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To whom it may concern,

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

The YWCA Australia welcomes the opportunity to make a submission to this inquiry.

The YWCA is a global network of women advancing social justice and creating opportunities and services for the development of women and their families. As a not-for-profit organisation with a focus on addressing the needs of women and girls, a feminist agenda has informed our work. Through our state-based local associations, we offer a range of programs aimed at developing women's leadership and promoting gender equality.

The YWCA Australia also led the development of the Collaborative Submission from leading women's organisations and women's equality specialists, and made contributions to it. This submission which addressed comprehensively the inquiry's terms of reference. In our individual submission below, we address the following terms of reference in greater detail:

The effectiveness of the Commonwealth Sex Discrimination Act 1984 *in eliminating discrimination and promoting gender equality, with particular reference to:*

- *b. the extent to which the Act implements the non-discrimination obligations of the Convention of the Elimination of All Forms of Discrimination against Women and the International Labour Organization or under other international instruments, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights; and*

- *i. addressing discrimination on the ground of family responsibilities*

Please do not hesitate to contact Caroline Lambert on 0422 598 008 if you have any queries about this submission.

Yours sincerely,

Raina Hunter
Policy Coordinator

Caroline Lambert
Executive Director

Introduction

The YWCA is a global network of women advancing social justice and creating opportunities and services for the development of women and their families.

Through our state-based local associations, we offer a range of programs aimed at developing women's leadership and promoting gender equality.

As a not-for-profit organisation with a focus on addressing the needs of women and girls, a feminist agenda has informed our work.

Scope of submission

The YWCA Australia contributed to and endorses the Collaborative Submission from leading women's organisations and women's equality specialists (the Collaborative Submission).

While we have limited our additional comments in this submission to the extent to which the Act implements its obligations under CEDAW and other international instruments and its effectiveness in addressing discrimination on the ground of family responsibilities, we would draw the Committee's attention to the comprehensive list of recommendations contained in the Collaborative Submission, especially those relating to:

a) the need to amend the Objects of the Act (Recommendations 1, 2 and 4);
b) the need to review the definitions in the Act to give full effect to CEDAW obligations pertaining to formal equality and substantive equality (Recommendation 6); and
c) the exemptions in the Act (Recommendations 38 and 44).

Recommendations

The recommendations contained in this submission are:

Recommendation 1: that the Government immediately move to abolish the exemption in the SDA relating to educational institutions established for religious purposes.

Recommendation 2: that the Government urgently introduce a national scheme of paid maternity leave. The YWCA Australia advocates 9 months paid parental leave , funded by Government and employers combined, to provide 75-80% of replacement earnings.

Recommendation 3: that the SDA be amended to provide full protection against discrimination to workers with family responsibilities, not simply protection from termination of employment.

Recommendation 4: that the Government move to legislate for breastfeeding breaks for mothers returning from maternity leave

Recommendation 5: that the Government consider introducing a right to return to part-time after maternity leave, rather than simply the right to request this

Extent to which the Act implements the non-discrimination obligations of CEDAW, the International Labour Organization and other international legal instruments

Relevant international instruments

Australia signed the Convention of the Elimination of All Forms of Discrimination against Women (CEDAW) in 1980 and ratified it in 1984.[1] Two reservations were entered: one on participation in direct armed combat and the other on the provision of paid maternity leave.[2] CEDAW is the international instrument which deals most directly with sex discrimination and gender equality,

Australia ratified the ILO Workers with Family Responsibilities Convention (Convention 156) in 1990.

Australia signed the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1972 and ratified it in 1975.[3] The government entered no reservations to ICESCR. Thus the obligation to provide paid maternity leave to working mothers applies to the Australian government.

Australia signed the International Covenant on Civil and Political Rights (ICCPR) in 1972 and ratified it in 1980.[4] Thus, the broad-based sex discrimination obligations entailed in both these treaties apply within Australia.

The Australian government has not ratified the International Labour Organisation (ILO) Maternity Leave Convention (Convention 183). Thus, none of the obligations established in relation to maternity leave in this convention apply.

