



20 October 2008

Mr. Peter Hallahan
Committee Secretary
Standing Committee on Legal and Constitutional Affairs
Parliament House
Canberra ACT 2600

Dear Mr. Hallahan,

Inquiry into the effectiveness of the *Commonwealth Sex Discrimination Act 1984* in eliminating discrimination and promoting gender equality

The Public Interest Law Clearing House (PILCH) makes the following further submission in relation to the above-named inquiry pursuant to the Committee's request at the public hearing on the 10 September 2008. It is intended that this supplementary submission be read in conjunction with the PILCH submission dated 1 August 2008.

The additional submission covers the availability of data in sexual harassment matters with reference to the:

- prevalence of this form of discrimination,
- number of matters that go to mediation or conciliation before proceeding to hearing, and
- number of complainants who take action and return to the workplace.

According to the Victorian Equal Opportunity Review Discussion Paper produced by the Department of Justice in 2007 (**Paper**), sexual harassment is a form of systemic discrimination that continues to be an ongoing issue. Complaint statistics cannot be the sole indicator of sexual harassment since discrimination often goes unreported, particularly by society's most vulnerable groups.¹ In many cases as outlined in the Paper and in PILCH's earlier submission, many women do not report sexual harassment for fear of losing their job or being victimised for making a complaint.² In addition, complainants are often further traumatised by the external complaint process or internal investigation, as well as by the lack of support provided for their rehabilitation and reintegration back into the workplace.

In 2003 a Human Rights and Equal Opportunity Commission (HREOC) telephone survey found that less than one third of those who experienced sexual harassment made a formal report or complaint about sexual harassment. For those who did not report their experience, almost half expressed a lack of faith in the grievance process as the reason.³

Given the above, it is extremely difficult to obtain definitive data on how widespread sexual harassment is. Certainly anecdotal evidence and the above survey suggest that it is still a significant problem for our

¹ Victorian Equal Opportunity Review Discussion Paper, Department of Justice 2007, 4

² Ibid

³ Human Rights and Equal Opportunity Commission, 20 Years On: The Challenges Continue Sexual Harassment in the Australian Workplace (2004) 42.

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community. In terms of the collection of data for the State and Federal equal opportunity commissions, in 2005-2006 the number of inquiries to the Victorian Equal Opportunity and Human Rights Commission was 477 and the number of complaints was 295.⁴ In the same period, 690 inquiries relating to sexual harassment were made to HREOC resulting in 155 sexual harassment complaints.⁵

HREOC's submission to this Senate Inquiry provides data in relation to the number of sex discrimination matters including sexual harassment that have been conciliated in recent years and applications made to the Federal Court and Federal Magistrates Court.⁶ This data should be examined in conjunction with research conducted by Sara Charlesworth on the number of matters that actually proceed to hearing. In 2006, only 10 employment matters under the Sex Discrimination Act 1984 were determined in the Federal Magistrates Court or Federal Court.⁷

PILCH has not been able to locate definitive data on the number of individuals that return to the workplace after making a complaint of sexual harassment. However, as stated in our earlier submission, a review of complaints lodged with the HREOC in 2003-2004, found that 67 per cent of those who made a complaint of sexual harassment had left their employment.⁸ It is not clear whether complainants left the workplace immediately upon making a complaint, or returned to work and then left due to victimisation or lack of necessary support and services for rehabilitation or reintegration.

These statistics suggest that this inquiry should carefully consider the need for appropriate disciplinary action to be available in respect of perpetrators. Existing conciliation and hearing processes do not provide for a direction to be made as to appropriate disciplinary action to be taken against a perpetrator. Nor is appropriate disciplinary action always carried out by organisations when an internal investigation substantiates that such unlawful conduct has occurred, even where the perpetrator makes admissions of sexually harassing a complainant.

We hope this additional submission is useful to the Committee. Please contact us if you require any further information or assistance.

Yours faithfully,



Michelle Panayi
Manager
LIV Legal Assistance Scheme



Mat Tinkler
Acting Executive Director
PILCH (Vic) Inc.

⁴ Victorian Equal Opportunity Review Discussion Paper, Department of Justice, 2007, 4

⁵ Human Rights and Equal Opportunity Commission, Annual Report 2005-2006, 49-59

⁶ Submission of the Human Rights and Equal Opportunity Commission to the Senate Legal and Constitutional Affairs Committee on the Inquiry Into the Effectiveness of the Sex Discrimination Act 1984 (Cth) in Eliminating Discrimination And Promoting Gender Equality 40-41 Example: In 2006-2007 46% of matters under the SDA were conciliated.

⁷ Sara Charlesworth, RMIT University, The Clare Burton Memorial Lecture 2007, Understandings of Sex Discrimination in the Workplace: Limits and Possibilities, 5

⁸ Human Rights and Equal Opportunity Commission Annual Report 2003-2004 Chapter 10, 2.