

IMPLEMENTING GENDER EQUALITY

Inquiry into Effectiveness of the *Commonwealth Sex Discrimination Act 1984* in Eliminating Discrimination and Promoting Gender Equality



WOMEN'S HEALTH VICTORIA

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INTRODUCTION

Women's Health Victoria is a statewide women's health promotion, information and advocacy service. We are a non government organisation primarily funded by sections of the Victorian Department of Human Services. We work with health professionals and policy makers to influence and inform health policy and service delivery for women.

The work of Women's Health Victoria is underpinned by a social model of health. We are committed to reducing inequities which arise from the social, economic and environmental determinants of health. These determinants are experienced differently by women and men. By incorporating a gendered approach to health promotion work that focuses on women, interventions to reduce inequality and improve health outcomes will be more effective and equitable.

The vision of Women's Health Victoria is for a society in which there is an accepted approach to health that is empowering and respectful of women and girls; one that recognises the importance of gender in determining health outcomes and utilises a sound gender analysis in policy making and in health and community service design.

We work towards achieving this vision by incorporating the principles of integrated health promotion. This is implemented by:

- Having a strong focus on working in partnership with other organisations and opinion leaders. We use credible tools to determine and strategically plan for the creation of new partnerships and the development of existing ones.
- Using a mix of health promotion interventions that are focused at the population level to achieve our vision – a significant amount of our activity is spread across evidence-based health information provision, policy support, advocacy, social marketing and sector based capacity building.

- Clearly defining our community of interest as individuals and organisations that work in areas which influence health outcomes. Our community of interest includes but is not limited to health promotion practitioners, service and information providers, policy and opinion leaders, and researchers and educators.

SUBMISSION

Thank you for the opportunity to contribute to the inquiry into the effectiveness of the *Sex Discrimination Act 1984* in eliminating discrimination and promoting gender equality.

The Human Rights and Equal Opportunity Commission (HREOC) maintains that sex discrimination and sexual harassment remain a major problem in Australia, with serious long-term effects¹. In 2006/07 HREOC received over 470 complaints under the Sexual Discrimination Act (SDA) and similarly so for 2007/08. This is said to be an underestimate given that research shows less than one third of those who experience sexual harassment in the workforce make a formal complaint¹. In addition:

- Women and men have different needs in relation to many public services, and in both the workplace and as service users they can experience unfair and unequal outcomes;
- Women experience considerable disadvantage in the workplace, including a significant pay gap between women and men;
- While women live longer than men, women are also more likely to spend more years in poor health or with a disability;
- Legal rights to sex equality has not eliminated discrimination and gender inequality; and,
- Women and men are frequently put at a disadvantage by policies around family².

In their report to the WHO Commission on Social Determinants of Health, the Women and Gender Equity Knowledge Network state:

‘Gender inequality damages the physical and mental health of millions of girls and women across the globe... Deepening and consistently implementing human rights instruments can be a powerful mechanism to motivate and mobilize governments, people and especially women themselves’³.

In accordance with the decree of the *Sex Discrimination Act 1984* that states:

‘the need to prohibit, so far as is possible, discrimination against people on the ground of sex, marital status, pregnancy or potential pregnancy in the areas of work, accommodation, education, the provision of goods, facilities and services, the disposal of land, the activities of clubs and the administration of Commonwealth laws and programs’⁴.

Women's Health Victoria proposes amendments to the *Act* to incorporate a duty upon organisations, businesses, service providers and other public entities to proactively address discrimination and promote gender equality within all aspects of policy, practice and service. To this end, Women's Health Victoria promotes the United Kingdom's (UK) *Gender Equality Duty* and required component *Gender Equality Scheme* (GES) as a model for consideration.

Gender Equality Duty

In the United Kingdom (UK), in April 2007, the *Equality Act 2006* enacted changes to the *Sex Discrimination Act 1975* to include a ‘general duty to promote equality’. A general statutory duty was placed on public authorities, which stated that when carrying out its function the public authority shall have due regard to the need:

- To eliminate unlawful discrimination and harassment on the grounds of sex
- To promote equality of opportunity between women and men⁵.

Unless exempt, ‘public authority’ includes government departments and executive agencies, colleges and universities, schools, National Health Service (NHS) trusts and boards, councils and

local authorities, police and fire authorities, inspection and audit bodies and museums. The duty also applies to functions which are carried out by external contractors, as well as those which are carried out directly by the public authority itself⁵.

The Duty has been introduced by the UK Government 'in recognition of the fact that women and men have different needs in relation to many public service areas, and that in both the workplace and as service users they can experience unfair and unequal outcomes'⁶. With the focus of the duty on outcomes rather than process, organisations are duty bound to proactively promote gender equality.

