❖ Young men are three times as likely as young women to be victims of violence, however, there are no public health campaigns to address this very serious issue
- ❖ Men are also victims of intimate partner abuse, however, there are no support services for these men, nor treatment services for abusive women
- ❖ Boys in Australia are much more likely to drop out of school than girls. In NSW, the difference between boys' and girls' average Tertiary Entrance Rank is almost 20%. Males currently make up just 41% of university graduates
- ❖ In Australia today, only women have reproductive rights. Upon becoming pregnant, a woman can choose to have the baby, or have an abortion, or put the baby up for adoption. A man has no legal right to choose whether to become a father or even to be notified that he has become a father
- ❖ Men are more likely to be convicted and receive longer sentences for the same crimes, compared to their female counterparts
- ❖ Following family court proceedings, children are far more likely to be given little or no time with their father than they are with their mother
- ❖ The current inequitable parental leave schemes, favouring mothers, reinforce fathers in the traditional 'breadwinner' role rather than supporting them as being 'hands-on' dads (which all the research shows gives better outcomes for children and their parents).
- ❖ There is a critical lack of support services for young fathers. While there are precious few services for teenage mums, we are only aware of a single service in Sydney for young dads - a support group run by the Father Support Service.

While some of these areas of male disadvantage have improved since 1984, many of them have remained static or have even deteriorated over this period. Clearly the Commonwealth Sex Discrimination Act has failed to address male disadvantage to the same extent as it has addressed female disadvantage. Ironically, the Act that purported to be all about eliminating discrimination and promoting equality has turned out to be itself discriminatory, by addressing discrimination against women much more than discrimination against men.

Any proposed changes to the Sex Discrimination Act 1984 *must* be based upon the principle of *gender equality*, not just 'equality for women'. The Act must be re-written to be gender-neutral so that it continues to assist women in those areas where they suffer disadvantage but also assists men in those areas in which they suffer disadvantage.

(b) The extent to which the Act implements the non-discrimination obligations of the Convention of the Elimination of All Forms of Discrimination Against Women and the International Labour Organization

The Convention of the Elimination of All Forms of Discrimination Against Women (CEDAW) is a strange document. In some areas it appears to support true equality between the sexes, but in many others it appears to be a sexist, discriminatory convention aimed at only addressing discrimination against women, but not against men. *Dads on the Air* supports all the aims of CEDAW, but we believe that Australia's compliance with the convention needs to go further than just addressing discrimination against women: it needs to address discrimination against men as well.

In fact, the wording of the CEDAW document actually make provisions for such an approach by State signatories such as Australia. Article 23 notes that,

"Nothing in this Convention shall affect any provisions that are *more conducive to the achievement of equality* between men and women which may be contained:

(a) In the legislation of a State Party [our emphasis]"

Dads on the Air proposes that the Sex Discrimination Act's *compliance* with CEDAW (not CEDAW itself) be reworded so as to be gender-neutral, thus ensuring Australia's international obligations are met, but yet going further by applying them to men as well as to women.

For example, the following passages from CEDAW could be re-worded and implemented in Australian law as such:

Existing wording:

“Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realisation of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.”

Suggested re-wording:

“Article 2

States Parties condemn discrimination based on sex in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating sex discrimination and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realisation of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination based upon a person’s sex;
- (c) To establish legal protection of the equal rights of men and women and to ensure through competent national tribunals and other public institutions the effective protection of individuals against any act of sex discrimination;
- (d) To refrain from engaging in any act or practice of sex discrimination and to ensure that public authorities and institutions shall act in conformity with this obligation;

- (e) To take all appropriate measures to eliminate sex discrimination by any person, organisation or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination based upon a person's sex;
- (g) To repeal all national penal provisions which constitute discrimination based upon a person's sex."

In addition to making Australia's compliance with CEDAW gender-neutral, there is one other clause of the *Convention of the Elimination of All Forms of Discrimination Against Women* that should not be complied with, as it is arguably damaging to children.

Article 10 includes the following clauses,

"States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women: ...

... (b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality."

There is a wealth of recent data showing that young boys and girls develop in different areas at different rates. Girls, for example, on average, develop their language abilities (reading, writing, speaking) much earlier than do boys. Boys, on average, develop their visual-spatial abilities much earlier than do girls. This is due to differences in brain development between boys and girls. Therefore,

Boys and girls should *not* have access to the same curricula and the same examinations: they should be given different curricula and examinations tailored to their particular developmental patterns.

