



7 August 2008

Peter Hallahan
Committee Secretary
Senate Legal and Constitutional Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

By email legcon.sen@aph.gov.au

Dear Mr Hallahan

**Re Inquiry into the effectiveness of the *Sex Discrimination Act 1984* (Cth) in eliminating discrimination
and promoting gender equality**

I refer to our telephone conversation on 1 August 2008 regarding the above Inquiry. Thank you for extending the deadline for our submission to 8 August 2008.

I write as the Chair of the Equal Employment Opportunity Network of Australasia (EEONA).

1. Background

By way of background, established in 2003, EEONA is a not-for-profit national peak body representing diversity and EEO practitioners across Australia (and New Zealand). The aim of EEONA is to provide practitioners with a voice on diversity and equality issues that have national significance, such as the current Inquiry.

In effect, EEONA members operate as the key organisational implementation point between discrimination legislation/policy and practice, balancing the needs of employers with the needs of



employees, and can thus provide practical insights into the operation of legislation such as the *Sex Discrimination Act 1984 (Cth) (SDA)*.

2. Submissions

2.1 Overview

We note, and endorse, one of the consistent themes arising from the 2020 Summit, namely that removing barriers to workforce participation (including barriers that are based on sex discrimination) is critical to Australia's future. In particular we note that "The future of the Australian Economy" stream recognised "the importance of unleashing Australian talent by removing direct and indirect discrimination, which means improving structural support, strengthening laws and creating public accountabilities beyond gender"¹. Hence we wish to commend the Senate Standing Committee on Legal and Constitutional Affairs for undertaking this important Inquiry.

Our intention is not to address each of the fifteen issues raised by the Committee when calling for submissions, but to draw the Committee's attention to recent research we have published which assists in identifying and evaluating the current operation of diversity and equality related legislation such as the SDA. This information is comprehensively documented in our report entitled *2008 Status report on diversity and equality*² which was published on 25 July 2008, and our submission highlights some of the key findings from the report which are relevant to the Committee's Inquiry.

2.2 2008 Status report on diversity and equality

In 2003, 2005 and now 2008 EEONA has administered the Australasian Diversity and Equality Survey (ADES) to track the implementation of diversity and equality through the eyes of diversity practitioners in Australia (and New Zealand). Key questions in the ADES concern (i) why are organisations interested in diversity?; (ii) how do organisations implement a diversity agenda?; (iii) what are the challenges to diversity implementation?; and (iv) how are issues/responses changing over time? In addition to these general questions, each ADES includes a special section on a topical diversity related issue. In 2008 the

¹ Department of Prime Minister and Cabinet (2008) *Australian 2020 Summit, Final Report*, www.australia2020.gov.au, p. 50.

² A full copy of the report is available at www.eeona.org



ADES reported on workplace flexibility (as well as diversity), a topic which clearly has relevance to the Inquiry's interest in family responsibilities discrimination.

In terms of methodology, in 2008 the ADES research comprised a survey of 48 members (and a follow-up focus group), who represent a diverse range of small, medium and large organisations from private, government and community sectors. In total the survey respondents represented nearly one quarter of a million employees (238,580). In terms of the generalizations which can be made based on this data, it should be noted that members of EEONA are likely to be drawn from best practice organisations in terms of their commitment to eliminate discrimination³.

In terms of findings relevant to this Inquiry, we draw the Committee's attention to the following data.

1. **Legal compliance is a key driver of implementing a diversity strategy** (76% agreement). Other findings from the ADES suggest that the SDA and *Equal Opportunity for Women in the Workplace Act 1999* (Cth) have stimulated employer attention to issues of sex discrimination, at least at the level of introducing policies, programmes, training and grievance handling processes. The report also notes that this finding "suggests a significant opportunity for government policy makers" in terms of stimulating employers to take action to elimination discrimination, including sex discrimination.
2. **Employers collect demographic data on employees in terms of gender** (100% agreement), and this has a direct impact on the development of gender related policies and programmes. This is a very positive finding. Employers are much less likely however, to collect data on invisible stigma (eg sexual orientation: 5% agreement, and religion: 5% agreement), therefore gender related programmes are less likely to be nuanced to reflect diversity within the female population. One of the suggested reasons for the gap in data collection is concerns about privacy. This means that guidance from HREOC about data collection protocols would help improve the diversity of gender related data collection and consequential initiatives to redress sex discrimination.