The General Duty is the overall duty to eliminate discrimination and harassment and to promote equality⁵. Specific duties outline what organisations are expected to do in England, Scotland and Wales. As of October 2007, enforcement of the duty resides with the UK Commission for Equalities and Human Rights⁵. It will issue compliance notices to authorities that have not published a Gender Equality Scheme. If the organisation fails to comply with the notice further legal steps may be taken to ensure the fulfilment of duty requirements. The compliance notice is enforceable in UK courts⁵.

Gender Equality Scheme

The Gender Equality Scheme (GES) is a requirement of organisations to:

- prepare and publish a GES document, which shows how the organisation intends to fulfil the duties, and which sets out gender equality objectives;
- prepare the GES in consultation with employees, service users and other stake holders, including unions;
- consider information gathered about how policies and practices affect gender equality;
- consider the need for objectives to address the causes of any gender pay gap;
- set out in the GES how the organisation has and intends to:
 - gather information on the effect of its policies and practices on men and women, in employment, services and performance of its functions
 - use the information to review the implementation of the scheme objectives
 - assess the impact of its current and future policies and practices on gender equality
 - consult relevant employees, service users and others (including trade unions)
 - ensure implementation of the scheme objectives;
- implement the GES and any actions for gathering and using information within the three year life of the scheme⁶;

The GES is reviewed, and revised if necessary, at least every three years, with a progress report submitted annually⁶.

Recommendation

Women's Health Victoria recommends an amendment to the *Sex Discrimination Act 1984* that incorporates a similar Gender Equality Duty akin to that of the United Kingdom's. Such a duty would place a statutory requirement upon public organisations to produce a Gender Equality Scheme (GES), adhering to the research, consultation, preparation, publishing and implementation requirements around equality objectives.

In an Australian context, the proposed Gender Equality Duty and Gender Equality Scheme would mean consideration of the differences between the conditions, situations, needs and priorities of women and men in all policies, planning and actions, as part of the core business and decision making of an organisation.

It would be the aim of such an Australian duty to:

- identify and address gaps in current organisational policy, programs and practice around discrimination and gender equality as identified by the *Sex Discrimination Act 1984*;
- promote the use of a gender lens, which acknowledges differences for women and men, when creating and implementing future policy and practice;
- acknowledge and account for differences in the experiences of women and men in aspects of service use, health, employment and other related conditions;
- use sex disaggregated data to inform policy, programs and practice;
- address any existing pay gap between women and men;
- increase safeguards around discrimination and gender equality for people currently employed, so that redress is not only available after cessation of employment;
- increase employment intake and retention based on equitable conditions;
- enhance organisational work culture along gender equity lines (through policies around work/domestic life balance, awareness training, staff participation and consultation, etc); and
- make organisations legally accountable to gender equality by producing a Gender Equality Scheme in accordance with a statutory duty.

Proposed changes would apply to *Parts I, II, III and IV* of the *Sex Discrimination Act 1984*. The primary amendment would require an addition to *Part 1 – Preliminary* outlining the Gender Equality Duty and Gender Equality Scheme. This would give instruction to the sections of *Part II – Prohibition of discrimination*. Exemptions may remain the same. Consideration would need to be given to the governance of such an amendment; if deemed to come under the purview of the Human Rights and Equal Opportunity Commission, *Part III – Functions of Human Rights and Equal Opportunity Commission* would need to be amended. *Part IV – Offences* would also see an insertion relating to circumstances where an organisation does not meet its duty by producing and implementing a Gender Equality Scheme.

It is the view of Women's Health Victoria that the proposed amendments to the *Sex Discrimination Act 1984* will have the ability to enhance all aspects of organisational policy, planning and practice in efforts to eliminate sex discrimination and promote gender equality.

¹ Human Rights and Equal Opportunities Commission (2008) Time for fresh ideas to tackle sex discrimination. Publications. HREOC. Available at:

http://www.hreoc.gov.au/about/media/media_releases/2008/69_08.html Accessed 14 July 2008.

² Department of Health (2007) Creating a Gender Equality Scheme: A Practical Guide for the NHS. Equality and Human Rights Group. Department of Health: London.

³ Women and Gender Equity Knowledge Network (2007) Unequal, Unfair, Ineffective and Inefficient – Gender Inequity in Health: Why it exists and how we can change it. Available at:
http://www.who.int/social_determinants/resources/csdh_media/wgekn_final_report_07.pdf

⁴ See *Sex Discrimination Act 1994* available at: www.comlaw.gov.au

⁵ Equality and Human Rights Commission (2007) Gender Equality Duty. Available at:
<http://www.equalityhumanrights.com/en/publicationsandresources/Gender/Pages/Gender.aspx> Accessed 14 July 2008.

⁶ National Health Service (2007) A Step by Step Guide to Producing a Gender Equality Scheme. Available at:
<http://www.nhsemployers.org/excellence/excellence-2324.cfm> Accessed 14 July 2008.