In order to comprehensively address sex discrimination in *all* its forms, Australian legislation should surely refrain from complying with international conventions and treaties that contain sexist provisions. One such convention is the *International Labor Organisation Forced Labour Convention of 1930*, to which Australia and 170 other countries are active signatories. Article 11 of this Convention exempts "able bodied males" between the ages of 18 and 45 from the international ban on forced labour.

Australia should withdraw from this (and other) sexist conventions and/or lobby the relevant international bodies to reword their conventions to be gender neutral and non-discriminatory.

(g) Preventing discrimination, including by educative means

While it is important to spend money and resources in a targeted fashion in order to achieve the maximum impact from any government program or service, the motto of “helping those groups the most who need it the most” has morphed over the past 25 years into “helping *only* those groups who need it the most” across a number of gender-related areas.

Most Australian data shows that women experience domestic violence and sexual assault at higher rates than do men. However, approximately one in three victims of these crimes are male. It would thus be prudent to target services and programs more to women than to men in order to address these issues in an equitable manner. However, the approach largely taken over the past 25 years has been to *only* offer programs and services to help female victims of domestic violence and sexual assault, while leaving one-third of victims of these crimes (men) without any programs or services whatsoever. The most recent example of this is the Federal Government’s establishment of the *National Council to Reduce Violence Against Women and Children*.

Strangely, when it comes to areas in which men experience greater victimisation than women, such as work-related illness, injury and death; or morbidity and mortality from heart disease; the approach hasn’t been to establish male-only programs and services to the exclusion of women. In fact women are often targeted with special programs because they are considered a “minority group” in these areas. Any proposed changes to the Sex Discrimination Act must address this issue.

Service providers must be obliged to offer their services to all that need them, regardless of their gender.
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(i) Addressing discrimination on the ground of family responsibilities

There has been no greater change in Australia’s gender landscape over the past 25 years than the change in the role of the Australian father. The role of Australian dads has changed from being the sole breadwinner whose main role was to provide financially for his family, to taking on a much more hands-on parenting role while his partner shares the breadwinning burden. Australian fathers in 2008 are much more likely to need to take time off work to look after their children’s needs than ever before.

Unfortunately, however, the Australian workplace has not changed much at all over the same period. Men are still expected to put in long hours and not take time off for family responsibilities. Women may sometimes find it hard to find an employer that gives them the job flexibility to enable them to care for their young children, but most men find it almost impossible.

The family responsibility provisions of the Sex Discrimination Act 1984 only cover the *dismissal* of employees on the ground of family responsibilities. Both mothers and fathers face many forms of discrimination on the grounds of family responsibilities which treat them differently to other workers, but which stop short of actual dismissal. The Federal Sex Discrimination Commissioner Elizabeth Broderick spoke passionately about this in the Daily Telegraph on July 22 2008:

“Elizabeth Broderick said she wanted to strengthen the Sex Discrimination Act to penalise those employers who stick family-friendly fathers on the ‘daddy track’ by refusing to promote them.

The reforms are a key part of the new commissioner's agenda for action that will be launched in Sydney today.

Ms Broderick said that, until the workplace culture changed to give men as well as women an equal right to time off work for family duties, men would be unable to do housework and childcare. She told The Daily Telegraph that men as well as women deserved to have the joy of being involved in their families.

But the workplace culture prevented them taking up part-time work and they were still viewed as the primary breadwinners.

Ms Broderick said men complained to her about the gender imbalance in access to flexible family-friendly work arrangements during the listening tour she undertook when appointed last September.

‘Men would say: “My female colleague finds it easier to get flexible work arrangements than I do because if I put my hand up it's like I'm not a serious player, you're not committed”,’ Ms Broderick said.

She said the Sex Discrimination Act currently does more to protect women than men in these circumstances because of the international laws on which it was based.

‘We do know the Sex Discrimination Act has more limited protection for men than it does for women,’ she said.

‘Men can only bring a complaint if they are sacked, not if they are put on the daddy track,’ she said.

She wanted the law to be strengthened to protect men from indirect discrimination such as being denied promotion because they work part-time or have family responsibilities.