CEDAW's implementation in Australia

CEDAW requires not only that signatories adopt measures to preclude discrimination, but also to achieve women's equality. The *Sex Discrimination Act 1984* (SDA) gives force to some of the international legal obligations contained in CEDAW and the ILO Workers with Family Responsibilities Convention.

The SDA goes further than CEDAW by specifically addressing sexual harassment. (The CEDAW text does not mention violence against women, however the CEDAW Committee clarified its understanding of the relationship of sex discrimination to violence against women, including sexual harassment, in a General Recommendation on the subject.[5])

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[1] Federation of Community Legal Centres (Victoria) Human Rights Working Group, *Right Off the Attack on Human Rights in Australia* (2002), 62.
[2] Ibid.
[3] Ibid, 48.
[4] Ibid, 36.
[5] CEDAW Committee, 'General Recommendation 16, above n 11.

Australia's legal obligations

In relation to the framework established above, Australia has international and domestic legal obligations to

1. prohibit pregnancy-based discrimination in work specifically under CEDAW and more broadly in relation to sex discrimination as per the ICESCR and ICCPR
2. provide paid maternity leave for working women as per the ICESCR
3. ensure terms and conditions which reflect the needs of workers with family responsibilities, including the prohibition of maternity-based discrimination, as per CEDAW and the ILO Workers with Family Responsibilities Convention and the prohibition of family responsibilities being grounds for dismissal as per the ILO Workers with Family Responsibilities Convention and CEDAW
4. promote, develop or provide child and family care by public or private means as per CEDAW and the ILO Workers with Family Responsibilities Convention
5. educate the community to challenge values on family responsibilities and the function of maternity as per CEDAW and the ILO Workers with Family Responsibilities Convention.

Extent to which the SDA implements these obligations

The joint submission endorsed by the YWCA Australia (referred to above) stated that *"the current definitions of sex discrimination, the provisions on discrimination on the basis of family responsibilities contained in the SDA, and the remedy mechanisms available in the SDA do not meet the full scope of measures envisaged in CEDAW. This view is shared by the CEDAW Committee, who in their most recent review of Australia's implementation of CEDAW, expressed concern about the legislative framework for sex discrimination in Australia:*

> *12. While noting the existence of national legislation to prohibit sex discrimination at federal, state and territory levels, the Committee expresses concern about the status of the Convention at these levels and the absence of an entrenched guarantee prohibiting discrimination against women and providing for the principle of equality between women and men."*

Furthermore, the YWCA Australia is concerned that there are a number of significant exemptions to the SDA. Despite requests from NGOs, the CEDAW Committee have yet to offer a view on these exemptions.[6] Charlesworth and Charlesworth suggest that the exemptions may be incompatible with the treaty purposes and should perhaps be the subject of reservations to CEDAW.[7]

This submission elaborates on the extent to which the YWCA Australia believes the Sex Discrimination Act is currently implementing – and failing to implement – Australia's obligations under CEDAW and other international instruments, especially in relation to discrimination on the basis of family responsibilities.

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[6] See WRANA, *Australian NGO Shadow Report on the Implementation of CEDAW* (2005)and Committee on the Elimination of Discrimination Against Women, *Concluding Comments of the Committee on the Elimination of Discrimination against Women: Australia*, UN Doc CEDAW/C/AUL/CO/5 (2006).

[7] Hilary Charlesworth and Sara Charlesworth, 'The *Sex Discrimination Act* and International Law' (2004) 27 *University of New South Wales Law Journal* 858, 863.

Prohibition of pregnancy-based discrimination

The SDA outlaws discrimination on the basis of pregnancy or potential pregnancy.[8] Potential pregnancy encompasses three elements: behaviour which discriminates against "the fact that a woman is or may be capable of bearing children; has expressed a desire to become pregnant; or is likely, or perceived as being likely, to become pregnant".[9]

Discriminatory behaviours based on physical features associated with pregnancy have also been considered within the context of pregnancy-based discrimination, even where the woman has not been pregnant.[10]

HREOC also notes that "less favourable treatment based on past pregnancy…can also be discrimination."[11] They note the case of *Gibbs v Australian Wool Corporation*[12] where it was held that a woman had been subject to pregnancy-based discrimination because the company failed to adequately consult with her during a restructure that occurred during her maternity leave. The result of the restructure was that she was required to undertake new duties on her return to work.[13]

The SDA allows for women to make claims of both direct and indirect pregnancy-based discrimination.

