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Submission to the Senate Legal and Constitutional Affairs Committee on the review of the *Sex Discrimination Act (1984)*

The South Australian Equal Opportunity Commission (the Commission) and the Office for Women (SA) (the Office) welcome the opportunity to provide comments on the review of the *Sex Discrimination Act (1984)*.

Introduction

The Equal Opportunity Commission has a dual role, both assisting people to resolve complaints of discrimination, and providing employers with training and policy development to prevent discrimination occurring.

The Office for Women (OFW) provides policy advice to the State Government on issues affecting women in South Australia, and works to ensure that South Australian Government services, policies and legislation provide equitable and positive outcomes for the women in this State. The Office works closely with women's groups and organisations, as well as with the government's advisory group on women's issues, the Premier's Council for Women.

We acknowledge the important role the *Sex Discrimination Act* has played in reducing discrimination and protecting human rights. This review provides a valuable opportunity to modernise and improve the legislation. Comments on specific issues are listed below.

Family Responsibilities

Workers often have difficulty accessing working arrangements that allow them the flexibility to care for children, family members and elderly relatives.

The Equal Opportunity Commission is active in encouraging organisations to develop equal opportunity policies appropriate for their workplace. This involves working together with business to identify ways to improve their policies and practices, and where appropriate, encourage employers to identify possibilities for developing flexible work arrangements for both men and women.

The Commission regularly receives enquiries from women who find their employment hours have been reduced upon telling their employer that they are pregnant, or being unable to return to their position after they have taken maternity leave. In one example, a woman who worked as a team leader in a call centre returned to work from maternity leave, working 4 days a week. After several weeks, she was told by her employer that if she wished to retain her role as team leader, she would need to work full time, and if she wished to work part time, she would have to move to a lesser position.

In 2007, the Commission received 35 enquiries where people felt they had been discriminated against because of their caring responsibilities. In the most serious examples, both women and men claimed that they had been fired for requesting flexible work arrangements to care for children with severe disabilities.

However, the *SA Equal Opportunity Act (1984)* provides only limited protection against discrimination based on caring responsibilities. In some circumstances, women may be able to progress these complaints as indirect sex discrimination, however, this option is rarely available for men.

In one example, a man who had been seconded to the Perth office of the national company he worked for applied to permanently stay in the Perth position. However, the company told him he didn't get the job because his wife was pregnant back home and they didn't think he would be committed to staying long-term in Perth. On returning to Adelaide, the complainant felt he was assigned meaningless work, without the leadership role he held in other positions. Although he initially lodged a complaint of marital status discrimination with the Commission, the complainant later resolved to pursue the matter in Western Australia, where caring responsibilities are included as a ground for discrimination in the WA legislation.

Currently under the *Sex Discrimination Act (1984)*, a person can only lodge a complaint in these circumstances if they are sacked from their job. This highlights the need for greater protection in circumstances where the person is not sacked but is effectively demoted, demeaned or treated unfairly because of their caring responsibilities. It further highlights the need for caring responsibilities to be included within the *Equal Opportunity Act 1984*. Amendments to this Act, which would include caring responsibilities as a ground for discrimination, are currently before Parliament. However it is important to have Federal legislation providing this remedy.

Application of Sex Discrimination Act 1984 to Men

As a basic principle, the *Sex Discrimination Act* (SDA) should apply equally to men and women. This is currently not the case. There are some men who cannot access the complaint mechanism under the SDA which leads to claims of unfairness.

Male on Male Sexual Harassment

The Commission has received an increasing number of complaints from men who have been sexually harassed by other men, most commonly in the workplace. This can involve men displaying pornographic material to other male colleagues, making sexual gestures and making derogatory comments about another man's sexuality or perceived sexuality.

In one instance, a State government male employee approached a male colleague and asked him if he was gay. He then approached him from behind and pinched his nipples, in addition to staring at him while putting his hand over his genitals making other suggestive movements.

In another complaint, a male employee alleged that his supervisor at his work site sexually harassed him by thrusting his groin back and forward into his body in an enclosed container at the mine site. He said that he reported this incident to his employer and they flew him home and told him to come back to work for them locally and forget about it. He said that no action was taken against the supervisor.

In certain instances, complaints such as these cannot be addressed under the SDA.

Men's access to parental leave

We strongly support the need for paid parental leave that can be used by women in the first three months after childbirth and thereafter accessed in a flexible manner to allow shared responsibility for childcare.

Many fathers can and do encounter discriminatory views when they seek to have their parenting responsibilities taken into serious account; for example in situations where they ask for extended leave to care for a child.

As an example, one family arranged for the mother to take 12 months unpaid maternity leave after the birth of their first child. The father planned to take a year off work to stay at home and raise their child when his wife returned to work after maternity leave.

Unfortunately, the father faced strong criticism and ridicule from his work colleagues, who did not view this as 'the thing for a man to do'.

Old fashioned ideas about the role of fathers as providers, not caregivers, are still around. Men are more likely to be seen as not being committed to their job and future career if they take time off to be with their children.

Increasingly though, a trend has been noted at the Commission for young male partners of pregnant women who are being discriminated against at work, to call seeking assistance. This suggests that the struggle for young families to balance work and child rearing responsibilities is starting to be viewed in the community as a concern for all parents – it is no longer seen exclusively as a 'women's issue.'

Sexuality Complaints not under SDA

Protection for people discriminated against because of their sexual preference is provided for in federal legislation under the *Human Rights and Equal Opportunity Act*. However protection is limited to employment and an individual does not have a remedy if the complaint can not be resolved through conciliation.

