

## Submission to Inquiry on Commonwealth Sex Discrimination Act 1984

This statement from BPW Australia responds to the inquiry into the effectiveness of the Commonwealth Sex Discrimination Act 1984 in eliminating discrimination and promoting gender equality. The statement comments on several of the prescribed terms of reference:

- c) the powers and capacity of the Human Rights and Equal Opportunity Commission (HREOC) and the Sex Discrimination Commissioner, particularly in initiating inquiries into systemic discrimination and to monitor progress towards equality;
- g) preventing discrimination by educative means
- h) providing effective remedies, including the effectiveness, efficiency and fairness of the complaints process
- i) addressing discrimination on the ground of family responsibilities

Equality between men and women is a principle that lies at the heart of a fair and productive society. According to the Human Rights and Equal Opportunity Commission this is key goal of the [Sex Discrimination Act 1984](#), which aims to eliminate discrimination and sexual harassment and promote greater equality in all aspects of the Australian community.

Some 20 years after the Act's establishment, BPW Australia strongly supports a comprehensive inquiry into the Sex Discrimination Act. BPW believes that the Act needs to be broadened and strengthened if its aims are ever to be achieved. It is our belief that systemic change is required to achieve real equality in our community and that such change needs to be encouraged, if not demanded, through legislation and by instrumentalities. The following points address specific areas of inadequacies of the Act in relation to the stated Terms of Reference

1. Currently the Sex Discrimination Act only provides for adoption of discretionary guidelines for the avoidance of discrimination. HREOC has no power to mandate the application of positive duties, nor to enforce compliance.

Even when recommendations are made (as in its recommendation for paid maternity leave) there is no enforcement power.

2. BPW represents women from diverse employment backgrounds, women who are both employees and business owners. It is therefore of great concern to BPW that statutory authorities such as the Equal Opportunity in the Workplace Agency, that offers an avenue of appeal through HREOC, have had their authority diminished over time. We support the adoption of targets or quotas to promote greater participation of women in decision-making bodies, and greater equality in opportunity. According to the OECD Employment Outlook 2008 reports, employment rates have never been higher across the OECD but some groups still lag behind: Women are 20 per cent less likely to be in work than men, while ethnic minorities face a much longer job search than other people. The report states that past reforms have helped level the playing field, but more needs to be done, including the enforcement of existing anti-discrimination laws and the introduction of policies that encourage non-discriminatory hiring.

3. Practices that inadvertently lead to reduced productivity by women lead to reduced earning capacity; this impacts both their present and future circumstances as evidenced by reports now showing that women in Australia are earning up to 17% less than men, and retiring on less than a third of male savings. This is despite the fact that in the last 25 years there have been substantial changes in women's economic circumstances. Australian Social Trends (<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4102.0Chapter8002008>) reports that the proportion of women earning their own incomes has risen, and levels of economic autonomy experienced by women have increased. However, women's relative economic position, as measured by their share of total gross personal income, has remained largely unchanged. The report confirms that women's personal incomes while they are of working age will be an important determinant of their ability to secure adequate living standards in old age. HREOC must have increased capacity to initiate inquiries to uncover the systemic discrimination that might lead to such inequality.

4. Discrimination occurs deceptively in many workplaces, as highlighted recently in the Victorian government's allocation of work to women barristers. Women barristers worked on 52 per cent of the government briefs but were paid just 28 per cent of the total fees from those briefs; by contrast male barristers worked on fewer cases but were paid more than three times as much (Australian, June 13 2008). It is only through identifying such practices that barriers to the employment and career progression of women can be changed. EOWA and HREOC should have stronger roles in assisting a greater range of employers to identify and then eliminate the causes of disadvantage and inequality. Currently less than 25 per cent of working women are employed with organizations reporting to EOWA. This may not be sufficient to bring about the required restructure of traditional work models to ensure that pay disparity is highlighted; that women's skills are not undervalued and therefore underpaid; that provisions for flexible employment and part time work do not have an adverse effect on career advancement when utilised even by senior employees. Flexible work must be recognized as being of equal value to employers. Appeals made to HREOC under the Equal Opportunity in the Workplace Act need to be considered in light of the Sex Discrimination Act to create change across the full government and business community.

5. BPW believes that such structural change is needed to ensure that women fill a greater number of senior positions in both government and private enterprise. Women continue to lag behind in both remuneration and in corporate leadership as identified in the 2008 Gender Equity report. The SDA and HREOC need the power to review systemic work practices that lead to under representation of women in key roles and ensure that discriminatory practices are eliminated.

6. BPW recognizes that the Sex Discrimination Act offers protection for dismissal from employment because of family responsibilities, but it has no power to ensure that workplaces actually accommodate the demands for fair and flexible employment conditions. Increasing the reach of the Sex Discrimination Act and the responsibilities of

HREOC would lead to greater accountability by government and business in terms of workforce participation, pay equity, promotion and leadership.

7. BPW believes that HREOC should have greater power through the Sex Discrimination Act where breaches are suspected. The fact that no action can be taken until an individual complaint is made really is contradictory to the Act's intent - it is very much the people who are being discriminated against who lack the power to make a complaint in the first place. Young women, indigenous women, refugee and migrant women are often targets for discrimination but few have sufficient understanding of their rights; women who are pregnant or returning to work can also be subject to discrimination. Most recently BPW members have expressed concern about the discrimination encountered by older women as they attempt to secure suitable educational qualifications or to reenter the workforce. Individual complainants need greater access to advice and legal aid guidelines if breaches are to be reported and acted on effectively.

BPW Australia welcomes this Inquiry into the effectiveness of the Sex Discrimination Act and expects an outcome that will in fact assist in the elimination of discrimination and sexual harassment and promote greater equality in all aspects of the Australian workplace and community.

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