At law, these provisions would seem to fulfil Australia's international obligations to prohibit sex discrimination, particularly pregnancy-based sex discrimination and provide for remedy of such discrimination. However, CEDAW is interested not just in the *de jure* steps a states party has taken but also whether the laws and policies result in the actual achievement of the elimination of discrimination against women.

In practice, exemptions in the SDA have effectively allowed some forms of pregnancy-based discrimination to continue. Pregnancy-based discrimination also remains significantly under-reported, making it difficult to assess the frequency and nature of this form of discrimination.

The exemption provided in the SDA to educational institutions established for religious purposes is of particular interest.[14] This exemption pertains to the hiring and dismissal of staff, whether as employees or contract workers. In 2005 18% of schools in Australia were Catholic schools and 10% were Independent schools,[15] of which, the National Association of Independent Schools reports, 94% had a religious affiliation.[16] Statistics from 2003 shows

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[8] SDA, above n 65. s 7.
[9] Ibid. s 4B.
[10] HREOC, *Pregnant and Productive: It's a right not a privilege to work while pregnant* (1999), 34.
[11] Ibid, 34-35.
[12] *Gibbs V Australian Wool Corporation* (1990) EOC Australasian Legal Information Institute (Austlii) http://www.austlii.edu.au//cgi-bin/disp.pl/au/cases/cth/HREOCA/1990/11.html?query=gibbs%20v%20australian%20wool%20corporation Accessed 3 September 2006.
[13] HREOC, 'Pregnant and Productive', above n 69, 34-35. They further note, at 35, *Coard v Mobil* where it was held that a failure to consult with women who are on maternity leave constitutes discrimination under s7(2).
[14] SDA, s38
[15] Australian Bureau of Statistics, *Website: Australian Social Trends, Government and Non-Government Schooling* (2006) Australian Bureau of Statistics 8 September 2006
[16] Anon., 'God in the Classroom', The Sydney Morning Herald (Sydney), 23 June 2003

that 57.7% of independent school teachers were women, while 67.7% of Catholic school teachers were women.[17] Hence almost one quarter of teachers in Australia have no protection from anti-discrimination laws in their place of employment, including pregnancy-based discrimination.

The previous government rejected calls to remove the exemption from the SDA on numerous occasions[18]. While the CEDAW Committee requested clarification on these exemptions in their review of the *Second Periodic Report of Australia* they have subsequently not engaged on the issue, despite requests from NGOs.[19]

Clearly, exemptions such as this in the SDA impose significant limitations to the realisation of the CEDAW obligation to ensure the elimination of pregnancy-based discrimination in Australia.

Recommendation 1: that the Government immediately move to abolish the exemption in the SDA relating to educational institutions established for religious purposes.

The YWCA Australia is also concerned about the under-reporting of pregnancy-based discrimination in Australia, which makes it difficult to ascertain how effectively the SDA is implementing CEDAW's non-discrimination obligations.

In its report *Pregnant and Productive*, HREOC noted the lack of statistics on the issue of pregnancy and work which made it hard to assess the prevalence of pregnancy-based discrimination in the community.[20] Nonetheless, they noted that almost 15 percent of complaints made under the SDA related to pregnancy-based discrimination, across the public and private sector, but for the most part related to dismissal in clerical or service sector jobs.[21] In 1998 the Victorian Equal Opportunity Commission reported that pregnancy-based discrimination complaints had increased by 90% in the previous twelve month period.[22] The Job Watch submission to the *Pregnant and Productive* Inquiry noted that women seemed to lack faith in the system: of the "fifteen women we interviewed to assist us with preparing this submission only three actually pursued any form of legal action."[23] Thus HREOC concluded that the statistics were not an accurate reflection of the level of pregnancy-based discrimination occurring.[24]

These two factors suggest that despite the *de jure* prohibition on pregnancy-based discrimination, the obligation to eliminate pregnancy-based discrimination in workplaces has not yet been realised in Australia.