Five percent of complaints lodged at the SA Commission each year are based on sexuality discrimination. This figure has remained steady over many years. Typically complainants allege that they have been harassed and humiliated at work about their perceived or declared sexuality. Sometimes this has ended in dismissal.

Complaints are also made about incidents that occur in the area of customer service. Recent examples include a same sex couple who were threatened that their driveway paving would not be completed when the service provider discovered they were living together. On another occasion a man was called a 'pooffer' by a transport ticket seller.

It is the Commission's view that protection on this ground is essential and that it is inconsistent with contemporary thinking not to provide a comprehensive remedy.

Vilification

Vilification relates to a public act that incites hatred, contempt or severe ridicule of another person or group. Some states prohibit vilification on all grounds covered by equal opportunity laws. It would be valuable to mirror current remedies under the Race Discrimination Act for racial vilification to cover all current and proposed grounds under the SDA.

Harmonisation

The Commission supports the need to harmonise the features of the *Sex Discrimination Act* with State and Territory anti-discrimination laws. More streamlined, consistent discrimination legislation across the country will provide the public with greater protection and avenues for addressing discrimination.

Reproductive Technology Grounds

In South Australia, there are an increasing number of enquiries from people who feel they are being treated unfairly because they are having treatment for fertility problems. This is an emerging issue as the average age of first time mothers increases. Unfair treatment because of fertility treatment or a lack of flexibility in the workplace to allow women to have treatment does not neatly fall within the matters covered by discrimination law. This is because the person is not disabled, nor is it necessarily discrimination on the grounds of pregnancy or potential pregnancy.

In *Pearce v South Australian Health Commission* a woman was denied access to the IVF program because she was separated from her husband. The Full Court of the SA Supreme Court unanimously declared that the *Reproductive Technology Act 1988* discriminated on the ground of marital status and thus was in breach of the *Sex Discrimination Act*. The effect of this judgement is that although the text of the *Reproductive Technology Act* remains the same the reference to married couples is inoperative. This is the same as in Victoria and Western Australia. It is therefore possible for single and lesbian women to access reproductive technology but only if they can demonstrate medical infertility. Consideration of this issue should be included in the review of the *Sex Discrimination Act*.

Addressing enquiries power

The Commission supports the continuation of the enquiries power under the *Sex Discrimination Act* as an effective way to address systemic issues of discrimination and harassment. Without these powers, discriminatory policies can remain unquestioned and provisions for promoting equality in all areas of life is limited.

A positive duty

In the UK and Canada antidiscrimination laws have been amended to include an obligation on organisations to reduce discrimination and take positive steps to achieve equal opportunity. A specific power requiring organisations to take action, incorporated into the *Sex Discrimination Act* and coupled with compliance tools, could be a major force in focusing responsibilities on organisations and away from the individual complaint based system.

Pregnancy and work

Many women are not accommodated in the workplace when they inform management they are pregnant. We have a raft of complaints about women who are fired, or have their shifts cut when they announce they are pregnant.

One woman was not provided with further work as a casual administration assistant after she told her employer she was pregnant. She was told the workload had decreased, but the employer hired another worker to cover her duties.

We have had a number of cases where women were simply fired upon informing their employer of their pregnancy, with the employers in each case citing the pregnancy as the reason for the dismissal.

We also have several cases where women have been denied a promotion after announcing their pregnancy.

In one example, the woman was an acting manager, and when three managers positions were advertised, she found less experienced people were promoted into them. She received a settlement of over \$10 000.

In another case, a woman who was promoted to a management position was actually demoted on announcing that she was pregnant, the employer confirming in writing that it was because she was pregnant and would “need time off work.”

Sometimes employers discriminate against pregnant women in a more subtle way, but again, designed to encourage them to leave the workplace.

In one example, a woman working as a casual in a small book store informed her manager that she was pregnant. She continued working as normal, but needed to attend a doctors appointment at a time she was scheduled to work. She arranged to swap shifts with another staff member. She was subsequently fired as “she needed to be available all opening hours of the store.”

Similarly, we have had other women complain that when they had to take time out to manage morning sickness, they were told not to bother coming back to work, as their bosses only wanted someone “reliable” who “could work all day.”

Another woman complained of having her shifts cut from 35 hours a week to one shift of 8 hours a week when she announced her pregnancy. A different woman complained of her shifts in a hairdressing salon being changed without notice.

When returning to work following pregnancy, women are regularly finding their positions have been restructured or they have been moved to a job with less responsibility. They have difficulty in negotiating flexible hours to fit in with child care availability and are unsure of their right to ask for part time employment. In line with modern work practices, it would be useful for the SDA to include a right to request part time work.

Domestic Violence and Work

The impact of domestic violence on employment participation is a significant issue, particularly for women. Research conducted by the Research Centre for Gender Studies at the University of South Australia has found that domestic violence negatively affects the working lives of victims. Of particular relevance to the current submission were reports of employers who rejected or dismissed the personal situations of women who had experienced domestic violence, as well as employers who were not accommodating of any interruption to workflow that occurred as a result of violence in the home or at work (eg multiple text messages being sent to employees as part of stalking behaviour). This research indicates that some employers are not supportive of the need to provide flexibility or modify particular work practices in order to assist employees who are experiencing violence. Discrimination arising as a result of domestic violence is another area that could also be included in the *Sex Discrimination Act*.

Conclusion

A *Sex Discrimination Act* that protects men and women equally will advance the reach for greater gender equality across the country.

The *Sex Discrimination Act* has provided sound protection, particularly for women, over a number of years. Its review is an opportune time to modernise the legislation to include emerging areas of protection and to address its shortcomings.

Yours sincerely,

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