‘We will be recommending to Government that they strengthen that,’ she said.”

Dads on the Air supports the Commissioner’s recommendations to expand the family responsibility provisions of the Sex Discrimination Act to include not only dismissal but also the entire range of indirect discrimination that parents can suffer, such as being denied promotion.

Other parts of the Act in need of reform are the provisions preventing discrimination against women on the basis of pregnancy or potential pregnancy that do nothing to prevent discrimination against fathers on the basis of their partners’ pregnancy or potential pregnancy. In this day and age of hands-on fathers who need to take time off work to care for their children (and whose partners rely on them to do so), it is increasingly likely that

employers will discriminate against fathers-to-be by putting them on the “daddy track” on the basis of their partners’ pregnancy or potential pregnancy. The Act must protect fathers from this form of discrimination.

Dads on the Air recommends adding the phrase “or partner’s pregnancy or potential pregnancy” to the phrase “to discriminate against a person on the ground of the person’s sex, marital status, pregnancy or potential pregnancy,” whenever it appears in the Act.

(n) Scope of existing exemptions

Section 43 of the Sex Discrimination Act 1984 states that,

“Combat duties etc.

(1) Nothing in Division 1 or 2 renders it unlawful for a person to discriminate against a woman on the ground of her sex in connection with employment, engagement or appointment in the Defence Force:

- (a) in a position involving the performance of combat duties; or
- (b) in prescribed circumstances in relation to combat duties.

(2) In this section:

combat duties means such duties as are declared by the regulations to be combat duties for the purposes of this section.”

The Act itself gives no justification for the discrimination against women who wish to take up combat duties in Australia’s armed forces. Some may argue that combat duties require greater strength, stamina and endurance than do other military duties. However, were this to be so, surely there is no reason to exclude women from combat duties on the basis of their gender when one could simply exclude all individuals who lack the strength, stamina and endurance to perform these duties successfully. It may well turn out that most or all combat positions would be taken up by men, but at least those women who possess the necessary physical attributes would be able to serve their country alongside men.

Another argument for excluding women from combat duties is that the presence of women on the front lines might be ‘distracting’ to male soldiers and adversely affect their performance. However, women are allowed to serve alongside their male colleagues in all other military roles except for combat duties without any problem, so there appears to be no reason why combat positions would be any different.

Another reason for the exclusion of women from combat duties might be chivalry: the valuing of female life more highly than male life. For the same reason that women were given lifeboats on the Titanic ahead of men, perhaps women are denied the opportunity of serving in combat duties because our chivalrous society would be averse to the thought of thousands of women returning home from war in body bags alongside their dead brothers.

As the rationale behind Section 43 of the Act is unclear, *Dads on the Air* recommends further exploration of this issue via community discussion and debate. In the meantime, it is recommended that Section 43 of the Sex Discrimination Act 1984 be repealed in the absence of any clear and reasonable justification for its existence.

It could also be argued that Section 43 of the Sex Discrimination Act 1984 is in contravention of Australia's international obligations as a signatory to the Convention of the Elimination of All Forms of Discrimination Against Women. Article 11 of CEDAW states that,

"1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to work as an inalienable right of all human beings;

(b) *The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment [our emphasis]*"

Section 31 of the Sex Discrimination Act states that:

"Pregnancy or childbirth

Nothing in Division 1 or 2 renders it unlawful for a person to discriminate against a man on the ground of his sex by reason only of the fact that the first-mentioned person grants to a woman rights or privileges in connection with pregnancy or childbirth."

If, as argued earlier in this submission, Australian fathers in 2008 are much more likely to need to take time off work to look after their children's needs than ever before, it appears that this exemption is out of step with the realities of family life today. By using this exemption, employers could give extended periods of paid leave, e.g. maternity or adoption leave, to women, whilst giving no paid leave at all to men.

In the case of natural births, as Australian parents are more likely than ever to share the hands-on tasks of parenting from the day their child is born, it seems archaic to have an exemption for one parent and not the other. In the case of adopted children, this exemption seems even stranger, as neither parent has given birth, and the child may either be beyond the age of breast-feeding or living with an adoptive mother who cannot breast-feed because she did not give birth to the child.

The Sex Discrimination Act needs to be amended so that it protect both parents' rights and privileges to attach and bond with their newborn child. The health and wellbeing of our children depends upon it.

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