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[17] Australian College of Education, *Teachers in Australia: A Report from the 1999 National Survey* (2001)
[18] In the 1992 HREOC inquiry into the review of the SDA, in the 1994 the Australian Law Reform Commission inquiry into equality before the law, and in the 1999 *Pregnant and Productive* report. HREOC, Pregnant and Productive, above n 68, 53.
[19] WRANA, above n 63, 12-13.
[20] HREOC, Pregnant and Productive, above n 68, 19.
[21] Ibid, 2, 29.
[22] Christy Ziss, 'Pregnancy Discrimination in the Workplace: A Growing Concern' (2000) 52 *Australian Company Secretary* 10
[23] HREOC, Pregnant and Productive, above n 68, 22.
[24] Ibid, 19-24.

Provision of paid maternity leave

The provision of 14 weeks paid maternity leave, with a compulsory minimum period of six weeks immediately after the birth, is the international standard for paid maternity leave.

Most commonly, Australian discussions of international obligations in the context of paid maternity leave note the reservation to CEDAW on the issue and the failure to ratify the ILO Maternity Leave Convention.[25] However, as noted above, the ICESCR also contains an international obligation to provide paid maternity leave and the Australian government have not entered a reservation to this provision. <u>Thus, the Australian government is obligated to provide paid maternity leave for working women.</u>

Currently, only around 37 percent of women of childbearing age in Australia are eligible for any paid maternity leave[26]. The *Workplace Relations Amendment* (*Work Choices) Act 2005* (Cth) provides for 52 weeks unpaid parental leave for permanent and long-term casual employees.[27] However, a national paid maternity leave scheme remains elusive.

The Baby Bonus (then Maternity Payment) was introduced in 2004, in recognition of the "extra costs incurred at the time of a new birth or adoption of a baby."[28] The one-off payment of $5000 per child (payment commenced at $3000 in 2004) is paid, for the most part, as a lump sum.[29] The payment was adopted despite repeated calls from HREOC for a national paid maternity leave scheme to be introduced.[30]

Charlesworth and Charlesworth argue that the

> welfare payment does not constitute paid maternity leave as envisaged under CEDAW. It is not intended to encourage women's ongoing attachment to the paid workforce, not is it intended to compensate working women for income forgone as a result of childbirth, nor is it linked to preventing discrimination against women in employment.[31]

The government has been called on to seek legal advice on whether the maternity payment would meet the obligations contained under CEDAW.[32] It also had the opportunity to address the issue in the context of the *Fifth and Sixth Periodic Report* review but did not do so.[33] The NGO Shadow Report called on the CEDAW Committee to offer an opinion on the matter in

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[25] Charlesworth and Charlesworth, above n 63, 860.
[26] ABS Pregnancy and Transitions survey 2005
[27] Department of Employment and Workplace Relations, *Website: Workchoices and Parental Leave* (2006) Department of Employment and Workplace Relations <https://www.workchoices.gov.au/ourplan/publications/WorkChoicesandparentalleave.htm> 8 September 2006
[28] Australian Government Family Assistance Office, *Website: Maternity Payment* (2005) Australian Government Family Assistance Office <http://www.familyassist.gov.au/internet/fao/fao1.nsf/content/payments-maternity_payment> 8 September 2006
[29] There are certain situations in which six equal instalments are paid, for example, if the mother is under 16 years of age, if she has an intellectual disability, a substance addiction, a mental illness, a gambling problem is homeless or at risk of being homeless. Ibid.
[30] For example, HREOC, Pregnant and Productive, above n 68, HREOC, *A Time to Value: Proposal for a National Paid Maternity Leave Scheme* (2002)
[31] Charlesworth and Charlesworth, above n 63, 862.
[32] Ibid.
[33] Government of Australia, *Fourth and Fifth Periodic Report of the Government of Australia on the Implementation of CEDAW*, UN Doc CEDAW/C/AUL/4-5 (2004)

the context of reviewing the *Fifth and Sixth Periodic Report* of Australia. The CEDAW Committee welcomed the introduction of the payment but was concerned by the ad hoc existence of paid maternity leave schemes and stated that "as a consequence, the State party continues to maintain its reservation to article 11, paragraph 2, of the Convention."[34]