³ This is evident from the number of member organisations who are the recipients of awards and citations for best practice, eg Employer of Choice for Women and Work and Family Awards.



3. **Employers are very likely to have programmes to eliminate harassment** (91% agreement). Given recent comment by the Sex Discrimination Commissioner⁴ on the prevalence of sexual harassment in the workplace, this ostensibly positive and inconsistent finding by the ADES may reflect the “best practice” nature of the respondents who participated in the ADES, or it may
4. reflect a limited capacity of training programmes to effect change in a workplace culture which is tacitly supportive of harassment.
5. **Employers are very likely to have discrimination/harassment grievance handling processes** (96% agreement) and measure the effectiveness of their commitment to diversity in terms of employee statistics (95% agreement) and information about grievances (89% agreement). Each of these data points are very positive in terms of the actions taken by employers to meet their “vicarious liability” related obligations.
6. **Managerial accountability for diversity outcomes is lacking.** The report identifies the importance of “creating managerial accountabilities for diversity, as well as rewards to acknowledge and incentivise good practice”. Noting the importance of managers in preventing and eliminating sex discrimination, it is disappointing that the ADES found only 30% of managers are held accountable for diversity outcomes (down from 72% in 2005). The report found “there is a clear gap between organisations’ espoused commitment to the diversity agenda and holding managers accountable, or rewarding managers, for outcomes. This means that guidance from HREOC about developing key performance indicators for managers in terms of gender equity would help improve their commitment to the diversity agenda.
7. **There is considerable room for improving the implementation of workplace flexibility.** 81% of respondents rated the current implementation of flexibility in their organisation as average or

⁴ Human Rights and Equal Opportunity Commission *2008 Gender Equality: What matters to Australian men and women* Sex and Age Discrimination Unit: Sydney.



below average. In addition to expanding the ambit of the “family responsibilities” provisions of the SDA to bring them into line with best practice provisions in state discrimination law (eg the *Anti-Discrimination Act 1977 (NSW)* and the *Equal Opportunity Act 1995 (VIC)*), the HREOC could provide guidance to employers about implementing flexible work practices to address the findings identified below:

- a. **There is a gap between flexibility policy and practice.** Organisations are highly likely to offer a broad range of flexible work practices on paper, however implementation is less effective than it could be, eg only 28% of organisations consistently implement flexibility across their organisation.
- b. **There is a lack of awareness of the legal drivers for flexibility.** 60% of respondents nominated “legal compliance” as a driver for flexibility in comparison to 76% for diversity. The report found that this suggests that “organisations are unaware of, or have not yet geared up for, the impact of the (Australian) *National Employment Standards*” with regard to the right for employed parents of young children to request flexibility.
- c. **Managers hold the flexibility key.** Building managerial capability is the key to closing the gap between flexibility policy and practice. When comparing high functioning organisations with respect to flexibility, and low functioning organisations, the ADES found that the key differentiators in terms of managerial capability concerned: managerial commitment to flexibility; managerial knowledge about, and support for, flexible work practices; and managerial confidence to manage difficult implementation issues.
- d. **A lack of flexibility for managers.** The ADES found that a key differentiator between organisations implementing flexibility and those which are not, is the extent to which managers (as well as employees) are able to access flexibility.
- e. **A lack of managerial metrics for flexibility.** The ADES found that, as with diversity, managers are not held accountable, or rewarded for, their commitment to flexibility.



3. Conclusion

In summary findings 1 to 4 above suggest that discrimination legislation, and the SDA in particular, is having a positive impact on the actions of organisations in terms of (i) high level data collection; (ii) policies and training programmes; (iii) grievance handling processes; and (iv) high level metrics.

Nevertheless, findings from the ADES suggest that these actions alone are insufficient to address structural and attitudinal workplace barriers to gender equity, and that much more is needed within organisations (and the broader community) to effect change. In particular findings 5 and 6 above suggest that there is room for legislative expansion, training, and the development of metrics to facilitate gender equity outcomes.

In relation to family responsibilities discrimination, much more attention needs to be given to assisting organisations with building managerial capability to implement flexible work practices, and this could be achieved through a communication strategy to address practical implementation issues. This strategy could include mandated flexibility awareness and skill training, job-redesign guidelines, and public measures of accountability (eg expanding the EOWA reporting model to place greater emphasis on work/care integration).

Should you have any queries, please do not hesitate to contact me on (02) 9810 7176 or via email: juliet.bourke@aequus.com.au.

Yours faithfully

Juliet Bourke
Chair, EEONA