As grounds for a complaint, the SDA does not directly address the issue of maternity leave, paid or otherwise. However, it does contain provision for inquiries, whether directed by the government or of their own recognisance.[35] In recent years HREOC has used this function to focus considerable attention on the issue of paid maternity leave.

Recommendation 2: that the Government urgently introduce a national scheme of paid maternity leave. The YWCA Australia advocates 9 months paid parental leave , funded by Government and employers combined, to provide 75-80% of replacement earnings.

Terms and conditions which reflect the needs of workers with family responsibilities

At a federal level, article 8 of the ILO Workers with Family Responsibilities Convention, which provides that family responsibilities shall not constitute a valid reason for termination of employment,[36] was used as a basis for amending the SDA.

However, the ILO Workers with Family Responsibilities Convention does not simply seek to address termination of employment but obligate states parties to promote laws and policies across a range of workplace behaviours. Likewise, while operating from a paradigm of discrimination against women, CEDAW seeks to alter the "understanding of maternity as a social function" and to foster "recognition of the common responsibilities of men and women in the upbringing and development of their children."[37] To this end, state and territory legislation provides greater implementation of international legal obligations than federal legislation, which is restricted to termination of employment.

The CEDAW Committee have also asserted, very strongly, that a formal equality approach will not satisfy the realisation of CEDAW obligations: identical treatment will not suffice, rather biological, social and cultural constructions of difference must be addressed along with a contextual consideration of the gender differences so as to ensure that measures go "towards a real transformation of opportunities, institutions and systems so that they are no longer grounded in historically determined male paradigms of power and life patterns."[38]

This, combined with the CEDAW obligations on challenging the gendered representation of family responsibilities, results in a clear expectation that for substantive equality to be achieved laws, policies and programs will need to transform social relations.

[34] Committee on the Elimination of Discrimination Against Women, *Concluding Comments of the Committee on the Elimination of Discrimination against Women: Australia*, UN Doc CEDAW/C/AUL/CO/5, para 24 (2006).
[35] SDA s 38
[36] ILO, 'Workers with Family Responsibilities Convention', above n 37, art 8.
[37] CEDAW, art 5.
[38] CEDAW Committee, 'General Recommendation 25', above n14, paras 8, 10.

Provisions on family responsibilities and indirect sex discrimination have begun to contribute to the implementation of the ILO Workers with Family Responsibilities obligations on more flexible workplace practices.

Nonetheless, limitations to the grounds for complaint and requirements to identify a comparator group, challenges with causation and the indirect sex discrimination approach along with the prevalence of a formal model of equality all negatively impact upon the full realisation of the ILO and CEDAW obligations to transform work practices to better respond to the needs of workers with family responsibilities.

Recommendation 3: that the SDA be amended to provide full protection against discrimination to workers with family responsibilities, not simply protection from termination of employment.

Recommendation 4: that the Government move to legislate for breastfeeding breaks for mothers returning from maternity leave

Recommendation 5: that the Government consider introducing a right to return to part-time after maternity leave, rather than simply the right to request this

Child and family care services

Support for the provision of child care and family care services is central to international legal obligations established in CEDAW and the ILO Workers with Family Responsibilities Convention.

However, the nature of the childcare is not dealt with by either CEDAW or the ILO Workers with Family Responsibilities Convention. These treaties simply state that childcare and family care services need to be supported, either through public or private means.

The availability of childcare services[39] or perceptions of the complainants efforts to obtain childcare have,[40] have been raised in complaints of sex discrimination however the cases have not turned on the issue. In general, the anti-discrimination framework provides no individual remedy for a lack of childcare as a form of sex discrimination, although it is conceivable that the SDA inquiries procedure (see below) could be used to explore this in the future.

Challenging values on family responsibilities and maternity

The final international legal obligation focuses on the development of education campaigns to challenge community views on the function of maternity and the roles and responsibilities of individuals with family responsibilities.

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[39] Kelly, Howe.
[40] Mayer.

The inquiries mechanism of the SDA is germane. Section 48 of the SDA asserts that HREOC should promote "understanding and acceptance of, and compliance with" the SDA and undertake research and education programs to promote the objects of the SDA.[41]

Two key issues arise in assessing the realisation of this objective: one, a review of HREOC actions in this regard, and two, a review of government funding of, and response to, such functions.

Pregnancy-based discrimination and discrimination against workers with family responsibilities has been a central focus of the work of the Sex Discrimination Commissioner since the late 1990s. In 1999 HREOC released *Pregnant and Productive* which documented the findings of an inquiry into matters relating to pregnancy and work, requested by the Attorney-General.[42]

Subsequently, HREOC, on its own recognisance, launched an examination of the "need or otherwise for a national paid maternity leave scheme in Australia,"[43] which resulted in the 2002 publication of *A Time to Value: Proposal for a national paid maternity leave scheme.*[44]

This was followed in 2005 with the *Striking the Balance* project which aims to examine family responsibilities and paid work.[45]

Collectively, over 540 submissions were received from individuals, community and business organisations,[46] and HREOC documented a significant increase in media coverage and polling on the issue of paid maternity leave in response to these inquiries.[47]

It is clear from these initiatives that the anti-discrimination framework as established in the SDA has the capacity to contribute to public awareness of these issues, and to challenge societal views on the needs of workers with family responsibilities.

Unfortunately, key recommendations from the *Pregnant and Productive* report and *A Time to Value* were rejected by the government. For example, in relation to the *Pregnant and Productive* report, the recommendation to publish enforceable standards in relation to pregnancy and potential pregnancy was rejected, as were the recommendations to expand coverage to provide protection to unpaid workers, to remove the exemption provided to educational institutions established for religious purposes, to remove the government's

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[41] SDA s 48(d) and (e).
[42] HREOC, 'Pregnant and Productive', above n 68, ix.
[43] HREOC, 'A Time to Value', above n 100, 3.
[44] Ibid, 81.
[45] HREOC, Striking the Balance, above n 2, 81. For a useful analysis of the benefits and limitations of the *Striking the balance* report see Sara Charlesworth, 'Striking the Balance or Tipping the Scales?: The HREOC Women, Men, Work and Family Discussion Paper' (2005) 18 *Australian Journal of Labour Law* 313.
[46] HREOC, 'Pregnant and Productive', above n 68, 231-5; HREOC, Website: Submissions, Striking the Balance (2005) HREOC, <http://www.hreoc.gov.au/sex_discrimination/strikingbalance/submissions/index.html> 7 September 2006, HREOC, 'A Time to Value', above n 100, 5.
[47] HREOC, 'A Time to Value', above n 100, 5-7. This was supported by independent external assessment for example Alison Morehead, 'A Review of New Australian Government Initiatives for Children' (2004) 69 *Family Matters* 94, 95

reservation to CEDAW and to fund economic modelling of a paid maternity leave scheme.[48] The recommendation contained in *A Time to Value* to establish a national paid maternity leave scheme was also rejected.[49]

These recommendations are key to the full implementation of CEDAW in Australia. The exemptions to the SDA significantly undermine its application in sectors dominated by women (for example, where women are teaching in schools run by religious organisations or working in hospitals run by religious organisations), as does the exemption to paid maternity leave. So while the public education component of the international obligations is achieved in a *de jure* sense assessment of the government response to recommendations arising from the educative component of the SDA is not realised in a *de facto* sense.

Addressing discrimination on the ground of family responsibilities

As referred to above, the YWCA Australia is concerned that in a practical sense, Australia has a long way to go in eliminating discrimination and promoting gender equality, in relation to family responsibilities.

In our joint submission, we stated: "*The current protection for people who have caring roles for others in the SDA is completely inadequate, and does not meet the obligations set forward in CEDAW or the ILO treaties Australia has ratified. Many state laws have gone past the level of protection offered. The SDA should provide full protection against direct and indirect discrimination to all people with family or caring responsibilities, and this should apply to all situations where other discrimination prohibitions apply, not merely to termination of employment."*

The YWCA Australia is concerned that, given the vast majority of unpaid work, including caring responsibilities, still falls to women in Australia, discrimination on the basis of family responsibilities obviously disproportionately effects women. This provides a further barrier to achieving gender equality in many areas.

Charlesworth argues that workplaces "continue to be based on the presumption of an 'ideal worker' with few domestic responsibilities, full-time work and little or no time off to care for family."[50]

The assumption of course is that the ideal worker has a corollary in the private sphere: the "full-time carer engaged in family work of housework and childcare, whose unpaid work subsidises the paid work of the ideal worker."[51] This dichotomy is inherently gendered with men taking on the ideal worker role and women the domestic care giver role, the "mummy track".[52] The challenge for the Sex Discrimination Act of course, is to address and overcome these stereotypes.

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[48] Human Rights and Equal Opportunity Commission, *Website: HREOC Assessment of Government Responses to Recommendations* (2000) HREOC <http://www.hreoc.gov.au/sex_discrimination/pregnancy/recommendations.html> 7 September 2006. In total twenty-three recommendations were accepted, twenty-one rejected and two deemed not appropriate.
[49] Charlesworth, 'Striking the Balance or Tipping the Scales?', above n 163, 314.
[50] Ibid.
[51] Joanne Conaghan, 'Women, Work and Family: A British Revolution?' in Joanne Conaghan, Michael Fisch and Karl Klare (ed), *Women, Work and Family: A British Revolution?* 2004)cited in Ibid.
[52] HREOC, 'Striking the Balance', *above n 2*, 57.

In assessing government support for addressing discrimination on the ground of family responsibilities, it is important to examine other government policies towards workers with family responsibilities. Hill notes that the former Howard Government fiscal and social policy "routinely constructed women as primary carers and secondary earners"[53] with the end result that "the Howard Government's approach to work *and* family policy is experienced by many women as work *or* family policy."[54]

It also useful to consider approaches taken in the past, for example the 1992 Department of Industrial Relations *Strategy for implementation of International Labour Convention 156 across Commonwealth policies and programs* which identified actions to support the realisation of six objectives derived from the ILO Workers with Family Responsibilities Convention. The Work and Family Unit has been replaced by a Work and Flexibility Section at the Department of Education, Employment and Workplace Relations and it is unclear what oversight mechanism for the Strategy remains. Certainly DEWR asserts that the Workplace Relations Act is compliant with the ILO Workers with Family Responsibilities Convention.[55]

Nonetheless, the rejection of key findings of both government and HREOC initiated inquiries and the reduction in funding to HREOC significantly undermine the realisation of the government obligation to support social and cultural change in relation to the roles and responsibilities of workers with parents, which is integral to addressing discrimination on the ground of family responsibilities.

Conclusion

Australia has a way to go before its international legal obligations in relation to sex discrimination and discrimination on the ground of family responsibilities are met.

The YWCA Australia hopes the Senate Legal and Constitutional Affairs Committee will consider our recommendations for improvement in its deliberations and in preparing its report on this important issue.

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[53] Elizabeth Hill, 'Howard's 'Choice': The Ideology and Politics of Work and Family Policy 1996-2006' (2006) http://www.australianreview.net/digest/2006/02/hill.html *Australian Review of Public Affairs*
[54] Ibid.
[55] Department of Employment and Workplace Relations, *Website: Work and Family: Legislation and Policy* (2006) DEWR <http://www.workplace.gov.au/workplace/Category/SchemesInitiatives/WorkFamily/Legislationandpolicy.htm
> Accessed 9 September 2006.